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## Biden's social media court fight could have major election implications

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The Biden administration will hope to secure its ability to contact social media firms today.

A federal judge blocked access between the White House and social media companies on July 4, ruling that they were collaborating to censor online speech. That move was later stayed, and the administration will hope to keep it that way following a hearing before the 5th U.S. Circuit Court of Appeals.

The sweeping injunction came in response to a lawsuit from Republican attorneys general in Missouri and Louisiana that alleged government officials and social media companies collaborated to suppress speech based on content.

It blocked dozens of officials, including press secretary Karine Jean-Pierre and Health and Human Services Secretary Xavier Becerra, from speaking to a host of tech firms and noted that most of the speech that had been suppressed was conservative in nature.

While much of the alleged censorship dealt with pandemic-related issues of vaccine efficacy and the lab leak COVID-19 origin theory, the issue has broad implications for the role of government in regulating online speech.

The White House outlined its approach to the issue early in President Joe Biden's tenure, when then-press secretary Jen Psaki said, "The president's view is that the major platforms have a responsibility related to the health and safety of all Americans to stop amplifying untrustworthy content, disinformation, and misinformation, especially related to COVID-19 vaccinations and elections."

At issue is how much of a role the government should play in directly convincing or coercing those platforms to remove content it deems unfavorable or inaccurate.

The 5th Circuit could reinstate the judge's order, continue the stay or institute a narrower compromise between the two. Knight First Amendment Institute Director Jameel Jaffer pushed for the latter approach in a statement.

"It surely can't be a violation of the First Amendment for the government to call out a newspaper for publishing a story the government believes to be false," he said, using a hypothetical

example. "On the other hand, we don't want the government to be able to escape the First Amendment's prohibition against censorship simply by relying on informal coercion rather than formal regulation."

Using informal coercion instead of regulation is usually known as "jawboning" and is one of the controversies at play.

Conservatives point to the FBI's role in suppressing the Hunter Biden laptop story in October 2020 that turned out to be accurate as one egregious example of government overreach. They worry the Biden White House could try similar tactics going forward if not restricted.

"[The White House] considers concerns about mail-in balloting and voter ID to be misinformation," Judicial Watch President Tom Fitton said. "We should be concerned that the Biden administration, given their prior record, will further intervene in elections."

"The administration can't ask a third party to do something they can't do directly," he added.

A dozen House Republicans filed an amicus brief Tuesday saying the case is a "smoking gun" documenting online speech suppression.

The Supreme Court ruled in the 1963 *Bantam Books v. Sullivan* case that informal censorship can violate the First Amendment under certain circumstances. But Democrats counter that the government should not be barred merely from contacting companies and sharing concerns and information.

A final decision in the case won't be reached for some time, but CATO Institute analyst Will Duffield suggests a solution could involve making sure the government speech is disclosed to the public.

"When the government speaks to private social media platforms about user speech, the content of those communications should be made public through the government," he said. "If these communications are public, we can come to our own conclusions, and I think a lot of the bullying language will no longer be made."