

GOP: Biden violated First Amendment by pressing Big Tech on covid misinfo

At House hearing, Republicans renew their claims that White House coerced social media companies to suppress conservative views



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House Republicans on Wednesday used a hearing on the U.S. government's coronavirus policies to highlight a lawsuit accusing the Biden administration of using social media to censor Americans' speech in violation of the First Amendment.

"The Biden administration strong-armed Big Tech companies to shut down debate in the name of science," argued Rep. Brad Wenstrup (R-Ohio), who chairs the House's select subcommittee on the coronavirus pandemic. He said the attempt to "censor speech" demands a congressional response, though he didn't say what that might be.

The hearing featured testimony from Missouri Attorney General Andrew Bailey (R), who with his Louisiana counterpart is suing in federal court to block the White House from working with tech companies such as Google and Meta to restrict what Americans can say on social media sites. A Trump-appointed federal judge in Louisiana has allowed the case to move forward, raising the possibility of another high-profile legal clash in higher courts over online speech.

The hearing and the lawsuit are part of a years-long political tug of war over what Americans can and can't say on social media — and who gets to decide. As social media platforms such as YouTube, Facebook and Twitter have worked to remove or reduce the spread of messages they deem offensive or harmful, conservatives have pushed back, saying the efforts target conservative opinion and infringe on Americans' freedom of expression.

During Donald Trump's presidency, the right focused its ire on the tech firms themselves, arguing that they were biased against conservatives. But courts so far have generally held that online platforms, as private companies, have their own First Amendment rights to choose what to publish and what not to. The First Amendment protects Americans from government censorship, not the editorial decisions of media companies.

Meanwhile, Democrats, including President Biden, have often criticized tech giants for not doing enough to curtail the spread of hate speech, conspiracy theories or misinformation on their platforms. In July 2021, Biden accused Facebook of "killing people" by spreading falsehoods about coronavirus vaccines. (He later walked back that comment.)

Now that Biden is president, Republicans have taken a new tack, alleging that the social media companies' decisions are actually being directed or at least influenced by the White House. If they can prove that tech firms are restricting speech at the government's behest, a court might find that violates the First Amendment after all.

That's what the Republican attorneys general of Missouri and Louisiana are arguing in *Missouri v. Biden*. In that case, a Trump-appointed federal judge has allowed the plaintiffs to collect thousands of communications between Biden administration officials and social media companies as they search for evidence that the government coerced the firms into suppressing posts that expressed dissenting views about the coronavirus, vaccines, elections and other sensitive topics.

The judge, Terry Doughty, heard oral arguments in the case last month and is expected to rule soon on the states' request for a preliminary injunction restricting how the Biden administration communicates with tech firms.

At Wednesday's House hearing, Missouri's Bailey found a receptive audience for his claims among Republicans, while Democrats indicated skepticism.

Among the pieces of evidence that Bailey argued is damning is an April 2021 email from Rob Flaherty, the White House's director of digital strategy, to Google officials. In the email, Flaherty expressed concern that "YouTube is 'funneling' people into hesitance" about the coronavirus vaccines. That concern, he added, "is shared at the highest (and I mean highest) levels of the [White House]."

Flaherty's email called for a "good-faith dialogue" between the White House and Google, including biweekly meetings, as the administration sought to address some Americans' reluctance to get a vaccination that it viewed as critical to containing the pandemic.

At issue, legally, is whether such dialogue and nudges rose to the level of government coercion — or whether they were in keeping with the federal government's own rights to express its views on the pandemic and misinformation.

Another witness at Wednesday's hearing, University of Virginia law professor Micah Schwartzman, said he has yet to see persuasive evidence of government coercion, calling claims of censorship "unverified allegations."

Rep. Debbie Dingell (D-Mich.) agreed, saying the government has a right to counter misinformation, especially misinformation that could lead to deaths during a pandemic, and has a right to communicate its message to private actors. She said false claims about coronavirus vaccines on social media led to preventable deaths, adding that she herself initially fell for false reports that the coronavirus vaccines would change peoples' DNA.

Jeff Kosseff, an online speech expert and author of the forthcoming book "Liar in a Crowded Theater: Freedom of Speech in a World of Misinformation," said via email that the case law on these sorts of censorship-by-proxy claims is messy and unresolved.

"On one hand, the government can (and should) be able to respond to private speech," Kosseff said. "But it crosses the line when it formally or informally pressures a platform to block constitutionally protected speech."

While the hearing focused on the coronavirus response, including whether various government orders violated Americans' rights to religious assembly, Bailey argued social media firms' coronavirus misinformation policies were a "Trojan horse" for the government to establish a "vast censorship enterprise."

But Rep. Jamie B. Raskin (D-Md.) countered by pointing out that while Republicans are accusing the Biden administration of influencing the content policies of social networks, their party is leading a surge in efforts to ban books and pass laws barring teachers from telling students about slavery and Jim Crow.

"The real government censorship in America is coming from the right," Raskin said.