

Chairman Cruz, committee members, thank you for giving me the chance to speak on this crucial topic.

On Aug. 28, 2021, Twitter (as it was then called) permanently suspended my account, supposedly for violating its “COVID-19 misinformation rules.” The ban deprived me of the largest and most vital platform for my journalism – at a time when many Americans were eager to hear what I had to say about Covid and the mRNA vaccines and viewed what I wrote millions of times a day.

But Twitter’s decision was no accident. It came after a deliberate and relentless campaign by the Biden Administration (as well as at least one senior Pfizer board member) to violate my First Amendment rights. Led by Andrew M. Slavitt, an official in the Biden White House, the administration began pressuring Twitter to silence me almost as soon as President Biden took office, with both public and private attacks on my reporting.

Both frontline and senior Twitter employees viewed what was happening to me with dismay. Going back to 2020, the company previously defended my right to speak as third parties demanded I be censored. Ultimately, Twitter’s top executives, including then-chief executive Jack Dorsey, secretly believed the company should not have suspended me. But the Twitter lobbyist who faced the Biden Administration’s pressure most directly went around them to orchestrate my ban. In the words he wrote to another Twitter official just days before he silenced me, the lobbyist hoped “to keep the [White House] target off our back.”

None of this is speculation. Thanks to internal emails and other documents that Twitter provided to me before Elon Musk took over – and more documents that Musk graciously and voluntarily turned over after he bought the company – I have hard proof of everything I’ve just told you. In fact, after I sued Twitter in December 2021 over the ban, the company admitted I had not broken its rules and “Mr. Berenson’s Tweets should not have led to his suspension.”

The company even reinstated me in July 2022 – again, *before* Musk bought Twitter. By then, though, the damage had already been done. In losing my access to Twitter, I lost my best chance to offer Americans my dissenting views on the Biden Administration’s Covid vaccine mandates, mandates the Supreme Court would strike down.

Federal District Judge Jessica G.L. Clarke laid out all these facts in two rulings she made this year on a 2023 lawsuit I brought against the Biden Administration and senior officials at Pfizer for its censorship. In fact, in a ruling just last week, Clarke noted that “on the merits,” the federal government has now conceded my claim the Biden Administration unconstitutionally violated my First Amendment rights in 2021.

Yet, in the same ruling, Clarke *still* dismissed my lawsuit.

This may sound impossible – a federal judge agreed my Constitutional rights had apparently been violated, yet said my lawsuit over the violation could not move forward. Yet it's true.

Why?

Because the Supreme Court has made it impossible for me, or anyone, to win monetary damages for violations of their First Amendment rights by the federal government. In fact, as the law now stands, federal officials can run censorship campaigns like the one the Biden Administration carried out against me with near-impunity. At worst, they may face a judicial injunction telling them to stop violating the First Amendment. But neither the officials individually nor the government as a whole face any risk that they may have to pay for doing so – for violating Americans' most basic Constitutional right, the right to speak freely.

It's open season for government censorship.

This loophole is even more expansive, and thus dangerous, when it comes to federal efforts to "jawbone," pressure, or outright threaten third parties like Twitter into silencing the speech of their users, employees, or business partners. That's true whether those third-parties are legacy media companies, new social media giants, or other kinds of businesses.

Why? First, as a practical matter, users are generally not privy to the communications between federal officials and the companies, so they have no way of proving the pressure existed or that it led to their censorship. My case is exceptional because of the documents I have found proving that my rights were violated – yet even so, I have been unable to obtain a remedy so far.

Second, expecting the companies to resist censorship on behalf of their users or business partners is unrealistic. My case, as well as documents from Facebook/Meta and other social media companies that the Select Subcommittee on the Weaponization of the Federal Government has unearthed in its own censorship investigation, shows that social media companies disliked the Biden Administration's efforts to force them to censor users.

Yet they had many other interests before the federal government. They viewed having to sacrifice speech from some users as the price they had to pay to stay in the administration's good graces. Every company faces this calculus, whether a Democrat or Republican is in the White House.

Yet jawboning of social media companies, in particular, is a more successful censorship strategy than ever before. These outlets are now the most important way for individuals to push their ideas into the marketplace of debate. I saw this firsthand in 2020 and 2021 (and still do). Twitter gave me a megaphone I would not otherwise have had, which is why the Biden Administration was so desperate to take it from me.

In 2024, the Supreme Court found that “a government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf.” But that case, *NRA v Vullo*, applied to *state* government officials – New York state’s insurance commissioner, to be precise.

The truth is that as the law now stands, federal officials have every reason to believe they can coerce private third parties to suppress speech without facing any sanction. And following the success of the Biden Administration’s efforts against me and other users, they have every reason to believe those efforts will succeed.

This is a powerful loophole that is no doubt enticing to politicians and officials of both parties. But it is wrong. Whether it affects Republicans or Democrats, journalists or comedians, conservatives or liberals or independents – and whether it goes by “jawboning,” “coercion,” “pressure,” or “threats,” this kind of censorship is wrong. Only two institutions have the power to fix it – Congress and the Supreme Court.

But the Supreme Court has until now declined to act, by extending the right to money damages to First Amendment claims.

This committee has a chance to begin the process of doing so – to take the first step helping Congress protect our vital Constitutional rights from censorious federal officials. I urge you to take it.

Again, thank you for giving me the chance to tell you about my case and my censorship. I view the protection of free speech as a bipartisan issue, and this issue as one that will hopefully have a bipartisan solution. I am happy to take any questions.