

# Congress of the United States

Washington, DC 20510

March 11, 2022

Vivek H. Murthy, MD, MBA  
U.S. Surgeon General  
Office of the Surgeon General  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Surgeon General Murthy:

We write with significant concerns that the Biden Administration continues to undermine the First Amendment by pressuring technology companies to censor specific users and certain speech. The First Amendment prohibits the government from directly censoring speech it finds objectionable. To bypass that prohibition, Biden Administration officials continue to pressure private companies to do what it cannot. However, this intimidation practice, known as “jawboning,” may also amount to unconstitutional behavior.

In *Bantam Books v. Sullivan*, the Supreme Court held that a government agency violated the First Amendment by sending letters to private booksellers to “inform” them they were selling books and magazines the agency found objectionable.<sup>1</sup> The agency’s letters thanked the booksellers for their “anticipated cooperation” and reminded them of the agency’s duty to recommend prosecutions.<sup>2</sup> The Court found that such behavior amounted to “informal censorship” because the effect of the letters was to intimidate the booksellers into suppressing the sale of the certain books and magazines.<sup>3</sup> The Court found that such behavior amounted to an unconstitutional “scheme of state censorship.”<sup>4</sup> Here, the Biden Administration appears to be engaged in similar behavior.

On July 15, 2021, you issued a Surgeon General Advisory on “health misinformation” in which you demanded “tech and social media companies must do more to address” perceived health misinformation.<sup>5</sup> At a press conference that same day, you decried technology companies facing “little accountability” for the spread of health misinformation.<sup>6</sup> At the same press

---

<sup>1</sup> *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 83 S. Ct. 631 (1963)

<sup>2</sup> *Id.* at 63

<sup>3</sup> *Id.* at 68.

<sup>4</sup> *Id.* at 72.

<sup>5</sup> U.S. Department of Health and Human Services, *U.S. Surgeon General Issues Advisory During COVID-19 Vaccination Push Warning American Public About Threat of Health Misinformation* (July 15, 2021), available at <https://www.hhs.gov/about/news/2021/07/15/us-surgeon-general-issues-advisory-during-covid-19-vaccination-push-warning-american.html>

<sup>6</sup> White House, Press Briefing by Press Secretary Jen Psaki and Surgeon General Dr. Vivek H. Murthy (July 15, 2021), available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/>

conference, White House Press Secretary Jen Psaki disclosed that your office is monitoring content on technology platforms and that the Administration has been in “regular touch with” social media platforms to pressure them to “move more quickly to remove harmful, violative posts.”<sup>7</sup>

Additionally, on February 1, 2022, Press Secretary Psaki applauded Spotify for adding disclaimers to certain episodes of The Joe Rogan Experience, but implicitly suggested Spotify deplatform Joe Rogan by demanding “more . . . be done.”<sup>8</sup> Subsequently, on March 3, 2022, you formally requested that technology companies submit information about COVID-19 misinformation.<sup>9</sup> You demanded information about the “COVID-19 misinformation policies on individual technology platforms” and, even more alarming, specific information about individuals who are considered to be “sources of COVID-19 misinformation.”<sup>10</sup> Your objective is clear: ensure private actors implement policies that censor certain speech and silence certain individuals.

Similar to the “informal censorship” in *Sullivan*, the Biden Administration continues to pressure private actors to censor speech it finds objectionable. Like the implicit threat of prosecution in *Sullivan*, you have suggested accountability is needed and Press Secretary Psaki has demanded “more . . . be done” about Joe Rogan. Your most recent action is even more appalling. To demand information about Americans engaged in “wrongthink” and ask that private actors identify individuals who the government considers to be a “source[s] of COVID-19 misinformation” is un-American and an affront to free speech and expression. It seems the Biden Administration may be engaged in its own “scheme of state censorship.”

As defenders of free speech, we are deeply troubled by the Biden Administration’s efforts to silence Americans and your specific role in chilling free speech and expression under the guise of “public health.” Unfortunately, Big Tech has shown it is willing to do the bidding of the Democrats, which makes your ongoing pressure campaign even more alarming. Accordingly, we ask that you respond to the following no later than March 25, 2022:

1. Please provide complete copies of any documents or internal communications, including memoranda, emails, or other communications related to the development of the Request for Information noticed on March 7, 2022.
2. Please provide complete copies of any documents or communications between any Department of Health and Human Services (HHS) employee, including yourself and others in the Office of the Surgeon General, and any private technology company

---

<sup>7</sup> *Id.*

<sup>8</sup> Steven Nelson, *Psaki cheers Spotify warning on COVID podcasts, says ‘more’ should be done*, New York Post (Feb. 1, 2022), available at <https://nypost.com/2022/02/01/psaki-cheers-spotify-warning-on-joe-rogans-covid-podcasts/>

<sup>9</sup> Davey Alba, *The surgeon general calls on Big Tech to turn over Covid-19 misinformation data*, NEW YORK TIMES (Mar. 3, 2022), available at <https://www.nytimes.com/2022/03/03/technology/surgeon-general-covid-misinformation.html>.

<sup>10</sup> U.S. Department of Health and Human Services, *Impact of Health Misinformation in the Digital Information Environment in the United States Throughout the COVID-19 Pandemic Request for Information*, (Mar. 4, 2022), available at <https://public-inspection.federalregister.gov/2022-04777.pdf>

(hereinafter “such company” or “tech company” or “technology company”) referring or relating to the company’s COVID-19 misinformation policies.

3. Please provide complete copies of any documents or communications between any HHS employee, including yourself and others in the Office of the Surgeon General, and any private technology company referring or relating to specific content on such company’s platform as it relates to COVID-19.
4. Please provide complete copies of any documents or communications between any HHS employee, including yourself and others in the Office of the Surgeon General, and any private technology company referring to or relating to a specific individual(s) on such company’s platform as it relates to COVID-19.
5. Have you or any other HHS employee communicated directly with Spotify about any episode of The Joe Rogan Experience? If yes, please explain what was communicated and the rationale. If such communication was written, please produce a complete copy of the communication.
6. Have you or any other HHS employee specifically asked that Spotify deplatform Joe Rogan? If yes, please explain exactly what was communicated. If such communication was written, please produce a complete copy of the communication.
7. As it relates to the monitoring operation in which Press Secretary Psaki stated your office is engaged, please answer the following:
  - a. Which technology companies are or will be monitored?
  - b. What specific information are you monitoring?
  - c. How many employees are or will be dedicated to such tracking? Prior to assigning these employees to this task, were those employees engaged in work that is actually within the scope of your office? If so, please identify what work has been sidelined for this effort.
  - d. Was the monitoring operation initiated at the direction of the White House? If yes, please list the individuals in the White House with whom you have been communicating concerning the monitoring operation and when those communications took place.
  - e. How often does your office identify specific posts as “misinformation” or “disinformation”? Please identify your office’s primary points of contact at these technology companies regarding your monitoring operation.
8. Has any tech company removed any content at your behest or any other HHS employee? If yes, please identify what was removed.

9. Has any tech company suspended any individual at your behest or any other HHS employee? If yes, please identify who you requested be suspended and why.
10. Has any tech company banned any individual at your behest or any other HHS employee? If yes, please identify the individual you requested be banned and the reason for the request.
11. In your Request for Information, you asked for unlimited troves of information about Americans and their speech. How will you ensure the privacy of users identified by the tech companies?
12. Who at the White House have you consulted with on this policy? To what extent have you consulted other departments and agencies of the executive branch?
13. You define “health misinformation” as “health information that is false, inaccurate, or misleading according to the best available evidence at the time.” As it relates to this definition, please answer the following:
  - a. On April 27, 2021, Centers for Disease Control and Prevention (CDC) Director Walensky stated that “less than 10 percent of documented transmissions...have occurred outdoors.”<sup>11</sup> However, at the time, it was understood that outdoor transmission was below one percent and possibly as low as .1 percent.<sup>12</sup> Does this meet your definition? Why or why not?
  - b. On September 26, 2021, CDC Director Walensky cited an Arizona study to claim schools without mask mandates were 3.5 times more likely to experience COVID-19 outbreaks.<sup>13</sup> However, the study is so flawed that experts have said it “should not have been entered into the public discourse” and that you “can’t learn anything” about mask rules from the study.”<sup>14</sup> Does this meet your definition?

If you have any questions, please contact Bijan (BJ) Koohmaraie with the Republican Committee staff at (202) 225-3641. Thank you for your prompt attention to this request.

---

<sup>11</sup> White House, Press Briefing by White House COVID-19 Response Team and Public Health Officials, (Apr. 27, 2021), available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/04/27/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-32/>

<sup>12</sup> David Leonhardt, *A Misleading C.D.C. Number*, New York Times (May 11, 2021), available at <https://www.nytimes.com/2021/05/11/briefing/outdoor-covid-transmission-cdc-number.html>

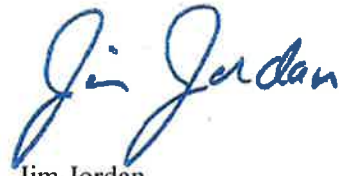
<sup>13</sup> David Zweig, *CDC's Flawed Case for Wearing Masks in School*, The Atlantic, (Dec. 16, 2021), available at <https://www.theatlantic.com/science/archive/2021/12/mask-guidelines-cdc-walensky/621035/>

<sup>14</sup> *Id.*

Sincerely,



Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and Commerce



Jim Jordan  
Ranking Member  
Committee on the Judiciary



Steve Scalise  
Ranking Member  
Select Committee on the Coronavirus Crisis



James Comer  
Ranking Member  
Committee on Oversight and Reform