



Bailey details why Missouri should help build wall between ‘tech and state’

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August 15, 2023

Missouri Attorney General Andrew Bailey is trying to build what he says is a wall between technology companies and social media content.

Bailey is taking part in a potential landmark case, along with Louisiana's attorney general, known as *Missouri v. Biden*. The case revolves around whether the federal government overstepped its bounds when it tried to get social media platforms to take down content — particularly posts around the COVID-19 pandemic.

In an interview Tuesday, Bailey said the case could have major implications for protecting speech through social media activity from federal government intrusion.

“They're done at the demand of a federal government and a bureaucratic apparatus that's unaccountable to the electorate,” he said.

An appeals court panel heard arguments earlier this month on a lower court's injunction curtailing federal officials from trying to take down social media content. The injunction from Judge Terry Doughty says, among other things, that a number of federal officials are barred from “engaging in any communication of any kind with social-media companies urging, encouraging, pressuring, or inducing in any manner for removal, deletion, suppression, or reduction of content containing protected free speech.”

“I think the wall of separation between tech and state is absolutely important to protect our right to free speech,” Bailey said. “The whole purpose behind the First Amendment right to free speech is to invite dissent into a free, fair and open marketplace of ideas, uninhibited from government censorship.”

During a July episode of *St. Louis on the Air*, Washington University law professor Greg Magarian questioned whether Bailey and Louisiana Attorney General Jeff Landry proved that the

federal government made specific threats if companies like Facebook or YouTube didn't take down content.

“When we're talking about giant social media platforms, giant corporations, and the government says: ‘Hey, we're gonna just tell you some of our concerns,’ those social media platforms know if they're being threatened,” Magarian said. “And if they're not being threatened, they know where the government is coming from. If the government is pushing them improperly trying to coerce them, they're in a good position to fight back. As far as I'm aware, there's not good evidence that that's what's been going on here.”

Bailey said federal officials threatened general immunity protections for technology companies for third-party content generated by users.

“There's absolutely good evidence of the coercion and collusion from the federal government to big tech and social media demanding censorship of speech,” he said.

A major aspect of the Missouri v. Biden lawsuit revolves around the federal government trying to take down content related to the COVID-19 pandemic.

The right to be wrong

During arguments last week, Department of Justice attorney Daniel Tenny said the injunction is so broad that it could end up hamstringing federal officials who need to combat unquestionably false information.

“If there were a natural disaster, and there were untrue statements circulating on social media that were damaging to the public interest, the government would be powerless, under the injunction to discourage social media companies from further disseminating those incorrect statements,” Tenny said.

But Bailey said there's nothing stopping a governmental official from publicly stating that an assertion on social media is false.

“The government has the right to speak on its own, and that the remedy for disfavored speech in this nation has always been counter speech, not government censorship,” Bailey said.

“Government censorship is counterproductive. People cease to trust the government if they feel they can't see and hear things on their own. The government has an important role to play, but it's not in the field of censorship. What we're fighting against is government officials silencing speech in opposition to their policy positions.”

Bailey said he anticipates the 5th Circuit Court of Appeals will hand down its decision within 30 days. He added that he expects the case to go to the U.S. Supreme Court.

When asked what he thinks is at stake in the case, Bailey said: “Freedom of speech in America.”

“Are we going to live in a world where the legacy of freedom enshrined in our Constitution handed down by previous generations is cast aside in favor of government censorship?” he asked.

Beth Talleur, left, and her son Joe Talleur grab various-colored folders on Aug. 4 at a Target in Kirkwood. In addition to shopping for Joe, who is entering his freshman year at St. Louis University High School, the pair was also shopping for his three younger siblings.

Targeting Target

Bailey has faced criticism for championing the Missouri v. Biden case while also signing on to a letter that criticized the retailer Target over merchandise sold during Pride Month.

Among other things, Walter Olson of the CATO Institute said last month's letter “is an effort to chill the retailer’s liberty to engage in conduct protected by the First Amendment to the Constitution.”

“In a piquant juxtaposition, Andrew Bailey, the attorney general of Missouri, took a victory lap after his state won a favorable ruling in the social media case, only to turn around the next day and appear as a signatory of the Rokita [Target] letter,” Olson said. “It all depends on what level of government is doing the browbeating to accomplish the takedown, doesn’t it?”

Bailey said the issues in Missouri v. Biden and the letter over the Target merchandise are different. He said that “the difference there is between protected core political speech and obscenity that is not protected speech.”

“I think parents have a right to have conversations with their children about cultural topics at a time and place of their choosing and consistent with that family's values,” he added.