NATIONAL REVIEW

The Beginning of the End for the Censorship-Industrial Complex?

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March 20, 2024

In oral arguments on Monday, the U.S. Department of Justice urged the Supreme Court to let government officials, including federal law-enforcement agencies, tell social-media company officials, in secret, what content to delete. In the case of *Murthy v. Missouri*, the central question is when government coordination with social media violates the First Amendment. The government's lawyer conceded that the government's intense, multi-agency pressure on social-media companies to remove content and accounts was unusual, but he effectively threw tech companies under the bus, saying that the companies were voluntary partners in the government's fight against "misinformation." As former CIA analyst Martin Gurri has remarked, "There's no precedent for what's going on unless you go back to Franklin Roosevelt's wartime censorship."

The people suing the government, including former Harvard professor Martin Kulldorf, allege that government officials coerced YouTube, Twitter, and other tech companies to remove their online posts and commentary, including criticisms of the government's Covid-19 policies. The plaintiffs presented damning evidence, including internal government emails and testimony from government officials. They documented federal officials' immense pressure on social-media companies, including profane emails and vague threats from White House officials to Facebook officials to remove vaccine "disinformation," as well as messages from the FBI to several social-media companies with spreadsheets of accounts and content that the agency wanted removed. The FBI followed up on its requests at quarterly meetings with companies, keeping internal notes of which companies were complying with FBI demands. Perhaps the messages were innocent — we may never know because the FBI used encrypted communications and has not revealed their contents.

Last summer a federal judge agreed and ordered the government to stop coercing social-media companies to remove protected speech. An appeals court upheld most of that preliminary injunction, and the government asked the U.S. Supreme Court to let it resume "advising" social-media companies about what content should be removed.

Growing evidence suggests that the system of censorship deployed in wartime has reemerged in peacetime in the digital age. The U.S. Censorship Office in 1945 described government-media agreements during wartime to limit public discussion of controversial subjects, a system it dubbed "voluntary censorship." The details of how voluntary censorship works have always

been hard to uncover since agencies can hide embarrassing and illegal behavior for years by deeming disclosure a "national security" issue.

Infamously, it took nearly ten years of congressional investigations for U.S. lawmakers to uncover details about government censorship of Polish-Americans' reporting in 1943 that harmed a U.S. ally. Rumors at the time — proved true decades later — held that the Soviet secret police had captured thousands of Polish leaders and intelligentsia and summarily executed them on Russian soil in 1940. U.S. officials, Congress later learned, censored diplomatic and news discussions about the executions and instead promoted Russian disinformation. President Roosevelt's advisers believed that public awareness of the Soviet executions of the Polish elite — U.S. allies in 1943 against the Nazis — would imperil Roosevelt's 1944 reelection and congressional support for a post-war United Nations organization.

Recent disclosures show that government tactics and "voluntary censorship" have changed in the digital age. YouTube freelance journalists, Twitter contrarians, and podcast hosts have no license to revoke, no mailing privileges to leverage, and no industry board members to threaten.

However, there are clear signs many U.S. government officials want to censor topics far beyond just vaccines, and that they view American minds as a theater over which their legal authority extends. For instance, the director of a federal cybersecurity and infrastructure agency noted at a 2021 event that the agency was expanding beyond protecting dams and electric substations from internet hackers to exerting "rumor control" during elections, saying, "We are in the business of critical infrastructure. . . . And the most critical infrastructure is our cognitive infrastructure." A White House national climate adviser stated at an *Axios* event: "We need the tech companies to really jump in" and remove green energy "disinformation."

Department of Homeland Security documents obtained and released by U.S. Senator Chuck Grassley show a 2022 plan to "operationaliz[e] public-private partnerships between DHS and Twitter" regarding content takedowns. Further, red flags are present at the social-media companies: Many hire former federal officials to their "trust and safety" teams, and others have created online portals to fast-track government agencies' content-takedown requests.

On the bright side, emails have revealed instances when employees at social-media company gently resisted and sometimes defied government censorship efforts. Ideally, and in accordance with First Amendment, the Supreme Court will put an end, at the very least, to the government's use of unrecorded meetings and secretive message services to urge censorship of Americans' speech. Front-line tech-company employees need the backing of the Court and lawmakers to protect free-speech norms and to resist becoming a mere extension of the government.

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