

Justices Lift Restrictions on Biden Admin Contacts With Social Media Companies

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The Supreme Court building. (Photo by Dan McCue)

WASHINGTON — A divided Supreme Court on Friday lifted a pair of lower court rulings that barred the Biden administration from communicating with social media companies while litigation over the government's effort to thwart misinformation online winds its way through the courts.

The 6-3 decision by the court puts on hold a ruling by a federal judge in Louisiana and the 5th U.S. Circuit Court of Appeals that placed sharp restrictions on when and how officials from the White House, the Federal Bureau of Investigation, the Centers for Disease Control and Prevention and other agencies could talk to social media companies about misleading content on their pages.

The justices also agreed to weigh in on the merits of the case later in their 2023–24 term.

In July, U.S. District Judge Terry Doughty, a Trump appointee, sided with attorneys general from Louisiana and Missouri who had argued the Biden administration had “engaged in a massive effort to suppress disfavored conservative speech” as it allegedly sought to stamp out misinformation about COVID–19 vaccinations and recent and current elections.

In response, Doughty issued a sweeping order that effectively blocked the White House and others in the federal government from communicating with the social media platforms about any content–related issue.

The administration appealed to the 5th Circuit, which largely agreed with Doughty, but nevertheless slightly narrowed the judge’s order, so that it applied only to the White House, the U.S. surgeon general, the Centers for Disease Control and Prevention and the FBI.

In September, the administration asked the justices to put Doughty’s order on hold.

In her petition to the high court, U.S. Solicitor General Elizabeth Prelogar said the order put “unprecedented limits on the ability of the president’s closest aides to use the bully pulpit to address matters of public concern.”

She went on to say it also hampered the FBI’s ability to address threats to national security, and the CDC’s ability to relay important public–health information to the general public through social media.

The justices in the majority did not write an opinion explaining the rationale behind their decision.

But three of the conservative justices on the court, led by Justice Samuel Alito Jr., who handles emergency appeals from the 5th Circuit, said they disagreed with the majority's decision. Alito was joined in his five-page dissent by Justices Neil Gorsuch and Clarence Thomas.

The dissenters maintain that the court erred in intervening in a case that was still in its very early stages.

As to the decision itself, Alito wrote, "At this time in the history of our country, what the court has done, I fear, will be seen by some as giving the government a green light to use heavy-handed tactics to skew the presentation of views on the medium that increasingly dominates the dissemination of news."

"That is most unfortunate," he added.

The underlying case was brought by five individual plaintiffs, including doctors and medical specialists, who claimed their social media posts criticizing that the nation's COVID politics and mask and vaccine mandates were being censored because they represented "disfavored viewpoints."

They, and the attorneys general fighting their case for them claimed the Biden administration had coerced the social media platforms to remove their content, thereby censoring their speech.

Prelogar pushed back at this assertion by noting the administration and social media companies sometimes disagreed on what constituted misinformation and what did not.

The justices will likely hear oral arguments in the case this winter or in the early spring. It is expected to hand down its decision in the case in June.

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