

Episode 241: A Victory for Free Speech with Jenin Younes

Bill Walton ([00:00](#)):

I think what we want to accomplish here is that this is a very big victory for speech. And we discovered a lot of things that we thought were true, but in fact were worse than we ever imagined. And they wrote it all down. They sent emails, they did this unabashedly. And now we've got them red-handed.

Jenin Younes ([00:19](#)):

Yeah, but they're still claiming that they didn't do anything wrong.

Bill Walton ([00:24](#)):

Exactly. Well, they think they're on the moral high ground somehow, that we really are ... I don't know what they think we're doing, but it's not what we're really about.

Speaker 7 ([00:35](#)):

Bill Walton, August 9.

Bill Walton ([00:37](#)):

Okay.

Speaker 3 ([00:42](#)):

Welcome to the Bill Walton show, featuring conversations with leaders, entrepreneurs, artists, and thinkers, fresh perspectives on money, culture, politics, and human flourishing. Interesting people, interesting things.

Bill Walton ([01:02](#)):

Welcome to the Bill Walton Show. I'm Bill Walton. Well, we've all heard the phrase, "I may disapprove of what you say, but I would defend to the death your right to say it." Well, we've just learned that the federal government does not agree with that, that there are many things that the Biden administration and maybe some of the predecessors think that they don't want us to think or say. And we've just seen what that's about in a recent victory in ... which court are we in?

Jenin Younes ([01:38](#)):

Well, the Western District of Louisiana.

Bill Walton ([01:41](#)):

The Western District of Louisiana, okay.

Jenin Younes ([01:43](#)):

Federal court.

Bill Walton ([01:43](#)):

And I've got Jenin Younes back again, the wonderful Jenin Younes back from the New Civil Liberties Alliance, who's their litigation counsel. And she was the lead lawyer on a case called State of Missouri

versus Joseph R. Biden Jr. And what the judge found was an incredible amount of censorship going on at the behest of the federal government and federal government agencies pushing the social media companies to censor, ban, and otherwise stifle the speech of people that disagreed with its policies. Is that the gist?

Jenin Younes ([02:18](#)):

That is the gist, yeah. So essentially what these government actors in various agencies, including the White House, the CDC, the FBI, an agency called the Cybersecurity and Infrastructure Security Agency, what they were doing was using various tactics, pressure, threats, coercion, encouragement in order to get the social media companies to censor people who expressed views that were different from the Biden administration. And that's a First Amendment violation.

Bill Walton ([02:50](#)):

So who are your plaintiffs?

Jenin Younes ([02:52](#)):

So NCLA represents private plaintiffs. Jay Bhattacharya and Martin Kulldorff were epidemiologists and co-authors of the Great Barrington Declaration. Aaron [inaudible 00:03:03], who's a psychiatrist, was a professor at UC Irvine before he got fired for not getting the vaccine.

Bill Walton ([03:07](#)):

Oh, they fired him? Yeah.

Jenin Younes ([03:08](#)):

For not getting the vaccine, yeah. And then a woman named Jill Hines, who runs the Health Freedom Network in Louisiana, opposing masks and vaccine mandates. So the case was originally brought by the State Attorney General of Missouri and Louisiana, and NCLA joined on behalf of private plaintiffs.

Bill Walton ([03:24](#)):

And how long has this been in the works?

Jenin Younes ([03:27](#)):

The lawsuit was initially filed on May 5th of 2022, so it's been a while.

Bill Walton ([03:31](#)):

Okay, but we had all the censorship going on in 2020.

Jenin Younes ([03:35](#)):

Right.

Bill Walton ([03:35](#)):

Well, actually it started before that with other issues.

Jenin Younes ([03:38](#)):

It's a little complicated, yeah, but as far as we know, some of this has been going on since around the election time of 2020. And some of these agencies, I would say were sort of acting rogue. So they weren't doing this because the Trump administration told them to. In fact, the evidence I've seen from the Trump White House, and I say this not as a Trump supporter, but they were actually ... their communications with social media companies were totally different. They were saying things like, "If you can promote authoritative information on COVID, that would be great," which is fine. They can do that. Once the Biden White House took over, it was threats. "If you don't censor this, we're going to come after you. We're considering our options." And then the social media companies complied. They changed their policies in order to censor more people and to basically do what the administration wanted.

Bill Walton ([04:30](#)):

Well, the judge, the judge is Terry [inaudible 00:04:33]?

Jenin Younes ([04:32](#)):

That's right, yeah.

Bill Walton ([04:33](#)):

And he's in Missouri?

Jenin Younes ([04:36](#)):

No, he's in Louisiana.

Bill Walton ([04:38](#)):

Louisiana?

Jenin Younes ([04:38](#)):

Yeah.

Bill Walton ([04:38](#)):

Well, the thing that was striking, and we were joking before, I said, "Come on, let's talk about this big victory." And I got ahold of the judgment. And the judgment's about eight pages, and it's astonishing, the list of the people who are defendants in this case. And then I looked at the memorandum attached to the judgment. Then I started reading it and I realized this is 49,000 words long.

Jenin Younes ([05:01](#)):

Right. Yeah.

Bill Walton ([05:04](#)):

And it's not just that it's long, but it gets into every single agency. It gets into the FBI, it gets into the CISA, which we had a talk about. State Department was involved. Every single agency was working with and commanding the social media companies and it was every single social media company, including things like Wikipedia.

Jenin Younes ([05:25](#)):

Yeah, that's right. I think one important thing to understand about the case is that this wasn't sort of one plot that was coordinated. It was different agencies acting independently and all thinking this was okay. I think there was some communication between agencies and the White House, but I think mostly they were sort of doing their own thing. So the way in which they were influencing the social media companies took different forms. The White House was using a lot of threats and pressure. "We're going to look at how to change Section 230," in order to get them to do what they wanted. The CDC was more working hand in glove, just saying, "This is the kind of post you should be taking down. This is authoritative information." And I think one thing that shouldn't get lost in this is a lot of what the government was saying was wrong was misinformation itself. So they were often promoting bad information while demanding that good information be removed.

Bill Walton ([06:22](#)):

So the list of things that they were wrong on included masks, included social distancing, included the efficacy of the vaccine.

Jenin Younes ([06:32](#)):

That's right, yeah. Natural immunity.

Bill Walton ([06:35](#)):

Oh yeah, they said natural immunity was unimportant.

Jenin Younes ([06:38](#)):

Yeah, the lab leak theory.

Bill Walton ([06:41](#)):

Ivermectin, hydroxychlorine. I mean the whole list of things that people were talking about back in the day in 2020, 2021, and we weren't allowed a debate. They just wanted to shut it down.

Jenin Younes ([06:51](#)):

Right, exactly. And I think this case kind of illustrates why we have a First Amendment, because we need to be able to debate these things. COVID was a new disease. There was actually a lot that was unknown. And the government, instead of allowing the public to hear different opinions from different scientists and different people ... you shouldn't have to be a scientist either to express your views ... shut it down and basically said there's one view, it's the government's. It's the lockdowns are good, mandates are good. And if you say anything different, you're going to be silenced.

Bill Walton ([07:23](#)):

I want to get into the particulars with the agencies, but I was impressed by the amount of research that was done, the amount of testimony, the amount of texts, the emails that were uncovered to build this case, because not just shooting from the hip here. And the judge wasn't shooting from the hip. He called it ... he said, "If this is true," and I think he concluded it is true, he said, "The present case arguably involves the most massive attack against free speech in the United States history."

Jenin Younes ([07:51](#)):

Yeah, I agree with that. I've been saying that since the beginning, since we brought this case, and actually since I brought a similar case before it. There has never been a situation in which the government could silence or suppress certain views in the amounts that it can with social media. I mean, in the 1970s, the government could call a newspaper and say, "Please don't print this story," or, "If you print this story, we're going to come after you," but that wasn't really the same as shutting down debate in the modern public square, which social media is these days.

Bill Walton ([08:23](#)):

Well let's do an example. The Great Barrington statement, was it that Fauci came out and Francis Collins came out who were then the top guys in the health establishment in Washington and said, "This comes out," and your clients who are probably a lot more famous than they are and a lot more accomplished than they are, they said, "These guys are just quacks."

Jenin Younes ([08:49](#)):

Yeah, so the Great Barrington Declaration was censored in 2020 and I think early 2021.

Bill Walton ([08:54](#)):

Firstly, explain what that is.

Jenin Younes ([08:56](#)):

Oh, sorry. Yeah, so Jay Bhattacharya and Martin Kulldorff, epidemiologists at Stanford and Harvard respectively, and then Sinatra Gupta, who's at Oxford, some of the top epidemiologists in the world, wrote a short treatise, basically calling for an end to lockdown. This was at the beginning of October of 2020, and end to lockdown saying that the harms outweighed the benefits, that it wasn't really going to work, and that the way to go about this was to protect vulnerable people, to use our resources to do that rather than shutting down society as a whole. This was, of course, disagreed with by people like Fauci and many of the establishment public health figures.

([09:33](#)):

And the declaration was immediately censored on social media. So it was hard to find it in Google searches, the Facebook page was taken down. And at the same time, there are emails between Anthony Fauci and Francis Collins of the NIH saying, "We've got to orchestrate a takedown of this declaration." Now, we don't at this time have direct evidence that they communicated with the social media companies and told them to take it down. I suspect such evidence exists, but I think there'll be a lot of efforts made to make sure that it doesn't come to light.

Bill Walton ([10:07](#)):

Well, let's talk ... he names the defendants by agency and by individuals.

Jenin Younes ([10:13](#)):

Yes.

Bill Walton ([10:13](#)):

And the defendants include the White House, State Department, CISA, FBI, CDC, on and on and on. I mean, there are like a dozen agencies that were the defendants and individuals within it. But we have thought, I think Jim Jordan, and I don't know if it's part of this case, we've got all the emails. We've got

all the emails between the White House and what they were telling the social media companies to do, in particular Facebook.

Jenin Younes ([10:44](#)):

Right.

Bill Walton ([10:44](#)):

I mean, they were basically ordering Facebook ... and they were really cranky. And they said to Facebook, "Look, if you don't do this, we're going to go after you on Section 230," or, "We're going to go after you on antitrust." Zuckerberg has been on record saying, "Look, if they come after us on antitrust, we've got a big problem." So they were using the most extreme form of coercion.

Jenin Younes ([11:06](#)):

Absolutely, yeah. What I'm saying is there isn't specific evidence of Fauci -

Bill Walton ([11:10](#)):

Oh, you're being so lawyery.

Jenin Younes ([11:12](#)):

Yeah, sorry.

Bill Walton ([11:13](#)):

I forget. You're being a careful lawyer.

Jenin Younes ([11:17](#)):

As a general sense, that's absolutely what's going on. And you mentioned recently Jim Jordan is chairman of the select subcommittee on weaponization of the federal government, which is a subcommittee of the House Judiciary Committee that's investigating this issue, and I served on briefly. So through that, Congress has subpoena power that is sort of unparalleled in other aspects. You usually can't even obtain this stuff through litigation. So internal meta documents, I think revealed the most shocking information, where the companies were basically saying ... they weren't basically saying, they said, "We're under pressure from the White House. We have to change our policies." And one of my favorites is one from Nick Clegg, who's the head of Global Affairs at Meta to the vice -

Bill Walton ([12:07](#)):

He's their man in Washington.

Jenin Younes ([12:08](#)):

Yeah.

Bill Walton ([12:09](#)):

He's Facebook's interface with everybody in Washington.

Jenin Younes ([12:12](#)):

Yeah. So he's emailing with the vice president of public policy and he asks him, "Why did we censor the lab leak theory, or why did we have it removed instead of demoted?" And the vice president of public policy says, "Because we were under pressure from the White House. We shouldn't have done it." Now the government has been arguing that the companies were doing this on their own and the government was just making suggestions, which is ludicrous when you read the emails. I mean there are hundreds and hundreds of emails that are very coercive, but these internal emails kind of, in my opinion, eviscerate that argument, because the companies are saying internally, "We're doing this because the White House is putting us under pressure."

Bill Walton ([12:54](#)):

Well, that's the way I read it.

Jenin Younes ([12:54](#)):

Yeah, that's the way anyone would read it.

Bill Walton ([12:55](#)):

I don't have to argue with the court, but as just a normal person reading what they did, this was incredible coercion.

Jenin Younes ([13:02](#)):

Yeah.

Bill Walton ([13:03](#)):

Bill Walton show. I'm here with my great guest and good friend, Jenin Younes, who's the lawyer on a case that we just received a summary. What was the verdict called?

Jenin Younes ([13:13](#)):

It's a preliminary injunction.

Bill Walton ([13:14](#)):

Preliminary injunction, Missouri versus Biden, which shows how the extent to which the federal government and the agencies were using social media to censor us. And the list of things that they were censoring, Jenin, we've been talking about COVID, but I'm looking at some notes here. It was not just efficacy of masks and lockdowns and things like that, but they were censoring conversation they didn't agree with about the 2020 presidential election, the security of voting by mail. You weren't allowed to post parody of federal government officials. Humor was part of what they were trying to shut down. No negative posts about the economy and no negative posts about Joe, President Biden. So it was really anything that was in opposition to the Democrat regime they were trying to censor.

Jenin Younes ([14:15](#)):

Yeah, exactly. And I mean, there's also the Hunter Biden laptop story is a big one, which -

Bill Walton ([14:19](#)):

Elaborate on that, because the FBI was in early on that one.

Jenin Younes ([14:24](#)):

Yeah, that was mainly the FBI. So what the FBI did was, and this has sort of come out through the discovery here, as well as the subcommittee's investigation, the FBI went to the social media companies and said, "There's a Russian hack and leak job coming. And also, you guys should change your policies so that you sensor hack and leak information, anything that's hack and leak. And also, it's probably going to involve Hunter Biden's laptop." Meanwhile, we know from depositions and their emails that they knew that Hunter Biden's laptop was not Russian disinformation or the result of a hack and leak job, that it was real, so to speak. It existed and it was his. So they were telling the companies this, well, they knew otherwise, and that was clearly an attempt to get them to censor the story. And the judge in this case found that they had coerced the companies by way of deception. So if the government is getting the companies to censor things by deceiving it about the nature of the material, that's coercion.

Bill Walton ([15:23](#)):

Well, it was coercion. And for anybody watching, listening to the show, I strongly recommend taking on that 49,000 ... what did it work out to exactly ... 49,716 word memorandum, which the judge wrote based on all the work that was done by everybody. And it's an incredible compilation. Everything you've been reading about in the paper or hearing is in there. And where do we find that? I had to dig around the internet. Do you -

Jenin Younes ([16:00](#)):

You should be able to Google and find it. If you Google Missouri versus Biden, Judge Doty. I have access to court ...

Bill Walton ([16:10](#)):

Okay. Anyway, it's not that hard to find. I found it in a couple of minutes, but you ought to take a read. It's well worth it. Let's talk about CISA. I had Ben Weingarten on ... he gave a testimony on one of the ... I think it's the House Committee on CISA, the Cybersecurity Information -

Jenin Younes ([16:33](#)):

Infrastructure Security Agency.

Bill Walton ([16:36](#)):

Infrastructure Security Agency. Talk about CISA.

Jenin Younes ([16:37](#)):

Yeah, they're a subcomponent of DHS, or subagency of DHS. So they were initially charged with protecting the infrastructure, so bridges and stuff like that, as well as the internet. We don't -

Bill Walton ([16:53](#)):

Like regular infrastructure?

Jenin Younes ([16:55](#)):

Yeah. Yeah. I mean, we also don't want foreign government to be able to hack into our cybersecurity, cyber infrastructure and get into bank records, whatever, that kind of thing. But what they started doing essentially was creeping into policing election, so-called misinformation, and then domestic speech.

Bill Walton ([17:15](#)):

They called that their election infrastructure.

Jenin Younes ([17:17](#)):

Yeah, exactly. Exactly. And they were acknowledging that, "Well, we're really looking at domestic so-called misinformation, but this poses a threat, so we're going to do it anyway." And they were working with third parties. So this is an interesting aspect of the whole thing too. There were a number of third party nonprofits who supposedly specialize in disinformation and misinformation, assessing it and figuring out what to do about it. And some of the other agencies would work with these third parties. They're known as the Virality Project, the Election Integrity Partnership. There are probably dozens at least. And they would sort of outsource the censorship to those companies, which also should be considered illegal.

Bill Walton ([18:08](#)):

Well they had their group, they called it the Countering Foreign Influence Task Force, and they interpreted that as really anything in the country, including domestic terrorism, which includes Trump voters.

Jenin Younes ([18:23](#)):

Right.

Bill Walton ([18:24](#)):

So their scope went all the way from protecting bridges and tunnels, then to IT, then to elections. But then Jen Easterly, who runs CISA, didn't she decide that we had something called our cognitive infrastructure?

Jenin Younes ([18:40](#)):

Yes. Yeah.

Bill Walton ([18:41](#)):

And she was testifying. She said, "Well, this is something we got to protect." Let me see if I can get her exact quote here, but she says that, "The cognitive infrastructure is the American mind, and they need to influence -

Jenin Younes ([18:56](#)):

They need to control that.

Bill Walton ([18:57](#)):

- what's in the American mind." Her quote is, "We live in a world where people talk about alternative facts, post-truth, which I think is really, really dangerous if people get to pick their own facts."

Jenin Younes ([19:11](#)):

Yeah. Well, you live in America, you get to pick your own facts.

Bill Walton ([19:14](#)):

Yeah.

Jenin Younes ([19:16](#)):

I mean, I think one of the common threads I see is -

Bill Walton ([19:19](#)):

Is she still on the job?

Jenin Younes ([19:21](#)):

Yeah, as far as I know, unless something changed in the last two weeks or something.

Bill Walton ([19:24](#)):

Right.

Jenin Younes ([19:25](#)):

I mean, one of the common threads I see through a lot of these government bureaucrats and these agencies who are doing this is that they think that they have a handle on the truth, and that Americans are babies who need to be told what the truth is, and they can't be exposed to different points of view and make their own decisions. And that's exactly what the First Amendment was designed to protect against. It says that every American has the ability to decide for him or herself what's true, and to hear different opinions and to make up their own minds.

Bill Walton ([19:54](#)):

Well, it's sort of the basis of all our freedoms.

Jenin Younes ([19:56](#)):

Exactly.

Bill Walton ([19:57](#)):

I mean, everything else stems from that.

Jenin Younes ([19:59](#)):

Exactly. Right.

Bill Walton ([20:01](#)):

Well, there was one where she teamed directly with the state department's Global Engagement Center.

Jenin Younes ([20:09](#)):

Yeah.

Bill Walton ([20:11](#)):

And they were, again, trying to flag emails and posts for parody and jokes. But it's interesting, they wanted to target inaccurate information, and we talked about COVID and vaccines, et cetera, but also racial justice.

Jenin Younes ([20:30](#)):

Right. Yep, yep. And they're going into the transgender stuff that's now considered ... you can have transgender misinformation if you say that biological men shouldn't be able to play on women's sports teams. They consider that misinformation.

Bill Walton ([20:46](#)):

Well, this is still happening.

Jenin Younes ([20:48](#)):

Oh, yeah.

Bill Walton ([20:48](#)):

I had Jay Richards on a few weeks ago, and we did a show on that topic. And Facebook demonetized it.

Jenin Younes ([20:58](#)):

Yeah. Yep.

Bill Walton ([21:00](#)):

We're not sure it was that show, but we think it was. And then mysteriously they put it back up again.

Jenin Younes ([21:06](#)):

Yeah. Yeah.

Bill Walton ([21:08](#)):

They didn't take it down. They just wouldn't let us run ads.

Jenin Younes ([21:11](#)):

That's really incredible. A week or two ago, YouTube censored NCLA and the Missouri former Solicitor General who's sort of leading this case, and they were discussing the case, and YouTube took it down for medical misinformation.

Bill Walton ([21:27](#)):

They were talking about the case that was in court, part of the legal system.

Jenin Younes ([21:33](#)):

Exactly.

Bill Walton ([21:34](#)):

Assuming part of the public record.

Jenin Younes ([21:37](#)):

Yes.

Bill Walton ([21:38](#)):

Then they took it down.

Jenin Younes ([21:39](#)):

Yeah, and it was three lawyers. I don't think they were saying anything totally crazy.

Bill Walton ([21:43](#)):

Well, lawyers ... you're all careful. And the ones that aren't careful, anyway they're not long lawyers, but you're also not allowed to talk about the withdrawal from Afghanistan and leaving \$87 billion of equipment in the desert.

Jenin Younes ([22:00](#)):

Yeah. Well, and this is exactly why we don't have the government policing speech. They're showing us here. They're illustrating why they can't be trusted to do this, because the idea that they're just taking down ... I mean, it's so problematic, the idea that you can just remove false speech. I mean, you start with the sort of epistemological questions, what is false? And then who decides? And this is what the framers of the Constitution understood when they enacted the First Amendment. They understood that this is not ... and it's much better that people be exposed to a variety of viewpoints, even if some of those are blatantly false or based on blatantly false information, people can decide for themselves and evaluate different arguments.

Bill Walton ([22:43](#)):

Well, I think the thing that ... one of the reasons I want to do shows like this, even though we now need to worry about YouTube, Facebook, and everybody else not letting it happen, is that the people in the government ... we're in the DC area, and the people in government are just like us. I mean, they're just as flawed. They've got similar backgrounds, similar educations, and all of a sudden they go into a government job and they then become omnipotent.

Jenin Younes ([23:08](#)):

Right. Right.

Bill Walton ([23:10](#)):

In their mind.

Jenin Younes ([23:11](#)):

Yes, exactly. And that's what this whole philosophy assumes, that people who work in government are omnipotent and they have a handle on the truth that regular people don't have, which they've proven themselves isn't true. How many things have they gotten wrong throughout the pandemic? And not to mention many other subjects.

Bill Walton ([23:26](#)):

Now I want to veer into the person a little bit. You used to be a pretty serious liberal.

Jenin Younes ([23:33](#)):

Yeah, with some caveats. I had a libertarian streak [inaudible 00:23:42] trouble.

Bill Walton ([23:44](#)):

Okay, well I still have that. But then what converted you?

Jenin Younes ([23:46](#)):

Well, COVID was really the thing. I mean, I was sort of shocked that people thought it was okay for the government to tell you you can't leave your home or you have to go get a vaccine. I mean, I opposed the lockdowns early on. That just seemed completely wrong to me. And the more I looked at it, the more I began to realize that there's so much government overreach in so many aspects of our lives, and it's just not consistent with the Constitution or the principles on which this country was founded.

Bill Walton ([24:18](#)):

What did you learn as you've developed this case? I mean, you've started out with a skepticism, but is there anything that shocked you that you learned that's in this case. And by the way, it's in the 49,472 words in the judge's memorandum.

Jenin Younes ([24:34](#)):

So I've been really surprised at just how bad some of these government actors were. I thought that there might be some material like this behind the scenes, but I couldn't have imagined the scope of it or the degree of the coercion and threats and hubris that these government actors displayed. There's one in particular, a guy named Rob Flaherty, who was the digital media director in the White House. And he was constantly, as soon as the Biden administration took over in January of '21, he was writing to the companies and just haranguing them and saying, "You better do what we want or else." And then they were saying, "Okay, okay, okay, we'll change our policies." And the tone he used with them was just completely unacceptable. And now we know from the Jim Jordan emails, the emails Jim Jordan obtained that the employees at the companies didn't like his tone, and they were saying, "We don't really like the way he's treating us, but we got to work with the White House, otherwise we can get in trouble."

Bill Walton ([25:37](#)):

Well, he told them, talking to Facebook, he said he didn't like something that was in the post or something about vaccine hesitancy, and he emailed them, "You're hiding the ball."

Jenin Younes ([25:51](#)):

Yes.

Bill Walton ([25:54](#)):

And he accused Facebook of being ... was this Biden or [inaudible 00:25:57]? He accused Facebook of being responsible for the Capitol riots.

Jenin Younes ([26:01](#)):

Yeah. He basically said, "You guys were responsible for the riots because you didn't censor information about that. And now you're doing the same thing with the vaccines." And it was a very threatening tone, "We're not going to let you get away with this again," which is ...

Bill Walton ([26:15](#)):

Well, and again, this is exactly why you can't let these people do, this because they can ruin your business. Section 230, antitrust, I mean, they hold the ultimate sword of Damocles over you.

Jenin Younes ([26:28](#)):

Yeah, exactly. I mean, and by the summer of 2021, Biden was saying something, things like, "The social media companies are killing people." His communications director was saying that the White House was looking at Section 230 to see how the companies could be held accountable for not censoring vaccine misinformation. And then the company's internal emails show that they're saying, "Okay, we're really worried about this. We've got to change our policies." So I don't know how you can argue, even though the government is trying, how you can argue that the government wasn't responsible for this censorship.

Bill Walton ([26:59](#)):

Bill Walton show. I'm here with Jenin Younes and we're talking about Missouri versus Biden and the recent judge's pronouncement that the government was up to no good and with lots of evidence to prove it. But I want to talk a little bit about maybe the other side. The government's argument is, well, these social media companies agreed with this and they wanted to shut this speech down as well. And there's a lot of censorship that people feel on the internet, and we just blame Google, or we just blame Zuckerberg, but we don't really think the government's necessarily involved. Isn't that the argument the government's making?

Jenin Younes ([27:40](#)):

That is their argument, and it's an absurd argument.

Bill Walton ([27:45](#)):

Okay, why is it absurd? Let's go legal on this.

Jenin Younes ([27:46](#)):

I mean, first of all, before this information came out from the select subcommittee a few weeks ago, we had quite a bit of evidence that people in the White House especially, but also other agencies, were threatening the companies and bullying them. Now, you wouldn't need to do that if they wanted to do this anyway. Now we have these internal emails where you have the companies saying, the employees exchanging emails saying, "We don't really want to do this. We consider it a violation of free speech principles, but the White House is putting us under a lot of pressure. We've got to do it." So I don't know how they're going to be able to maintain that.

Bill Walton ([28:20](#)):

But if it's just the companies doing it, you can say, "Well, look, we're a private company. We don't like what you're saying. You don't have to use our platform." That's not a First Amendment violation.

Jenin Younes ([28:29](#)):

No.

Bill Walton ([28:29](#)):

It's only when the government ... you become an instrument of the government.

Jenin Younes ([28:32](#)):

Exactly. There's something -

Bill Walton ([28:34](#)):

What's the legal ... how does that work?

Jenin Younes ([28:37](#)):

There's something called State Action Theory, which says that the government can't co-opt private industry to accomplish what it can't do directly.

Bill Walton ([28:46](#)):

That's what's at stake. That's what's happening here.

Jenin Younes ([28:46](#)):

Yeah. So an analogy I use a lot is the government can't search your home without a warrant. The government also can't hire a private company to go search your home without a warrant in order to get around that prohibition. So the same thing should be seen to apply in the speech context. It's sort of a new area of law, because before social media, you didn't really have the government be able to co-opt private industry to censor people. I mean, there were cases where you had the government calling a newspaper and saying, "Please don't print the story," or, "Don't print the story or we're going to charge you with treason," or something like that, but it was a little bit different, in that the newspaper isn't responsible for serving as a platform for millions of voices. So if the newspaper complied, that was one story that was censored. And that was the Pentagon paper's case, was said that they can't do that, but the effects of this are really tremendous because of the nature of social media.

Bill Walton ([29:53](#)):

The government, of course, is appealing all this.

Jenin Younes ([29:58](#)):

Yes.

Bill Walton ([29:59](#)):

And that's uniform. Are all the agencies all in? And how many ... they have 53,000 lawyers involved?

Jenin Younes ([30:08](#)):

DOJ is obviously -

Bill Walton ([30:08](#)):

DOJ is running point.

Jenin Younes ([30:09](#)):

Yeah. Yeah.

Bill Walton ([30:10](#)):

And it's now August 9th, and there's going to be an oral argument tomorrow, August 10th?

Jenin Younes ([30:16](#)):

Yeah, that's right. In the Fifth Circuit.

Bill Walton ([30:17](#)):

What happens in an oral argument and where does this push this?

Jenin Younes ([30:21](#)):

So it's before a three judge panel, which is how they usually are. And the judges typically ask questions to the attorneys. I imagine this will be what's called a hot bench, where the judges ask a lot of questions because it's a big case. In this case, they also expedited briefing, which indicates that they consider it to be an important case. So things are going to happen fast. I think we'll have a decision by the end of August, and then it's very, very likely to go to the Supreme Court. Now, during oral argument, you typically get a very good idea of what the judges are thinking. They kind of allow the public to know how they feel based on the way they ask the questions.

Bill Walton ([30:57](#)):

Well, what George Dougherty found, and I think you've got to find this to make the case, I don't know what he ordered them to do, but you have to find, I guess number one, significant encouragement and coercion. And he found that.

Jenin Younes ([31:13](#)):

Yeah. So he was saying there are basically a couple of means through which the government can co-opt private industry. Now, if you coerce them, if you say, "If you don't do this, if you don't do what we want, sensor people or else we're going to impose consequences that are going to cost you a lot of money," that's coercion. That's one way of doing it. Also, significant encouragement. So that I would say is a little bit less developed in the legal context, but I think significant encouragement should be considered a First Amendment violation. If the government is saying, "Hey, you guys should really be taking these posts down. It's dangerous. We're not going to do anything if you don't." Well, maybe if they ... I don't know, if they explicitly say that, "But we really think this is what you should be doing. Just be good citizens and do that." I think that should be considered a First Amendment violation. The government shouldn't be involved in censorship at all.

Bill Walton ([32:03](#)):

But Flaherty said, when he was after, I think it was YouTube, he said, "Your YouTube video was shared at the highest, and I mean the highest level in the White House." And he went on and on and on, and he said, "We want to make -

Jenin Younes ([32:20](#)):

He said, the concerns were shared.

Bill Walton ([32:21](#)):

The concerns were shared, yeah.

Jenin Younes ([32:22](#)):

Which was very coercive, because that was saying the president himself had a problem.

Bill Walton ([32:25](#)):

The President of the United States was telling them this was the problem. And then he repeated it again. He said, "Just remember that I'm in the highest levels at the White House."

Jenin Younes ([32:34](#)):

Yeah. No, don't get me wrong. This was coercion, a lot of it.

Bill Walton ([32:38](#)):

Don't be too [inaudible 00:32:40].

Jenin Younes ([32:39](#)):

No, no. I want to be clear, I think this was extremely coercive, and I think that's exactly what was going on here, but I don't even think the bar should be that high. I think the government also shouldn't be able to work with a private industry, even if it's done voluntarily in order to censor people based on viewpoint.

Bill Walton ([32:56](#)):

And then they also had ... he also found irreparable harm.

Jenin Younes ([33:00](#)):

That's right, yeah. That's required for a preliminary injunction.

Bill Walton ([33:03](#)):

Okay. So he found both those to be the case. Now in the oral arguments, what's the federal government going to push back on?

Jenin Younes ([33:10](#)):

They're going to argue that the companies wanted to do this.

Bill Walton ([33:12](#)):

Okay. Okay.

Jenin Younes ([33:14](#)):

And then another issue, which might be boring to most people, is another issue is standing, which is sort of it's related, but -

Bill Walton ([33:22](#)):

So there are three issues, -

Jenin Younes ([33:23](#)):

- it's been contentious.

Bill Walton ([33:24](#)):

- the third one is standing.

Jenin Younes ([33:24](#)):

Well, yeah. Standing is -

Bill Walton ([33:26](#)):

I didn't clip that out. I thought it was boring.

Jenin Younes ([33:28](#)):

It is. It's a legal ... you have to show that you've been injured, and it's a very complex legal analysis. So in the First Amendment context, typically if you can even show that the government's conduct is causing you to self-censor, or you're afraid of being removed from social media so you don't say the things you would have, you don't need to show directly that your posts were removed because of the government, which would be very hard, although some people can. RFK Junior can because the government made specific demands that his posts be removed.

Bill Walton ([33:58](#)):

Well, he was part of the disinformation dozen.

Jenin Younes ([34:01](#)):

Yeah.

Bill Walton ([34:02](#)):

Talk about the disinformation -

Jenin Younes ([34:04](#)):

Oh, gosh.

Bill Walton ([34:04](#)):

Somehow I missed it. I was thinking I didn't know about the disinformation ... evidently there were 12 accounts that were responsible for 73% of what they -

Jenin Younes ([34:14](#)):

Well ...

Bill Walton ([34:15](#)):

- called ... well, this is them.

Jenin Younes ([34:16](#)):

Yeah.

Bill Walton ([34:16](#)):

They're 12 accounts, 73%. We can go after that disinformation dozen.

Jenin Younes ([34:21](#)):

Yeah, so this was a group of people who didn't necessarily work together, but they had been identified by this nonprofit called The Center for Countering Digital Hate. And what they really do is they go around trying to shut up people they don't like. They are not about any kind of hate speech or anything. So they had identified this group of people and claimed, basically they just pulled some statistics out of thin air, they were responsible for 73% of the misinformation on COVID vaccines on the internet. If Facebook just gets rid of them, it'll solve all our problems.

Bill Walton ([34:52](#)):

But I saw this and I started researching it. Then that just shows you how this works, though. There must have been 50 articles on the disinformation dozen. What was it, 2020, '21 when they started? That was all, and then really terrible ... the dirty dozen.

Jenin Younes ([35:09](#)):

Exactly. And the White House and the Surgeon General just accepted these statistics without really very much basis. And actually the internal emails from Facebook show the people at the company really didn't buy this. And they said, "Well, I don't know where they're getting these numbers from. This really isn't right. We think it's more like 0.05%," but this seemed like a good political target for the White House, I think. So Biden and some of his staff sort of zeroed in on this as a focus. They got to get rid of the disinformation dozen. And what do you know, right in the summer of 2021, when they were putting all this pressure on the companies to get rid of the disinformation dozen, even though the companies said initially they haven't been violating our policies, all of a sudden they all lost their accounts. So we know why that happened.

Bill Walton ([35:57](#)):

Well, once again, going back to our buddy Flaherty, I guess in 2021, he said he didn't like that they weren't getting the dirty dozen, disinformation dozen off fast enough. He said, "Are you guys effing serious? I want an answer on what happened here and I want it today."

Jenin Younes ([36:18](#)):

Yeah. Yeah.

Bill Walton ([36:21](#)):

So you get a call from the White House, okay.

Jenin Younes ([36:23](#)):

Yeah. I mean I also want to make sure I mention, they were also explicitly demanding Flaherty, a guy named Andy [inaudible 00:36:34], who was the senior advisor to the COVID response or something, and the Surgeon General, and this is in internal emails, they were demanding that the companies remove true information if it would stoke vaccine hesitancy and true accounts, especially if it lacked context. So if you suffered a severe adverse effect after getting the vaccine and you wrote about it, if you didn't say, "But this is only suffered by 0.01% of people who get the vaccine," they would consider that, they call it malformation, so true things that lack the appropriate context.

Bill Walton (37:03):

That's the most evil term.

Jenin Younes (37:04):

Yeah.

Bill Walton (37:05):

There's disinformation, misinformation, and malformation. And malformation, something can be true, but they don't like the way you use the facts.

Jenin Younes (37:15):

Exactly. Exactly. So they were censoring true stories, true accounts, because it was not good for their agenda.

Bill Walton (37:26):

Well, let's talk about ... this is the Bill Walton show. I'm here with Jenin Younes and we're about to talk about Dr. Fauci. Dr. Fauci is named in this lawsuit.

Jenin Younes (37:40):

Yes.

Bill Walton (37:41):

What was his role? How did he come up? I mean, I've got some notes here. I'd rather hear it from you.

Jenin Younes (37:46):

Yeah. So he initially came into the picture in the sort of fall of 2020 because he was demanding censorship of the Great Barrington Declaration, which we discussed earlier, and sort of anyone who disagreed with his lockdown strategy to mitigate the spread of COVID. Now, he also, we know that he played a major role in trying to get the lab leak theory silenced, probably because he was responsible for funding gain of function research, which means ultimately he may have played a rather large role in the COVID pandemic in the first place.

Bill Walton (38:27):

They wrote a paper called The Proximal Origin of COVID-19. And that was published in what, Nature Magazine?

Jenin Younes (38:38):

Yeah.

Bill Walton ([38:39](#)):

And it debunked anything that had anything that stated anything. It couldn't have occurred in a lab. It had to have occurred in nature.

Jenin Younes ([38:46](#)):

Yep, while meanwhile they were exchanging emails saying that they thought it was quite possible it came from a lab, but that wouldn't be very politically convenient for them.

Bill Walton ([38:56](#)):

This is stunning.

Jenin Younes ([38:57](#)):

It is stunning.

Bill Walton ([38:58](#)):

And again, we felt this, we heard this. There are rumors, everybody's talking about this, but this has all been now pretty much documented.

Jenin Younes ([39:08](#)):

Yeah. Yeah. And I mean, I'm going to speculate a little bit, even though I try not to. At this moment we don't have direct evidence that Fauci asked the social media companies to censor the lab leak theory, but what we do have is emails from Facebook, internal emails where they're saying, "Why did we censor the lab leak theory again?" And another employee saying, "Because we were under pressure from the administration. We shouldn't have done it." So why would the administration have wanted to censor the lab leak theory? That's a question I've asked myself. This wasn't like the vaccines, where they were clearly ... the Biden administration had made vaccinating as many people as possible central to his campaign and his agenda. Why the lab leak theory? I suspect it's because that's what Fauci wanted. I don't have evidence of that at this moment, but I'm hoping we can get it.

Bill Walton ([40:02](#)):

Gee, Fauci was using the money from his agency to fund the Wuhan lab to do gain of function. And a lot of people believe that Fauci had an economic interest in some of the products that are being developed there.

Jenin Younes ([40:15](#)):

Right.

Bill Walton ([40:16](#)):

I mean, why would he be concerned?

Jenin Younes ([40:21](#)):

Exactly. Exactly.

Bill Walton (40:22):

And now he's retired. He may ... how old is he? 85?

Jenin Younes (40:28):

Something like that.

Bill Walton (40:29):

These cases drag on forever. The case may not be closed by the time he departs the [inaudible 00:40:35], who knows?

Jenin Younes (40:36):

Yeah, that's true.

Bill Walton (40:36):

But anyway, then he also testified he never contacted a social media company to ask them to remove information from their platforms.

Jenin Younes (40:46):

Yes, he says that, but we don't know that that's true.

Bill Walton (40:50):

Okay.

Jenin Younes (40:50):

He's not the most honest person.

Bill Walton (40:52):

So why don't you sum up a little bit, because this is ongoing. The oral arguments are tomorrow. We're going to have to come back to talk about where it goes. Are we optimistic it's going to go through these judges? I mean, I know you got to be careful as a lawyer. I want you to be a careful lawyer, but it seems like a lot of this is so overwhelming that I don't know how you throw it out.

Jenin Younes (41:17):

Yeah. I suppose to play devil's advocate, my fear, and I don't think this is a proper interpretation of the First Amendment, but my fear is that the court will say it's too hard to police the government in this way. In order to have a First Amendment violation, you have to have a specific threat and a means to carry that out. So the government actor making the threat has to actually have the power to carry that threat out. These kind of general threats ... I don't think that that's a threat.

Bill Walton (41:42):

So if we had only one threat, we could deal with it. But here we're dealing with 53,000 and it's just too much.

Jenin Younes (41:47):

Yeah. Yeah. And they were making specific threats also, to be clear. Now, the government says they didn't really have the ability to carry those things out, certainly not without Congress, et cetera. I don't think that's true, and I don't think that's the proper standard for assessing whether this is a First Amendment violation, but that would be my fear. That's the way ... I don't think that they're going to buy the government's argument that there was no pressure or that these were just suggestions. That's not how you can read these emails. So I am optimistic the Fifth Circuit is sort of ... it's a reliable predictor outcome.

Bill Walton ([42:26](#)):

They'll get to the right outcome.

Jenin Younes ([42:27](#)):

Yeah, the Supreme Court tends to follow them pretty closely.

Bill Walton ([42:34](#)):

I want to congratulate you again on this brilliant work. And I know you've got a team and all the people involved -

Jenin Younes ([42:41](#)):

We do have a team. Lots of very brilliant people on this.

Bill Walton ([42:43](#)):

The New Civil Liberties Alliance has done amazing work here.

Jenin Younes ([42:47](#)):

Oh, thank you.

Bill Walton ([42:47](#)):

And I'm a big supporter, and I think this was a big win. Let's hope we get through the oral pretty well and this thing proceeds.

Jenin Younes ([42:56](#)):

Yep.

Bill Walton ([42:57](#)):

Okay.

Jenin Younes ([42:58](#)):

Well, thank you so much for discussing this with me.

Bill Walton ([43:00](#)):

Oh yeah, great to have you on. You'll be back, I hope.

Jenin Younes ([43:02](#)):

For sure.

Bill Walton ([43:04](#)):

This has been the Bill Walton Show. I'm here with Jenin Younes of the New Civil Liberties Alliance, and we're talking about her exceptional case, Missouri versus Biden, which I think is something we've all been hoping would happen, and it's happening and it's a good piece of news. Hope you'll join me on future shows. Hope you like this one. Please send us your comments on ... best place is probably Substack or thebillwaltonshow.com. And again, to plug something new we're doing, join us on Insider Access Live, which is a Zoom interactive Q&A show where I'm talking with guests live, or live on Zoom rather. And we're going to be going back and forth with tough questions, or maybe hopefully easy questions. So anyway, look forward to talking with you on that and others, and we'll be back with you soon. Thanks.

[\(43:56\)](#):

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