

Koch-Funded Legal Group Fights to Protect Online Covid Misinformation

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Covid continues to kill thousands of Americans each week and debilitate many more, but the New Civil Liberties Alliance (NCLA), a group supported by Koch, is suing various members of the Biden administration—past and present—along with multiple administrative agencies over their efforts to combat online misinformation related to the virus.

The suit, *State of Missouri ex rel. Schmitt, et al. v. Joseph R. Biden, Jr., et al.*, was originally filed in May by two Republican state attorneys general — Eric Schmitt of Missouri and Jeff Landry of Louisiana. It alleged that the Biden administration, and the individuals named as defendants, coerced social media giants Twitter, Meta, and YouTube into censoring disfavored speech that later turned out to be accurate. NCLA joined the litigation in August on behalf of several individuals pro bono who claim to have been the victims of censorship because some of the Covid-related misinformation they promoted online was removed from social media platforms.

On Oct. 21, U.S. District Judge Terry Doughty, who was appointed by then President Trump in 2018, granted NCLA’s request to depose members of the Biden administration, including: Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases; Jen Psaki, former White House press secretary; and Vivek Murthy, the U.S. Surgeon General. In September, Judge Doughty blocked the Biden administration’s mask and vaccine mandates for Head Start workers.

The plaintiffs represented by NCLA include biostatistician Martin Kulldorff of the right-wing Brownstone Institute and epidemiologist Jay Bhattacharya of Stanford University, the Hoover Institution, and Brownstone. The pair are two of the three co-authors of the Great Barrington Declaration, an influential open letter released in October 2020 calling on governments to reject large-scale public health interventions in the face of the Covid pandemic in favor of “focused protection” for the vulnerable only. The document, which was signed at a conference hosted and filmed by the American Institute for Economic Research (AIER), a libertarian think tank that has received Charles Koch Foundation funding, generated fierce backlash within the scientific community but was embraced by certain political leaders—particularly those on the right like Trump and Ron DeSantis, the Republican governor of Florida.

Funding information for the Brownstone Institute is not yet available, as it just received tax-exempt status in early December 2021, and its website states, “We do not and will not share donor names.”

NCLA's involvement in the lawsuit signals the latest effort in an ongoing war on public health measures waged by right-wing, business-aligned groups—particularly those affiliated with billionaire Charles Koch. From the outset of the pandemic, these organizations have worked to downplay the seriousness of the virus, cast doubt on the efficacy and desirability of mitigation measures, and mobilize people against policies such as stay-at-home orders, school closures, mask requirements, and vaccine mandates.

Koch-Funded Litigation Group

Charles Koch's fingerprints are all over the lawsuit. NCLA receives close to half of its funding from the Koch influence network, with more than \$1 million (2020) coming from the Charles Koch Institute (recently rebranded as Stand Together Fellowships) and more than \$3 million (2017–20) from the Charles Koch Foundation. In addition, the right-wing litigation center has received over \$2 million (2018–20) from DonorsTrust, the preferred conduit of the Koch political network's donors.

Since its founding in 2017, NCLA has served as a legal pitbull for big business interests, using the courts to do battle against government regulations—particularly those that cause headaches for Koch. For example, in December 2021, the group filed an amicus brief in the Supreme Court case of *West Virginia v. Environmental Protection Agency*, in which the Court sided with the state and limited the federal agency's power to regulate greenhouse gas emissions. The group's founder, Mark Chenoweth, previously served as in-house counsel for Koch Industries.

An associate member of the State Policy Network, a right-wing web of think tanks and tax-exempt organizations that is backed by Koch and other far-right foundations, NCLA has represented several prominent Koch-backed groups including Americans For Prosperity (AFP), the Cato Institute, and the Institute for Justice. In May 2021, the Charles Koch Foundation posted a press release boasting of its support for NCLA.

Throughout the pandemic, the group has also worked to defeat public health measures, such as the Occupational Safety and Health Administration's emergency workplace safety standards and the Centers for Disease Control (CDC) and Prevention's eviction moratorium. Jenin Younes, the NCLA attorney in the *Missouri* case who goes by @leftylockdowns1 on Twitter and wrote for AIER, was involved in the former litigation.

Even the Republican attorneys general behind the lawsuit are linked to Koch. Schmitt is receiving support from Koch's AFP in his current campaign for the U.S. Senate, and Landry, whose AG campaign received donations from Koch Industries in 2015, just announced that he will be running for governor of Louisiana next year.

The Case

The complaint in *Missouri et al. v. Biden et al.* alleges that the federal government has violated the plaintiffs' First Amendment speech rights by colluding with or coercing social media companies to identify content for removal that it labels as misinformation. Compliance, it claims, has come under threat of increased regulation or the repeal of Section 230 of the

Communications Decency Act of 1996, which provides a liability shield to social media companies for the content users post on their platforms—with exceptions.

“Having threatened and cajoled social-media platforms for years to censor viewpoints and speakers disfavored by the Left, senior government officials in the Executive Branch have moved into a phase of open collusion with social-media companies to suppress disfavored speakers, viewpoints, and content on social-media platforms under the Orwellian guise of halting so-called ‘disinformation,’ ‘misinformation,’ and ‘malinformation,’” the complaint reads.

The suit also claims that the timing of the controls by social media companies coincides with federal government demands for increased censorship. It cites as one example an email sent to Fauci by former National Institute of Health (NIH) Director Francis Collins on Oct. 8, 2020. In the email, Collins requested a “quick and devastating published take-down” of the Great Barrington Declaration. While Fauci replied with several published articles, and he and Collins both publicly decried the document, such actions can hardly be described as official White House policy. In fact, Collins acknowledged that his own quotes, while accurate, “will not be appreciated in the [White House].”

In practice, the Trump administration actually hewed closely to the recommendations of the Great Barrington Declaration thanks to Trump adviser Scott Atlas, who was involved in bringing the document to light. Atlas sold the president on the herd immunity strategy in the document and, according to a staff report from the House Select Subcommittee on the Coronavirus Crisis, convinced him to weaken the CDC’s testing guidelines and instead scale back testing. Three days before the NIH email, Atlas and Health & Human Services Secretary Alex Azar had met privately with the authors of the declaration to discuss pandemic strategy.

Azar called the authors “distinguished infectious disease experts,” and following the meeting tweeted that, “We heard strong reinforcement of the Trump Administration’s strategy of aggressively protecting the vulnerable while opening schools and the workplace.”

The lawsuit seeks to have social media companies treated as “common carriers,” a classification that would strictly limit their ability to moderate content—including misinformation—on their platforms. Current Supreme Court precedent is protective of free speech even when it includes lies and factually questionable or incorrect information, save for limited circumstances.

Burt Neuborne, the Norman Dorsen Professor of Civil Liberties emeritus and founding legal director of the Brennan Center for Justice at New York University Law School, told the Center for Media and Democracy (CMD) that the complaint is “a political document, not a serious legal document,” noting that in his opinion, “nothing close to improper government censorship has been alleged.”

“No matter how many convoluted ways plaintiffs try to avoid it, the essence of the case is a challenge to the First Amendment right of a private entity operating a social media platform to decide what to print,” he said. “Section 230 may be good or bad policy, but it doesn’t turn private social media platforms into an arm of the government. It merely frees them to use their own judgment in deciding what to print.”

Neuborne explained that it is not “unlawful for the government to express its views about the factual correctness or incorrectness of a given statement, and to urge private speakers to refrain from disseminating false information,” noting that “such speech by government officials falls squarely within the Supreme Court’s government speech doctrine.”

That doctrine, he added, “also protects the government’s right to criticize the manner in which a social media platform is carrying out its 230 responsibilities, and consider whether 230 should be amended or abolished.”

Deadly Misinformation

Misinformation has been a killer throughout the pandemic. While the unvaccinated are more likely to get infected—and significantly more likely to end up hospitalized or dead from the virus—vaccine hesitancy is widespread in the U.S. An analysis published by the Johns Hopkins Center for Health Security in October 2021 found that misinformation and disinformation had caused as many as 12 million Americans to decline the jab and had cost the U.S. billions in economic damage. In May, Food and Drug Administration Commissioner Robert Califf stated that “misinformation is now our leading cause of death” when it comes to Covid.

Vaccines are not the only public health measure politicized during the pandemic. Mask-wearing and stay-at-home orders have been as well.

The *Missouri* complaint declares, for example, that there is no compelling evidence supporting lockdowns as a mitigation measure based on “a Johns Hopkins meta-analysis.” However, similar claims have been debunked by multiple credible fact checks, and the “meta-analysis” cited was not actually attributable to Johns Hopkins nor was it peer-reviewed. Worse, it was riddled with methodological problems.

As it stands today, more than a million Americans have died from the virus and many more have been disabled. According to U.S. Census Bureau data, 7.5 percent of the adult population is living with long Covid, and recent CDC data reveals that four out of five of these sufferers struggle to perform daily tasks. In July, the American Academy of Neurology suggested that the condition is now the nation’s third leading neurological disorder.

Covid misinformation is also radicalizing people. It has fueled threats against journalists, educators, school officials, scientists, and politicians. David DePape, the man arrested for attacking Nancy Pelosi’s husband, Paul Pelosi, with a hammer in the couple’s home in San Francisco on Oct. 28 while looking for the Speaker, was an anti-vaccine conspiracy theorist.

Government efforts to combat false information online span presidencies. While Trump himself was an unreliable messenger of facts, he did sign an act into law creating the Cybersecurity and Infrastructure Security Agency (CISA) as a sub-agency of the Department of Homeland Security (DHS). CISA began tracking misinformation, disinformation, and malinformation on social media platforms and notifying the companies about threats. Those efforts have continued under Biden.

On the campaign trail, Biden had discussed holding social media companies accountable for the misinformation on their platforms. In July 2021, the president went as far as accusing Facebook of “killing people.”

However, the extent of the Biden administration’s efforts to counter misinformation online amount to working on a voluntary basis with social media companies—flagging content deemed misleading or false for them—and promoting counter-narratives. For example, CISA developed a Covid-19 disinformation toolkit for state, local, and tribal officials. To date, no meaningful executive or legislative action has been taken to compel cooperation from social media companies, which have been reluctant to work too closely with the government but have removed some of the flagged content.

As The Intercept noted in a recent report, “a 2021 report by the Election Integrity Partnership at Stanford University found that of nearly 4,800 flagged items, technology platforms took action on 35 percent—either removing, labeling, or soft-blocking speech, meaning the users were only able to view content after bypassing a warning screen.”

The *Missouri* lawsuit is aimed directly at preventing even limited government efforts to ensure the factual accuracy of Covid-related information shared online in order to save lives amid the most significant public health crisis in a century.

Sowing Doubt

Throughout the pandemic, Kulldorff and Bhattacharya have promoted the narrative that government responses like “lockdowns” and mandates are the real danger, not the virus itself. Between them, they have suggested that mitigation measures are to blame for a wide range of problems—from excess deaths to Russia’s war in Ukraine. They advocate for natural infection as an essential tool for achieving herd immunity, even though that immunity has not manifested as casualties mount. Kulldorff even served as an advisor to a global Covid-19 disinformation network alongside Patrick Fagan, the former lead psychologist of the infamous digital analytics firm Cambridge Analytica.

Both Kulldorff’s and Bhattacharya’s contrarian streak has earned them sizable, engaged social media audiences, with hundreds of thousands of followers each on Twitter alone. But their ideological bent has led the pair to misconstrue or even dismiss data that runs counter to their preferred narratives, earning them criticism from their peers and trouble on social media platforms.

For example, the complaint highlights Kulldorff’s temporary suspension from Twitter in May 2021, which came after he had claimed that masks are ineffective at preventing the spread of Covid. The complaint also cites YouTube’s removal of a video of Kulldorff and Bhattacharya participating in an April 2021 roundtable discussion with DeSantis, during which they recommended against masking children. Kulldorff claimed that it’s ineffective and unnecessary in the first place while Bhattacharya, who has no background in the field of pediatrics or psychology, suggested masks could cause developmental harm.

The larger body of research provides a stark contrast to their opinions. The CDC has long recognized the importance of masking in reducing viral spread, and studies have concluded that masks reduce reduce spread in school and community settings. What's more, in August, the American Academy of Pediatrics publicly recommended masking children while dismissing claims about developmental delays. Diane Paul, a doctor, audiologist and senior director of Clinical Issues in Speech-Language Pathology at the American Speech-Language-Hearing Association (ASHA), told CMD that while more research is warranted, "At this time, ASHA is not aware of studies that directly assessed the long-term impact on speech and language development when young children interact with adults who are wearing facemasks."

"However, there are studies demonstrating children can tune into different communication clues and gestures when an adult's mouth is not visible," Paul said.

The *Missouri* complaint claims that government-induced online censorship by social media companies "reduces the message and impact" Bhattacharya has as an expert. However, in October 2021, a federal judge called Bhattacharya's testimony in a suit over Tennessee Gov. Bill Lee's executive order allowing parents to opt their children out of school mask mandates "troubling and problematic" because it was "replete with contradictions that undercut his credibility." U.S. District Judge Waverly D. Crenshaw explained that Bhattacharya, the state's star expert, had oversimplified the conclusions of a study he cited.

"He offered opinions regarding the pediatric effects of masks on children, a discipline on which he admitted he was not qualified to speak," Crenshaw wrote. "His demeanor and tone while testifying suggest that he is advancing a personal agenda. At this stage of the proceedings, the Court is simply unwilling to trust Dr. Bhattacharya."

Crenshaw is not the only judge to doubt Bhattacharya. Another, in Manitoba, wrote that regardless of his credentials and qualifications, "questions can be and were raised respecting the weight that should attach to some of his opinions and views on the specific topics of immunology and virus spread" because of "the absence of a more consistent and more specialized long-term academic focus and a more obviously rooted practical and clinical experience."

The judge noted that "many of Dr. Bhattacharya's opinions and prescriptions on the subject of the preferred and most effective public health responses to the pandemic fall outside the mainstream consensus that has developed amongst most medical and scientific experts and governments the world over."

Anti-Vaccine Narratives

Kulldorff and Bhattacharya have also encouraged vaccine skepticism. In a June 2021 op-ed, "The Ill-Advised Push to Vaccinate Young People," the duo wrote that "even a slight risk of a serious vaccine adverse reaction could tip the benefit-risk calculation, making the vaccine more harmful than beneficial." They went on to argue: "We have already observed rare problems with blood clots (J&J vaccine) and myocarditis (inflammation of the heart muscle, Pfizer and

Moderna) in younger people, and additional equally serious issues might still be found. Under such uncertainty, vaccine mandates are unethical.”

In July, Kulldorff wrote an article for Brownstone questioning the safety of Covid vaccines based on a study published the previous month. In another post, he suggested that the mRNA vaccines might not reduce mortality.

In reviewing Kulldorff’s and Bhattacharya’s claims, Dr. Dan Wilson told CMD that “vaccines are extremely safe for the youngest age groups,” explaining that “the myocarditis has mostly been seen in adolescents, not the youngest kids,” and adding that “even in adolescents, the rates of it are rare. They’re usually mild, usually self-resolving, whereas myocarditis associated with a viral infection is often more serious and comes with other things that are also very serious.”

Wilson, a molecular biologist who has been involved in vaccine research and in 2020 started a YouTube channel called “Debunk the Funk with Dr. Wilson” to expose junk science, also took issue with Kulldorff questioning mRNA vaccine safety and the study he relied upon. The researchers, he noted, were “analyzing a dataset that is just not suited to answer their questions” about the commonality of serious adverse effects.

In addition, significant post-market safety monitoring has been going on around the world since Covid vaccines rolled out in late 2020, he pointed out.

Wilson found similar problems with Kulldorff’s article questioning the impact of the mRNA shots on mortality, noting that the epidemiologist had relied on studies that were ill-suited to measure differences in deaths.

“The clinical trials that the authors are assessing are not powered to measure differences in death,” he said, adding, “You need a larger population to confidently address that question. Again, such data were available and completely ignored by the authors.”

Numerous studies have found that both Pfizer’s and Moderna’s mRNA vaccines lower the risk of death associated with Covid. A CDC report from March notes that people receiving two doses of an mRNA Covid-19 vaccine had “a 90% reduction” in the risk of death or needing ventilation, while three doses provided even better protection. In New York City, for example, data as of Sept. 4 showed that unvaccinated residents were five times more likely to die from Covid than those who had been vaccinated and boosted, and six times more likely to be hospitalized. The CDC currently recommends vaccines for everyone aged six months and older.

While neither fully identifies with the anti-vaccine movement, Kulldorff and Bhattacharya have provided plenty of soft support for it. For example, Bhattacharya recently suggested that the updated Omicron boosters might not be ready or safe for use. When *Mother Jones* senior editor Kiera Butler criticized him for the assertion, the Stanford professor took to Twitter, attacking the report and goading his followers to target the journalist, even “liking” multiple tweets suggesting she was either paid off by big pharma or invested in it—a conspiracy theory anti-vaxxers throw around about public figures who promote the jabs.

Kulldorff and Bhattacharya have also surrounded themselves with anti-vaxxers. The Brownstone Institute, a group founded by AIER's former editorial director Jeffrey A. Tucker where the pair are senior scholars, bills itself as the "spiritual child of the Great Barrington Declaration" and has been a hub for vaccine misinformation. Tucker is also an advocate for the return of child labor and founding member of the neo-Confederate group League of the South,

In December, Brownstone will host a conference in Miami, which Bhattacharya will attend along with Florida Surgeon General Joseph Ladapo, who recently published highly-criticized guidance recommending against Covid vaccines for young people and rose to prominence through his membership in America's Frontline Doctors, a right-wing anti-vaccine physician-led group that promoted and sold quack viral cures. Others scheduled to attend include the notorious vaccine skeptic Dr. Robert Malone and Paul Alexander, who expressly advocated for mass infection as a path to herd immunity while serving as HHS science adviser in the Trump administration. He also worked to downplay the CDC's Covid messaging, was later involved in the Ottawa anti-vaccine trucker convoy, and has suggested jailing public officials who promote vaccines.

Gavin Yamey, professor of Global Health and Public Policy at Duke University, told CMD that the group "has peddled horrific nonsense about Covid vaccines," noting that "Brownstone's founder, Jeffrey Tucker, says that the Covid vaccine is 'a technology that's not been proven as safe and effective.' This is appalling anti-vaccine rhetoric." Brownstone has also lauded an anti-vaccine rally and even promoted quack Covid treatments like hydroxychloroquine and ivermectin, Butler reported.

The other plaintiffs represented by NCLA in the *Missouri* lawsuit are also vaccine skeptics. Jill Hines, co-director of Health Freedom Louisiana and founder of ReOpen Louisiana, has promoted unreliable vaccine injury claims. Psychiatrist and ethicist Aaron Kheriaty lost his job for refusing the Covid vaccine due to his "natural immunity" from a prior Covid infection. While prior infection does lead to some level of protection, the CDC recommends vaccination even for the previously infected.

Jim Hoft, founder of the right-wing conspiracy website *Gateway Pundit*, which peddles anti-vaccine misinformation, is also a plaintiff in the case, represented by a Missouri law firm.

In May, Kulldorff and Bhattacharya participated in a panel discussion with notorious anti-vaxxer Steve Kirsch, founder of the Vaccine Safety Research Foundation. Kirsch has claimed without evidence that the vaccines have killed hundreds of thousands of people. At the event, when he claimed that the vaccines have killed more people than they have saved, Bhattacharya barely pushed back.

"I'm not sure I agree with that," he said, before adding, "I don't think we know that." The following month, a study came out estimating that Covid vaccines had saved more than 20 million lives around the world in 2021—the first year they became widely available.

In a tweet from July, Kulldorff shared an article by writer Alex Berenson calling the vaccines a "failure." Berenson had been banned from Twitter in August 2021 for "repeated violations of our

Covid-19 misinformation rules” but “sued his way back onto the platform,” according to *The Atlantic*.

Ironically, Kulldorff and Bhattacharya have attributed vaccine skepticism to proponents of Covid mitigation measures. In a March article for the Epoch Times, a publication known for disseminating vaccine misinformation, the pair argued that while the jabs reduce mortality their efficacy has been oversold, which has undermined public confidence in them. In August, Bhattacharya took to Twitter to blame “lockdowns” and mandates for the return of polio, arguing that such policies hurt public trust in medicine.

Koch Connections

NCLA’s pro bono intervention in the *Missouri* case comes as no surprise. Several well-known Koch-supported outfits like [AFP](#), the [American Enterprise Institute](#), the [Heritage Foundation](#), and AIER have been crying foul over the Biden administration’s efforts to crack down on online misinformation.

In March, the Heritage Oversight Project [joined](#) the Free Speech Alliance along with 90 other conservative organizations, taking issue with alleged “big tech” censorship of conservative thought on topics including the pandemic. A Heritage commentary published in September warned that such efforts represent a [coordinated ploy](#) by “big tech,” the Biden “regime,” and the political left to consolidate power.

In July 2021, AIER published a post [suggesting](#) a lawsuit against the Biden White House very similar to the *Missouri* suit after Press Secretary Psaki announced that the administration was working with Facebook to counter misinformation on the platform. The commentary references legal precedent included in the complaint.

The *Missouri* case feeds a victimhood narrative central to the conservative movement. For decades, right-wing groups like those in Koch’s network have worked to inject unpopular, extreme ideas into the mainstream political discourse under the guise of greater inclusivity and restored “balance.” The alleged anti-conservative “bias” of big tech has long been a rallying cry—though last year, Twitter’s own research [found](#) that the platform’s algorithm actually favored right-wing opinions.

“Right-wing organizations want their policies to seem legitimate to the public, so they find scientists who have opinions that are viewed as fringe or discredited by mainstream science,” Social epidemiologist Justin Feldman, a visiting scientist at Harvard’s T.H. Chan School of Public Health, told CMD. “On top of that, they can use populist framing wherein ‘big science,’ ‘big tech,’ or the liberal establishment are trying to censor ‘brave truth-tellers.’ The populist framing helps galvanize their base since they see themselves as the underdogs fighting powerful institutions. It also provides an explanation as to why their experts are not taken seriously by the mainstream.”

Kulldorff and Bhattacharya have ties to Koch’s influence network beyond the role AIER played in the origins of the Great Barrington Declaration.

Bhattacharya is a senior fellow at the Koch-funded Hoover Institution. In February, he was a featured speaker at a conference hosted by the Koch-tied Council for National Policy, a secretive and highly influential Christian right organization that influences policy in Washington. More recently, he and Kulldorff took teaching fellowships at Hillsdale College's new Academy for Science and Freedom in Washington. A conservative Christian college, Hillsdale receives funding from Koch's foundation.

Kulldorff and Bhattacharya have repeatedly denied being tied to Koch world in any meaningful way. In a March 2022 blog post, the pair wrote that their "closest and only financial 'connection' to the Koch network is to have worked for universities, Stanford and Harvard, which have received millions of dollars from Koch foundations, although unrelated to any of our own work." CMD is unable to independently verify this, as the Charles Koch Foundation last published grant agreements with Stanford in 2018, and Harvard in 2020.

On Twitter, Bhattacharya responded publicly to the author's request for comment, claiming that he was planning to write a "hit piece" on him and stating, "I also got \$0 from the Koch brothers." Bhattacharya said he covered his own travel expenses related to the AIER conference and has not received any money for his Hillsdale teaching fellowship or speaking engagements during the pandemic. At the time of his tweets, Bhattacharya was doing a speaking tour in Australia promoting the U.K. nonprofit Collateral Global, which was founded by epidemiologist Sunetra Gupta, the third co-author of the Great Barrington Declaration. Funding information for the group is not yet available.