

Speaker 1 ([00:04](#)):

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 ([00:24](#)):

The US government has established a vast system of censorship, and by keeping it largely secret, it's been able to exert unconstitutional control over and suppress critical debates regarding its medical, scientific, and climate policies. But Americans are beginning to push back. On March 18, the Supreme Court heard oral arguments in the case, *Murthy v. Missouri* challenging the government censorship on social media. At stake is a lower court injunction ruling that the Biden administration, including the White House, the FBI, the Department of Justice, the Surgeon General, the CDC, the Department of Health and Human Services, and it seems like most all the other federal agencies no longer can communicate with or coerce social media companies for, and I quote, "The purpose of urging, encouraging, pressuring, or inducing any manner the removal, deletion, suppression, or reduction of content containing protected free speech."

[\(01:35\)](#):

Well, this is a vital and complicated issue, and frankly, as a non-lawyer, I'm somewhat at sea and understanding the hows and on what basis the Supreme Court will decide this case. So to sort this out for you and for me, all of us non-lawyers out there is one of the lead plaintiff attorneys in the case, Jenin Younes who's with the new Civil Liberties Alliance and who served as a senior special counsel in the Weaponization Subcommittee. And joining us in a minute is our latest new arrival in the Younes family.

[\(02:10\)](#):

And Aaron Kheriaty, MD, a plaintiff in this case, and a man I think of as an American hero who's also a physician specializing in psychiatry and was fired from the University of California after challenging its COVID vaccine mandate in federal court.

[\(02:28\)](#):

Aaron has been called by Matt Taibbi, the most ambitious theorist of the censorship industrial age. He writes on Substack. So Jenin, since I last saw you, we've had a new arrival and tell us about our new arrival

Jenin Younes ([02:45](#)):

That's right. This is Zane. He's almost three months old. He was born on January 2nd, and he's already a free speech warrior.

Bill Walton ([02:55](#)):

Well, we're going to be [inaudible 00:03:01] Don't worry, Zane. We're going to be protecting your free speech and we're going to take care of your future young man. And dad is also here. He's with the park service or...

Speaker 5 ([03:13](#)):

Land trust.

Bill Walton ([03:14](#)):

Land trust. He's protecting the environment, which is important to the species and habitat. So Zane, you've had your moment in the sun. We're now going to go on to other matters. Okay. We're good. Thanks, guys. All right, Kenny, good luck with that.

[\(03:33\)](#):

So Aaron, we've upstaged you with Zane. I hope you don't mind a very cute young man, and we want to talk really about the drama that happened in the Supreme Court hearings, and there's a lot we want to take from that. But before we do that, what prompted you to sue the federal government?

Aaron Kheriaty [\(03:58\)](#):

Well, it started with my own experience of being censored online. After I filed a lawsuit against the university, I was interviewed by a former CBS journalist named Alison Morrow, who had her own podcast. And we were discussing just the ethics and the legal issues around vaccine mandates. That video was censored on YouTube, was taken down and I was fired shortly thereafter.

[\(04:24\)](#):

And then I found out after that, that Alison, who at the time who was working for the Washington State Department of Natural Resources, was told by her employer that if she didn't take the interview with me down off of the other platforms where she had posted it, that she would be fired. And to her credit, she refused to do that. She refused to allow her own employer to censor her and ended up losing her job.

[\(04:56\)](#):

It was a rather jarring and surreal experience for me, not only to have lost my own job because of my stance on vaccine mandates, but the very first person I talked to about that publicly, that conversation was censored and that individual lost her job. And so I was trying to wrap my head around what was going on with this refusal to have a public conversation about something that was clearly controversial, clearly impacting millions of Americans. And anyone who attempted to approach the topic and discuss it, write about it, speak about it publicly, was immediately shut out of the public conversation.

[\(05:42\)](#):

I found that profoundly disturbing. And so when one of the lawyers who at the time was in the State Attorney General's Office in Missouri, John Sauer, he was the solicitor general of Missouri at that time, called me up because they were thinking of filing this case. They had heard, Jen Psaki, president Biden's press secretary on television talk about how they were meeting with social media companies. They were pressuring and inducing social media companies to take down constitutionally protected speech.

[\(06:15\)](#):

John and the attorney general, Eric Schmitt at the time of Missouri looked at that and said, "Well, they can't do that. That violates the highest law of the land, the First Amendment of the Constitution." And so John called me up and said, "You've been censored, haven't you?" And I indicated that I had, and I mentioned the example I just spoke about and a few other examples of being censored and suppressed on Twitter.

[\(06:39\)](#):

He asked if I knew any other doctors and scientists, credible doctors and scientists who had been censored. And so I reached out to my friends and colleagues, Jay Bhattacharya at Stanford and Martin Kulldorff, who at the time was at Harvard to eminent epidemiologists, well-known as co-authors of the Great Barrington Declaration. I knew at the time that they had been censored and as evidence in our case and evidence from FOIA request came out, it became clear that there was a smear campaign orchestrated from the very top of the NIH, the director of the NIH, Francis Collins and Anthony Fauci had

an email exchange where they described this Harvard and Stanford epidemiologist and their co-author who was from Oxford as "fringe" epidemiologists and said that the Great Barrington Declaration needed a swift and devastating takedown.

[\(07:33\)](#):

So there was this behind the scenes orchestrated campaign to censor them. So Jay and Martin joined the case as well. And eventually Jill Hines, a health freedom advocate from Louisiana, and a journalist named Jim Hoff also joined as private plaintiffs. So this case was filed by two states, Missouri and Louisiana, and those five private plaintiffs that I just mentioned. What we suspected was going on, we found out as we got more documents on discovery, 20,000 pages of communications between the government and social media companies as well as the six depositions that we've done so far indicated not only was this happening, but it was happening on a much more elaborate scale.

[\(08:23\)](#):

It was happening on a much faster scale than we had initially suspected. So we discovered, for example, that not only were they censoring on COVID related topics, censoring people who are critical of the government's favored COVID policies, but it turns out they were censoring on a whole host of other domestic and foreign policy issues. The government was pressuring social media companies to suppress constitutionally protected speech of people who criticized our monetary policies, people who criticized foreign policies.

Bill Walton [\(08:58\)](#):

And climate. Climate is one of my big issues. I'm sorry, continue. I do want you to continue, but I want to get Jenin involved. How did you meet with New Civil Liberties Alliance? Because I've had Phil Hamburger on the show before and also... Who argued the case for us and who's your CEO?

Jenin Younes [\(09:25\)](#):

Mark Chenoweth? He didn't [inaudible 00:09:27] No, it was the solicitor general of Louisiana.

Bill Walton [\(09:29\)](#):

The New Civil Liberties are exactly the right people to be working with you on this because they understand the principles as well as anyone.

Jenin Younes [\(09:37\)](#):

Yeah. I got involved in this in a similar way as Aaron. I noticed that when I was tweeting anything about the vaccine. It would either get deboosted or censored. When I saw that Psaki and the surgeon general were making these statements saying that they were getting the tech companies to do this, I was profoundly disturbed. And when it affects you personally, you kind of see, "Wow, I really can't get my views out there because of the government." And I had a bunch of friends on Twitter who were experiencing the same thing.

[\(10:07\)](#):

Mark Changizi, Daniel Kotzin and Michael Senger. So I filed a lawsuit on their behalf that proceeded this one actually. And it was raising basically the same arguments, but it was a bit more constrained. It was just about COVID and it was just about Twitter. We weren't alleging anything about Facebook, so they didn't use Facebook.

[\(10:26\)](#):

When our suit was dismissed, the Attorney General of Louisiana and Missouri were planning to file this one, and they knew of my work, and so they obviously knew I was interested in the subject and knowledgeable about it. And so they needed attorneys to represent private plaintiffs. So they asked me to come on board and do that. So that's how we got involved.

Bill Walton ([10:47](#)):

So that was Aaron, and Martin, and Jay.

Jenin Younes ([10:48](#)):

And Jill.

Bill Walton ([10:49](#)):

And Jill.

Jenin Younes ([10:49](#)):

We represented all four of them.

Bill Walton ([10:50](#)):

And Jill was there.

Jenin Younes ([10:51](#)):

Jill Hines, yeah.

Bill Walton ([10:52](#)):

This is ongoing though. Wasn't Martin Kulldorff just fired from Harvard?

Jenin Younes ([10:57](#)):

Yeah.

Aaron Kheriaty ([10:57](#)):

Well, he just publicly announced that he was fired from Harvard. I think the actual firing occurred some time ago. I don't know the full story of exactly when, but he may have been working with the university to try to reverse that decision. But yes, just a few weeks ago, Martin, wrote a piece and I think it was City Journal describing what happened to him at Harvard, which is a very similar story to the one that happened to me at the University of California.

Jenin Younes ([11:28](#)):

Yeah. He also didn't want to get the vaccine as he had natural immunity. And that was the issue behind his firing from Harvard, which also, by the way, Martin is one of the most cited vaccine specialists in the world. So it's kind of ironic that these bureaucrats at these universities are writing policies that get him fired.

Bill Walton ([11:47](#)):

Well, Robert Malone, who was in this with us all has invented the technology and he didn't think it works. So it's a lot of big brains are lined up on this, on our side. So let's fast-forward to we had the lower court rule in our favor, and I read some of the language from his ruling and then that came to the Supreme Court.

Jenin Younes ([12:13](#)):

No. Actually there was the Fifth Circuit. We got a fairly favorable ruling in the Fifth Circuit. So that was probably two months after I came on your show last time. And so that's the Court of Appeals. If they trimmed back the injunction a little bit, they cut out some of the agencies. They thought there wasn't enough evidence against some of them, including NIAID and NIH. So sadly Collins and Fauci were removed from it. They also changed the standard a little bit.

([12:42](#)):

So they said the companies, sorry, the government can't coerce or significantly encourage the companies to censor based on Viewpoint. So it means that under the Fifth Circuit standard, the companies and the government can work together or partner. At least there's an argument to be made. So the subject of the Supreme Court arguments or a lot of the debate was like, "What's the line? Is persuasion, okay? Does that have to be coercion?" And it's our opinion, it would be highly problematic if you set the standard at coercion, which unfortunately the court indicated it might do because that means that these government entities can work very heavily with the companies to censor American speech and get away with it because the companies are apparently doing it voluntarily.

([13:36](#)):

And the First Amendment prohibits the abridging of speech, the government from a bridging speech. It doesn't say coercing. And interestingly, that's to be contrasted with prohibiting, which is used in the First Amendment context for religion. So it was clear they made a choice about abridging. They didn't say prohibiting, they said abridging. So anything that the government is doing to diminish speech should be considered a First Amendment violation. Unfortunately, based on what we heard, I'm not sure the court will see it that way.

Bill Walton ([14:03](#)):

So, Aaron, didn't Justice Jackson attempt to invent a whole new interpretation of the First Amendment during this hearing?

Aaron Kheriaty ([14:16](#)):

Yeah. I believe that she did. I don't think even some of the other more liberal justices are going to go quite as far as she did. Indeed, the federal government's own attorney did not go as far as she did. So the federal government was attempting at the oral arguments of the Supreme Court to make the case that they never coerced anyone. And Justice Jackson suggested at one point that even coercion might be acceptable if the state had what it considered to be a compelling state interest in suppressing or censoring speech.

([14:51](#)):

And the government certainly wasn't making that argument. I don't know that any of the other justices would be prepared to go quite that far, but it was striking and rather shocking to hear that from Supreme Court Justice that at one point she remarked that our argument seemed to hamstring the government in significant ways which could be problematic during certain periods of time.

([15:23](#)):

And that made the rounds on social media because of course, the whole purpose of the First Amendment and the entire Bill of Rights is to constrain the government in specific ways. The First Amendment exists for the citizens of the United States. It doesn't exist primarily for the government. Of course, the government has the right to publicly state its positions and its policies and try to defend them from the bully pulpit publicly. What it doesn't have the right to do is to go behind the scenes and pressure or coerce third parties to suppress the speech of other Americans.

Jenin Younes ([16:07](#)):

On that point though, I think our position is that even using the bully pulpit to abridge speech is prohibited by the First Amendment. So the government keeps making these comparisons to presidents get up all the time and say, "We should have lower greenhouse gas emissions and companies should be responsible citizens and help with that. And I agree that they can say that, but there's no constitutional right to a certain amount of greenhouse gas emissions, whereas we do have a constitutional right to free speech.

([16:37](#)):

So it's explicitly stated in the Constitution that that's where the the line is. The government can't take action from the bully pulpit or behind the scenes to abridge our First Amendment rights, our free speech rights.

Aaron Kheriaty ([16:49](#)):

Yeah. I want to riff on this a little bit because this is a really important point. This is an important issue that came up during the oral arguments. I just published a piece today in The Federalist trying to explain the reasons why some of the analogies used during the oral arguments don't hold up. It turns out three of the Supreme Court justices formerly were White House attorneys, and they indicated during the oral arguments, Roberts, Kagan and Kavanaugh, they indicated that we used to call up the New York Times or the Washington Post all the time and encourage them to change a story or maybe hold off on a story or suppress a story.

([17:33](#)):

Roberts at one point remarked, "But I never coerced anyone in doing that." And that elicited some laughter. But they seem to want to carve out some room for the government to try to persuade social media companies and the way that probably they had attempted to persuade journalists or editors in the past when they worked in the executive branch.

([17:57](#)):

In fact, there are several problems with that analogy. One of the problems with that analogy is when they called up a journalist or they called up an editor, they were talking to the person whose speech they were trying to suppress, and they were tempted to persuade that person and that person could say, "Well, yeah, I see your point. I'm going to hold off on this story until you can get your spies out of Afghanistan. I'll give you a week to do that. Or yeah, I see that I may have gotten this fact wrong, so I'm going to change that."

([18:25](#)):

Or they could tell the person on the other end to go take a hike. I think I got the facts right. I'm going to go ahead and run the story anyway. Well, when they were pressuring social media, they were never in conversation with the person whose speech they were suppressing. Martin Kulldorff, my co-plaintiff said, "I would've been happy to get a call from a government official trying to explain to me how I got the science wrong or why I should change my views on this particular scientific policy."

[\(18:52\)](#):

But of course, that never happened. So that's one key difference. Another key difference is the government doesn't have the same threats or swords to hang over the heads of the New York Times that they do with the social media companies. Things like removing Section 230 liability protections, which Mark Zuckerberg has called an existential threat to his company. That would destroy their whole business model, threats to break up their monopolies. Threats like this have not only been made as we articulate in the record, but they've been made in direct conjunction with the government's pressure on the social media companies to censor free speech.

[\(19:39\)](#):

So those things have been paired together, the government's own attempts to suppress speech. And sometimes that's even been done publicly. So it's very important to understand that there's little that the government can do to destroy the business model of the New York Times or to pressure them. And of course if they're leaning on a newspaper too hard, that's going to be front page news until the government stops doing it. That's going to be the lead headline in the Washington Post above the fold until the government backs off.

Jenin Younes [\(20:12\)](#):

There's also a difference between going to one newspaper and saying, "Don't publish this story." Whereas here, they're censoring it sort of entire lines of thought. Anybody who questions whether the vaccine is a good idea for everybody gets censored on social media. So the lab leak theory for instance, which we actually have very clear evidence, was censored because of the government, because there are internal emails from Meta executives saying, we censored because we were under pressure from the White House. We shouldn't have done it, which is pretty clear that the lab leak theory was censored because of the government and other things.

[\(20:49\)](#):

I mean, the government was asking the companies to censor true accounts of people posting their personal experiences with vaccine side effects if that would cause vaccine hesitancy. It's very different from calling them one story. This might pose a national security threat. Can you hold off for a few days versus anybody who says anything negative about the vaccines is silenced.

Bill Walton [\(21:11\)](#):

But these weren't just conversations from the White House directing Facebook to remove that post, although they did, and we have emails that showed direct instruction. In fact, who was his name? Ben in the White House.

Jenin Younes [\(21:26\)](#):

Rob Flaherty is the real villain.

Bill Walton [\(21:30\)](#):

Rob Flaherty. He's a flamer. He was-

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

He and Andy Slavitt were...

Aaron Kheriaty [\(21:34\)](#):

Those guys knew how to throw tirades and drop F bombs.

Jenin Younes ([21:38](#)):

Did anything come up about how pervasive and systematic and organized is? Because we have CISA and Jen Easterly talking to us about misinformation, disinformation and malformation and the American mind as critical cognitive infrastructure. And they have meetings with the social media companies every week, every month. They've got pop-up companies that do with names where you can't quite figure out how they're controlled. These are just not conversations. This is systematic. Former FBI agents are now sitting in the offices of Facebook and Google and YouTube. I mean, did that-

Aaron Kheriaty ([22:23](#)):

Yeah, that's right. Thank you for bringing that up because this is an aspect of this case that I think is hard for Americans to wrap their heads around, and it's probably hard for the justices to wrap their heads around. It's much easier to look at the evidence of Rob Flaherty screaming at a Facebook executive to take down a post critical of the president. But that probably accounts for 1% of 1% of the censorship that was happening. There's a very elaborated system which was put in place starting around 2017 and really was fully utilized in 2020 to suppress information around the election and then following that to suppress information around COVID.

([23:05](#)):

Michael Shellenberger calls it the censorship industrial complex. He's one of the Twitter files journalists who's dug into this whole apparatus in some depth, and basically it involves government cutouts, sometimes people call them GONGOs, government organized NGOs that were set up by the Department of Homeland Security and at the request of this agency called CISA.

([23:31](#)):

These are places like the Stanford Internet Observatory, University of Washington has a censorship outfit that claims to be a university-based research program, but really employs people 24/7 to use sophisticated AI to scrape the internet to see what ideas might threaten to go viral and to like an engineer at a soundboard mixing a record to turn the volume down on ideas that the government doesn't like and to turn the volume up on ideas that the government does like to literally try to control the flow of information online through a massive enterprise of censorship requests that are funneled to the social media companies from CISA, from the Department of Homeland Security.

([24:22](#)):

CISA acting as sort of the central clearinghouse for all these requests, but an entire industry set up by the government, funded by government grants, staffed by former government employees that's working 24/7 to do this. It's rather staggering when you peel back the carpet and you see this entire industry that in the phrase censorship industrial complex, the word industry should be taken very literally. This is a place that they don't call it censorship, they call it disinformation. This is a place that people can make a career. There are training programs at universities to become a full-time "disinformation expert". That is to say a full-time government employed or government funded at least censor.

Bill Walton ([25:16](#)):

The one I used to say it was funny, but I don't think it's funny, my favorite one is malformation where they'll recognize that something is factual, but they don't like the context that you put it in. And so they'll...



Aaron Kheriaty ([25:31](#)):

That's right.

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

So they're dealing with malformation. Well, did they make the argument, "Oh no, we didn't need to coerce them because the social media companies already agree with us that this information is hate speech or terrible speech and we need to shut it down." We didn't even need to direct them because they would've done it on their own. I mean, that get into the issue of who's intending to do what and how hard they had to push?

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

That's a large part of their argument and what I fear the court will find is okay. And the CDC was doing something similar. So there's like CISA doing a lot of the sort of election related stuff, and then the CDC was doing a lot of the COVID related stuff. And their argument is, "Look, read these emails." These companies were asking for our help and we were just helping them implement their own policies or enforce their own policies. We were telling them what is misinformation about the vaccines? And the government has speech rights. The government has a right to communicate with these companies.

[\(26:35\)](#):

I think for the reasons I discussed earlier, that's extremely flawed because what they were doing was censoring and the government just can't be in the business of censoring people. The government could speak with... The CDC can certainly speak with the social media companies and say, "We think there's a problem with vaccine misinformation. Can you please put our content up to what we think is the right thing for Americans to do?"

[\(26:59\)](#):

Or the CDC has every right to post on Twitter and say, "People are saying things about the vaccine that aren't true. We think everyone should get the vaccine." They have the right to counter speech, but what they cannot do is demand that Americans speech be taken down. But unfortunately, some of the questions that members of the court asked, including the swing voters concern me that they might find that this is okay. And as Aaron said, this is the vast majority of the censorship that's happening. So if the court says that's okay, we're in pretty big trouble.

Bill Walton ([27:30](#)):

Well, Aaron, you did an interesting analysis in one of your pieces on your Substack site where you started talking about we've got nine justices, which justices are likely to vote, which way? Now, Jenin, can't talk about it because she's in the legal profession and she needs to be...

Jenin Younes ([27:49](#)):

Oh, I can make predictions. I just have to...

Bill Walton ([27:52](#)):

Well, you can't characterize what you think of them?

Jenin Younes ([27:55](#)):

If it's negative, no.

Aaron Kheriaty ([27:57](#)):

Let me just enter the caveat that I think-

Bill Walton ([27:59](#)):

What was that like? You're in this august room and they're up hearing these arguments and you're watching these people react. One of the things that you pointed out was that Justice Thomas who notoriously said nothing forever post the whole COVID thing. He's now starting to speak up. So that's getting interesting. So anyway, I'm interested, what's your take on what happened and how they're likely to line up?

Aaron Kheriaty ([28:26](#)):

I mean, it was quite something being in the courtroom and observing the oral arguments. It's my first time doing that. People who watch the court carefully will tell you that it's a very dicey business trying to make predictions about what the court is going to do based on the tone and tenor of the oral arguments. So a big grain of salt with what I'm about to say, and I could be completely wrong, and I'm not an expert in this, but my impression is that we have three justices that are sympathetic to our arguments and very concerned about the censorship that's been going on.

([28:59](#)):

That would be Justice Alito, Justice Gorsuch and Justice Thomas. And in fact, I think we have pretty solid evidence that they're concerned because when the Supreme Court put a temporary stay on the circuit court's injunction, basically saying, "Until we rule the injunction is not going to go into effect," those three justices wrote a dissenting opinion on the stay saying, "No, we think the lower court's ruling should go into effect. We can still hear the case and maybe reverse that later." But they were concerned enough about what was going on, and they thought we had presented enough evidence in favor of the injunction that they didn't want to put a temporary stay on it. And the tenor of their questions during oral arguments suggested to me that that's still their position.

([29:47](#)):

Justice Jackson, Justice Sotomayor, and Justice Kagan seemed not sympathetic to our arguments. I think Justice Kagan being probably the smartest of those three and thinking through how she's going to write what hopefully is a dissenting opinion about why the government should have been able to do what they did, was trying to punt on the question of standing and trying to make the case that perhaps the plaintiffs didn't have standing to bring the case in the first place.

Bill Walton ([30:23](#)):

Explain standing because that's one of... When I said for the non-lawyers out there... I think I know what it means, but I'd rather have you tell me.

Jenin Younes ([30:32](#)):

That's the ability of the person who's bringing the case to bring a case. So you can't just go into court and say, "I don't like this law." You have to show that you've been injured by the law.

Bill Walton ([30:42](#)):

You have to show that you personally have been injured. Didn't they refer to something like the Disinformation Dozen?

Jenin Younes ([30:48](#)):

Yeah. States standing is complicated. I'm not going to get into it. The states know that their standing argument is harder. So that's one reason they wanted individual plaintiffs in the case. And what our argument is, is that none of these people to our knowledge were explicitly mentioned, at least in the documents we have. You don't have Rob Flaherty saying, "Take down Aaron Kheriaty or Martin Kulldorff... Well, Kulldorff was mentioned in one of the NGO cutout documents, but that's separate.

([31:23](#)):

Our argument is that these people were censored for the types of things that the government was demanding censorship on, and that should be enough, and it should be because what are the chances, especially before you get discovery, you're going to get evidence that the government asked for you explicitly to be censored. If the government is saying censor vaccine misinformation and then you're censored for vaccine misinformation, that should be enough to bring the case.

([31:43](#)):

However, the government's contention is that you should basically need to be mentioned yourself. And RFK, Robert F. Kennedy, Jr. was mentioned by the White House, and they demanded that his account be taken down. He's one of the Disinformation Dozen. So he's mentioned personally as well as among the Disinformation Dozen who were then taken down. So actually Alito, RFK tried to intervene in the Supreme Court and join our suit, and Alito wrote a dissent basically saying they denied that motion. But Alito wrote a dissent saying, "We should grant it because RFK has airtight standing," which was an indication he thought other members of the court might try to find. We didn't have standing. Our clients don't have standing.

Bill Walton ([32:28](#)):

Okay. So, Aaron, why don't you pick up where we...

Aaron Kheriaty ([32:30](#)):

Yeah. I don't think that is going to work. I mean, I think the court will find that at least one of us has standing, which is enough. Perhaps Jill Hines or Jim Hoff, who I think are mentioned in some of the documents by name. But if they don't, that will open up a vast pathway for continued government censorship because they'll simply say, "We're going to do topic-based or theme-based or idea-based censorship." And so long as we don't name names, no one will ever have standing to bring a case challenging the censorship enterprise.

([33:09](#)):

I just don't think that is tenable. In fact, that's a pretty terrifying possibility. The three justices that I haven't mentioned, I think are the three question marks. That would be Barrett, Kavanaugh and Chief Justice Roberts. Roberts and Kavanaugh didn't give, I think a lot of indications which way they were going to go.

([33:34](#)):

I think Kavanaugh was, as a former White House attorney, sort of sympathetic to the idea that maybe calling up and trying to persuade someone of something so long as you don't force it is not such a bad thing. But hopefully he can understand that there's, as I described before, there's key differences in the power dynamics with the social media companies that don't apply to that analogy that he was mentioning.

([34:02](#)):

Barrett, I think was also unclear, but she did ask a very important hypothetical at the end that suggested to me that she understood that even without coercion, deep entanglements, deepen measurements, Jenin, can explain the idea of joint action, which I think is a legal concept that might apply here, where if the government becomes too deeply enmeshed with a private entity like a social media company, even if things look cooperative, that could be constitutionally problematic.

[\(34:36\)](#):

She asked a hypothetical could... And this was a question to the government's lawyer, would it be okay or would it be constitutionally problematic in the government's opinion if one of the social media companies gave over an entire area of content moderation to a government agency? They just said, "We're going to hand CDC complete control over content moderation on COVID related topics, for example." And the government attorney was forced to admit, "No, that would be problematic."

[\(35:09\)](#):

I think that was an important hypothetical because... Well, first of all, it's not entirely hypothetical. I think that's more or less what some of the companies did during COVID in relation to the CDC or the Department of Health and Human Services and the surgeon general. So admitting that it was problematic indicates that some of these deep entanglements maybe constitutionally problematic. And it indicated to me that Barrett was maybe starting to understand or wrapping her head around the kind of problems with not just one individual calling another individual and berating him over the phone or via email, but the whole censorship industrial complex itself was operating in such a way that basically the government and social media companies were becoming indistinguishable.

[\(36:10\)](#):

And that in and of itself, aside from any pressure or coercion, could implicate social media companies as state actors and thereby subject them to the constitution.

Bill Walton [\(36:30\)](#):

Well, what kind of ruling would we get that would have a chilling effect on the censorship industrial complex? I mean, all the way to one end of the spectrum, we get a 9-0 ruling that this was flat out censorship, and they-

Jenin Younes [\(36:45\)](#):

That's definitely not going to happen.

Bill Walton [\(36:49\)](#):

So we're going to get some soft ruling, 6-3, 5-4. We're not sure. If we get a ruling.

Jenin Younes [\(36:55\)](#):

Well, majority is a majority. We just need a majority.

Bill Walton [\(36:57\)](#):

Let's say we get a favorable ruling in this case, they talk about just narrowing it down to the harm just done to you as individuals and not a broader class of people affected by government censorship, and therefore it wouldn't have any effect on everything else the government is doing?

Jenin Younes [\(37:12\)](#):

So they could limit the injunction just to the individuals or the individuals in the states and say, only Aaron Kheriaty, Jill Hines, Jim Hoft, Martin Kulldorff, and Jay Bhattacharya can enforce this. However, this is just the preliminary injunction. We still have an entire case that's still in the district court that we can move forward with discovery.

Bill Walton ([37:34](#)):

So that's the legal file. So we've got the injunction. That was to stop. It was a cease and desist.

Jenin Younes ([37:39](#)):

Yeah. Basically.

Bill Walton ([37:41](#)):

But even regardless of what happens here, you're going to go back in and try the whole case?

Jenin Younes ([37:46](#)):

Yeah. I mean, look, there are certain things the court could say that might make that very hard to do. I mean, if the court said none of the plaintiffs have standing, then it would be hard to continue with the plaintiffs that we have. Perhaps-

Bill Walton ([38:02](#)):

Well, wouldn't you just swap in some other plaintiffs?

Jenin Younes ([38:05](#)):

Yeah. And actually RFK has been joined with our case below so that we could probably continue that way. If the court just said, "Everything that went on here is perfectly fine, the government has every right to say whatever it wants to the tech companies, which is completely inconsistent with the First Amendment and would be a disaster, that might likewise be hard to go forward because the district court still has to use that standard.

[38:27](#)):

I do think we're going to get something much more mushy or hopefully quite clear in our favor. My guess is that there's going to be a few justices will say any of this partnering is a First Amendment violation. A few will only sign on for the coercion and then there'll be a dissent. If I were going to make a prediction, I could be very wrong.

Bill Walton ([38:53](#)):

Well, it's hard to read that. Aaron, you wrote something about, or maybe it was Brownstone that wrote it, that there was a computer model that tried to predict what the courts were likely to do and it was only 7% better than [inaudible 00:39:09]

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

Among peers?

Aaron Kheriaty ([39:12](#)):

Yeah, that's right. So these predictions are all conjectural, but I think Jenin and I are more or less on the same page in terms of guessing what the court is going to do. But I think it's important to remember that first of all, an injunction is very hard to get. You can be denied an injunction because there's a very high legal threshold to get an injunction evidential threshold.

Jenin Younes ([39:36](#)):

A preliminary injunction.

Aaron Kheriaty ([39:37](#)):

Court intervening before a final ruling. So it's hard to get an injunction. So I think any injunction, even if it's narrowed or softened as compared to the circuit court injunction is a big dent in this machinery. If the government actors have to stop and question will this or will this not violate the injunction that's going to make their censorship much more difficult?

Jenin Younes ([40:02](#)):

That's right.

Aaron Kheriaty ([40:03](#)):

I think. And there will be potential criminal penalties attached if they violate the injunction. And so we need some sort of win here. The censorship enterprise is actually a global phenomenon, and the First Amendment of the United States Constitution is the most robust protection of free speech anywhere in the world. So I think any kind of win at the Supreme Court on the question of the injunction is going to be a big step forward. And just the fact that this case is shining light on what's happening, and it's been front page news for the last week or so since the oral arguments is also a very positive development because Americans are starting to wake up and realize what the government has been doing. And lots of them are deeply unhappy about this.

Bill Walton ([40:58](#)):

Well, Justice Jackson basically saying, "Look, this Constitution... I'm in these black robes and I'm in this room, but this constitution is really getting in the way of what we ought to be doing." But the other eight justices, it sounds like at least are trying to work within the language of the Constitution and find a constitutional ruling as opposed to... I mean, we're dealing with a world of law fair now, and there's a lot of... I mean, if you look at what's happening with Trump, it's hard to find any basis for some of this.

([41:34](#)):

I mean, didn't in New York, they created a new statute just to go after Donald Trump specifically in this fraud case? We're living in a more and more lawless time. How optimistic are you that if we do get some sort of favorable ruling here, that that's really going to stop the lawless agenda that these people have?

Jenin Younes ([41:58](#)):

Well, that's a good question, but the thing is that once you have a ruling, the repercussions for the individuals who are perpetuating this regime will be much more significant. So once you have a clear ruling, you can sue people in their personal capacities. So before there's... While the law is a little bit fuzzy, I mean, I would say it's not that the First Amendment is clear, but we can admit there's no Supreme Court ruling on whether on this specific issue of the tech companies and government working together or being coerced to censor.

[\(42:29\)](#):

While there's no clear ruling, you tend to sue people in their official capacity, and that means they don't have to pay personally for what they've done once. There's a clear ruling saying this is not lawful, you can sue people in their individual capacity, which means there are personal repercussions for them, and you can sue for damages, which means you can get money. So the incentives change to comply.

Bill Walton [\(42:50\)](#):

This can really matter.

Jenin Younes [\(42:51\)](#):

Yeah, it could really matter. And I will also add, because I sounded a little bit pessimistic earlier, we were up on a win, and I think that the majority of the court thought that the Fifth Circuit had gone too far. And so that was part of why the tenor of the argument seemed so negative for us. But I don't think that they thought everything the government did was just fine, or I certainly don't think the majority of them thought that. It was very different from the Fifth Circuit's tone, which was sort of a shock that the government would even do anything remotely like this.

Bill Walton [\(43:27\)](#):

Martin, you want to follow up, or Aaron you want to follow up with... Let me ask-

Aaron Kheriaty [\(43:33\)](#):

I wonder if there's cultural differences between a district court judge and Louisiana Fifth Circuit, three-judge panel who exist outside the swamp of Washington DC looking at what actually goes on behind the scenes with some of these federal agencies and being appalled by it versus people who live and work and grow up in that atmosphere of the world of Washington DC.

[\(44:03\)](#):

I think Supreme Court justices are not immune from this, this idea that we're the ones in power and we know how things need to be. One of the challenges with the American system is that the Constitution constrains the government, but the enforcement of the Constitution, the application of the Constitution to specific cases in the courts relies on basically self-restraint by the government. So we're asking the government to restrain the government's own power.

[\(44:40\)](#):

I think there's been a broad consensus in the United States of the importance of that, and the will of the people has been strongly behind that for much of American history. But perhaps over the last 20 years or so, it's becoming increasingly clear that many Americans unfortunately no longer believe in the Constitution. Many young people today don't understand the reasons and the importance for the First Amendment protections of free speech and the other freedoms guaranteed

Jenin Younes [\(45:10\)](#):

It was written by white men, so it must be bad.

Bill Walton [\(45:14\)](#):

Oh yeah. Those terrible white men. Well, that is a big issue. Do you feel at all that this is one of those careful cases for Justice Roberts that he's always preserving and he should to try to preserve the standing of the court? Could this be so politically charged that people start talking about court packing?

Aaron Kheriaty ([45:42](#)):

I don't know that things are going to go that far because I mean, one of the things that the censorship enterprise doesn't want is sunlight. All of this was operating in secret prior to our case and prior to the Twitter files. And the last thing that this whole censorship industrial complex wanted was for people to find out what they were doing. So some sort of big political push at the courts to try to get the right kind of ruling in this case, I think is only going to increase public attention on the case.

[\(46:29\)](#):

I think the people who are engaged in this enterprise that's the last thing that they want. They've only come out of the shadows in the last week or two because they've been forced to do so by virtue of the fact that this case has been in the news and the progression moves from first they ignore you. Nothing to see here, and then they dismiss you.

[\(46:53\)](#):

Oh, government censorship is a conspiracy theory. And then when that is no longer tenable, they say they pivot to... Well, yeah, this is happening. But of course it's a good thing that it's happening. It's necessary that it's happening, which is the argument that you saw at the Supreme Court, but they don't really want to make that pivot to admit that it's actually going on because that will bring a lot of critical scrutiny on the behavior.

[\(47:22\)](#):

So I think they're going to continue to try to downplay this. They're going to continue to try as best they can whenever they can to keep it out of the public eye, because this only really works when people aren't aware that it's happening, when a sufficient number of people are aware that it's happening, and then they realize that they've been actually victimized by it. They've been subjected to censorship.

Jenin Younes ([47:44](#)):

One of their strategies has just been to paint it as a right-wing conspiracy theory, as you alluded to, and this is all Trumpian people. Matt Taibbi actually wrote a great piece on that. I mean, the people who like me and you know about that.

Bill Walton ([47:56](#)):

You know the three of you are particularly Trumpian.

Jenin Younes ([48:01](#)):

No. Also we've based our impressions off reviewing thousands. I mean, I've probably reviewed 20,000 pages of documents. They reach these conclusions, but the average person doesn't even read an article about it. So it's easy to say, "Oh, these people are just conspiracy theorists."

Bill Walton ([48:21](#)):

They got out in front of the censorship thing taking advantage of the technology, the social media companies. But, Aaron, as you point out, once we begin shining a light on this and this technology, this AI... Or not AI, but we can use that ourselves. And now that we know who they are and what they're



doing, and we can name names, individuals, we can make it extremely uncomfortable for them. I don't think Jen Easterly wants to be featured as a profile in anything. She thought she went into some cushy government job is going to operate in obscurity.

Jenin Younes ([48:57](#)):

Kate Starbird seems to like to be on the front pages of things.

Bill Walton ([49:00](#)):

Who's that?

Jenin Younes ([49:02](#)):

She was one of the censors at the University of Washington. She is sort of one of the big ones who has been involved in this. In fact, she's been on the front pages of five or six different papers, and Matt Taibbi wrote a piece last night that said, "They keep putting out these pieces with photos of disinformation researchers looking sad." Which I thought was quite funny.

Aaron Kheriaty ([49:24](#)):

Yeah. She's not a great face for the movement. I mean, you listen to her and you look at her and you start thinking, "Who made this person the arbiter of what is true and what is false? What authority does she have to tell doctors and scientists from Harvard, Stanford and the University of California that they're mistaken on some scientific question. Because she calls herself a disinformation researcher, whatever that is.

Bill Walton ([49:52](#)):

So my line of action with a lot of these issues is the more we can make it personal and the more we can put a profile face videos of these people and who they actually are, I think that destroys their credibility. I mean, a lot of these people operate under the facade of a federal agency and oh my gosh, I ran a public company, had to deal with the Security and Exchange Commission, and you get a letter or something like that and you realize there's just this one junior lawyer who wants to make a career move that's just trying to put something out there. And if you can identify, isolate, and do a little Saul Alinsky with them and put them out in public, I think it works for us.

Jenin Younes ([50:34](#)):

Yeah.

Bill Walton ([50:35](#)):

I'm for it. Well, what else should we... This has been fabulous. Any final words, Aaron?

Aaron Kheriaty ([50:44](#)):

Yeah. I think it's important for listeners to understand that some listeners may be thinking, "Well, I haven't necessarily been personally impacted by this issue because I'm not on social media or maybe I have an account on Facebook or on X, but I don't post anything. I just go on to see what other people are saying. So I probably haven't personally been censored by the government."

([51:06](#)):

But the Supreme Court has made it clear in previous cases that the First Amendment right of free speech exists not just for the speaker, but also for the listener that your rights are harmed and violated when censorship happens. Because in a functioning republic, in a functioning democratic system, the public needs access to information in order to make informed decisions about voting, about public policy, about the things they're going to support about health-related behaviors.

[\(51:42\)](#):

What we got during COVID, just to use that as one example, is what Jay Bhattacharya calls the illusion of scientific consensus, that there was actually deep disagreement and debate on the government's preferred pandemic policies from lockdowns, to vaccine mandates, to the use of masks. But the public wasn't aware of that because one side of that debate was artificially suppressed. And so censorship affects all of us. People died during COVID because of censorship. People died during COVID. People were harmed during COVID because policies that ended up doing more harm than good school closures, lockdowns were put in place, and they remained in place far longer than they should have because the critics of those policies were silenced.

[\(52:38\)](#):

So this has real world consequences. Most of what they targeted was true speech and that's precisely why they targeted. It was threatening to their power. So they weren't primarily targeting people who were claiming on Twitter that aliens have implanted a chip in my brain and are controlling me from outer space. I mean, people like that may have been censored by the government, but the government was primarily concerned about voices like the plaintiffs who were credible, persuasive, intelligent people who had something to say, who had something to contribute.

[\(53:18\)](#):

And because we were critical of the government's preferred policies, we were a threat. So we don't have to establish for purposes of our legal case that the information that was censored was true. All we have to do is establish that it was legal speech, that it was constitutionally protected speech, which is easy to do because the categories of illegal speech that are not constitutionally protected or very, very narrowly defined, things like direct incitement to physical violence or child pornography. Those are not forms of protected speech.

[\(53:51\)](#):

But obviously that's not what the government was going after. They were going after people who were trying to make a case that we should be approaching things differently on this or that foreign or domestic policy. So this is an issue that affects all of us. It has real world consequences when the government does this and that built in corrective mechanism of public discussion and debate.

[\(54:20\)](#):

Can't function in a system that's characterized by government censorship. Scientific advancements can't be made if censorship infects science and medicine. Scientific progress happens precisely because people challenge a particular consensus. They put out a new hypothesis. They test existing theories to see if they hold up under scrutiny. So science and censorship are totally incompatible. And so this science has harmed medicine, this harmed Americans' ability to make informed decisions about their health and censorship is the seed bed of totalitarian systems. It's where all those systems always begin.

Bill Walton [\(55:08\)](#):

So we're going to stop it. That's very well said. I was just thinking about copying and pasting that for promoting the show, but there's something else we need to promote, and it's what Jenin is doing with the new Civil Liberties Alliance, which is an incredible organization. And you all exist to do what?

Jenin Younes ([55:33](#)):

To fight the administrative state mainly. So to ensure that agencies aren't acting outside of their authority to try to constrain agency power and to protect Americans' rights. So I actually have another case I'm going to California for which I also represent Aaron, where we're arguing, California had enacted a statute prohibiting doctors from giving patients advice about COVID that departs from the scientific consensus. And we actually won, and the state repealed the statute, but now they want to throw the case out.

([56:07](#)):

We want to preliminary injunction. We want to continue to litigate the case so that the state... We can establish that the state can't do it again. They don't want to press that.

Bill Walton ([56:15](#)):

For people who have these issues that feel like they're being abused by the administrative state, we should get in touch with you. You represent people, some people pro bono.

Jenin Younes ([56:23](#)):

We represent everyone pro bono. Nobody pays.

Bill Walton ([56:27](#)):

Everybody' i pro bono. So if you've got a case, and particularly if it's a constitutionally significant case, this is something that you're looking for and want to push. I know I'm a supporter of what you all are doing, so...

Jenin Younes ([56:37](#)):

Free speech is a big one, and agencies abusing their power [inaudible 00:56:41]

Bill Walton ([56:41](#)):

It's a target rich environment.

Jenin Younes ([56:49](#)):

We don't have a shortage. We have to turn a lot of people away, sadly.

Bill Walton ([56:52](#)):

Oh my gosh. Well, this has been fantastic. We're just tip of the iceberg on so many of these things, but this is a good start. I think we understand what's at stake with this case, so thank you.

Jenin Younes ([57:02](#)):

Thank you.

Bill Walton ([57:04](#)):

Aaron writes on Substack. Highly recommend you take it in, and I'd also highly recommend you subscribe. I also recommend you subscribe to us on Substack and all the other podcast platforms that you listen to podcasts or watch them. We're on YouTube and Rumble. And I think we'll get past the YouTube censors on this, although I'm not sure. And you can find Jenin Younes at New Civil Liberties Alliance and hope you'll all be both be coming back as these things evolve because we're in a big fight and we got to win.

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

Yep.

Bill Walton ([57:39](#)):

Anyways. Well, thanks for joining.

Jenin Younes ([57:40](#)):

Thanks Bill.

Aaron Kheriaty ([57:40](#)):

Thanks, Bill.

Jenin Younes ([57:41](#)):

Thanks, Aaron for coming in from California and we will see you next time.