

# The White House Has Never Had the Power to Police Speech



President Joe Biden speaks at a barbecue with active-duty military families on the South Lawn at the White House in Washington, D.C., July 4, 2023. R(Julia Nihkinson/Reuters)

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That it seems to believe otherwise is its own fault, not the fault of those fighting for the First Amendment.

I regret to inform you that the authoritarians are at it again. In *Politico* today, Adam Cancryn relates the anguish and frustration that have been felt within Joe Biden’s White House since a federal judge reminded the executive branch that it is bound by the Bill of Rights. “Biden officials have felt handcuffed for the past two years,” Cancryn writes, “by a Republican lawsuit over the administration’s initial attempt to clamp down on anti-vaxxers, who alleged the White House violated the First Amendment in encouraging social media companies to crack down on anti-vaccine posts” — a suit that staff at the White House believe “has limited their ability to police disinformation online.”

To which one must ask: As opposed to what?

The First Amendment's protection of the progenitors of "misinformation" is not an esoteric loophole or a marginal technicality or the remnant of a bygone era. It is not vestigial, or contingent, or the product of a quirky mistranslation. It is one of the foundations of our society. In the United States, it is the authorities, not the citizens, who are cabined by the law. The Constitution grants no enumerated power to the federal government with which it might legitimately police lies, and, as if to make the matter as clear as possible, the Bill of Rights explicitly prohibits such policing. In totalitarian nations, the state is permitted to determine what it considers to be authoritatively true, to disseminate its resolutions across the country, and to punish anyone who dissents. Here, the state must allow individuals to speak irrespective of the contempt in which it holds their opinions. Remarkably, this applies even when the president is a Democrat and the topic is vaccines.

The frame that both the Biden administration and *Politico* have adopted is thus defective. The White House has not "felt handcuffed"; it is handcuffed. The limits on its power are not the consequence of "a Republican lawsuit"; the Republican lawsuit is meant to uphold the constitutional limits on its power. Biden's compliance with the ruling has not given those whom he disdains "more space to promote their views"; that space existed beforehand and was being temporarily invaded by the executive branch. Throughout, *Politico* implies that those who have benefited from the verdict are not *really* exercising their rights: The lack of force, the outlet sneers, has allowed them to "tout themselves as free speech warriors." But there's no "tout themselves" about it. They *are* free-speech warriors. They're engaged in "free speech," which, in America, includes misinformation, and they're "warriors" because the government is trying to shut them up. That the content of their speech is often preposterous is no more important to the case than it would be if it were "hateful." There are no classes of expression in the First Amendment.

Legalities aside, it should be obvious why we do not want our government to team up with private institutions and attempt to regulate debate. Substantially, it remains the case that our elected officials are not licensed to play arbiter of the truth — and they must not become so in the future. Our government can, of course, participate in the national debate, and, when it does, it has prominent platforms available to it. What it *cannot* do is decide that those with whom it is arguing must be silent or attenuated or limited to an approved set of ideas. This is not because there is no such thing as the truth; rather, it is because one does not arrive at a perfect possession of truth by dint of winning an election or taking an oath of office. In free countries such as the United States, dissent is imperative both per se (even when their doing so is facially ludicrous, individuals enjoy an unalienable right to disagree) and practically (governments can be wrong, and the best way to discover when they are is to host an open debate). To limit it in the name of democracy is to turn democracy upside-down.

Structurally, there can be no such thing as a volitional exchange of ideas between a social-media company and a federal or state government while the federal and state governments remain tasked with regulating those social-media companies. If I were to recommend to Twitter that it remove a certain post or user, the organization would be able to evaluate my suggestion in a

vacuum. Missives from Washington, D.C., or Tallahassee, by contrast, tend to arrive marked with a collection of threatening stamps: IRS, SEC, FTC, FBI, etc. Practically speaking, presidents and governors ask for “favors” or “voluntary action” in much the same way as the mafia does: The mouth smiles and there’s a “please” at the end of each sentence, but there’s a loaded gun under the table.

Once again, the Biden administration is focusing has got it wrong — the problem is not that it has been uncommonly hamstrung by abstruse litigation, but that, through its own fecklessness and dishonesty, it has lost the trust of the public. Like all imperious instincts, censorship reflects insecurity rather than confidence, impotence rather than strength, resignation rather than hardiness. Lies have been with us since Eden. The best counter to their influence is not the sword, but the truth.