

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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July 22, 2021

The Honorable Jeffrey Zients
COVID-19 Response Coordinator
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20502

Dear Mr. Zients:

On July 12, 2021, media outlets reported that groups affiliated with the Biden Administration, like the Democratic National Committee, are planning to encourage cellular communications carriers to surreptitiously spy on Americans in an effort to silence speech disfavored by the Biden Administration.¹ The White House has also said that it is flagging content on Facebook for the company to censor.² These efforts target speech that the Biden Administration and its allies view as “misinformation” regarding COVID-19 and vaccines.³ Any such effort undertaken by the Biden Administration, or at the Administration’s behest, would have grave consequences for Americans’ First and Fourth Amendment rights. We write to request additional information about this matter.

The U.S. Constitution protects the right of Americans to speak freely without fear of government intrusion. While the government is free to encourage citizens to engage in certain favored behavior, the government generally may not proscribe or impede speech because it disagrees with the ideas expressed.⁴ The government also may not monitor the communications of Americans in the absence of a warrant, or use a private party to engage in behavior that it cannot engage in itself.⁵ The Biden Administration using cellular communications carriers to monitor and potentially restrict or disrupt access to speech, or directing a private company to

¹ See, e.g., Natasha Korecki & Eugene Daniels, ‘Potentially a death sentence’: White House goes off on vaccine fearmongers, POLITICO (Jul. 12, 2021); see also Samuel Chamberlain, DNC, Biden allies want phone carriers to vet anti-vax messages: report, N.Y. POST (Jul. 12, 2021).

² Steven Nelson, White House ‘flagging’ posts for Facebook to censor over COVID ‘misinformation’, N.Y. POST (Jul. 15, 2021).

³ See Chamberlain, *supra* note 1.

⁴ See, e.g., R. A. V. v. St. Paul, 505 U.S. 377, 382 (1992) (“The First Amendment generally prevents government from proscribing speech or even expressive conduct because of the disapproval of the ideas expressed.”).

⁵ See Katz v. U.S., 389 U.S. 347, 353 (1967) (holding that the government electronically monitoring the communications of Katz amounted to a search and seizure within the meaning of the Fourth Amendment); See also Georgia v. McCollum, 505 U.S. 42, 50-53 (1992) (discussing the *Luger-Edmonson* framework for ascertaining when a third party is considered a state actor).

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to censor certain speech, it views as misinformation would violate these essential Constitutional doctrines.

To assist the Judiciary Committee in conducting oversight of the Biden Administration's efforts in this area and the ramifications on the Constitutional rights of Americans, please provide the following:

1. A staff-level briefing on the Biden Administration's efforts to work with cellular communications carriers and Facebook to address what it considers to be misinformation regarding COVID-19 and/or vaccines;
2. All documents and communications referring or relating to any effort to address what the Biden Administration considers to be misinformation regarding COVID-19 and/or vaccines, including efforts undertaken by outside groups at the behest or with the encouragement of the Biden Administration; and
3. All documents and communications referring or relating to the Biden Administration identifying content for Facebook to censor on its platform regarding COVID-19 and/or vaccines.

Please provide the briefing and requested documents as soon as possible but not later than 5:00 p.m. on August 5, 2021. If you have any questions about this request, please contact Judiciary Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member



Mike Johnson
Ranking Member
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Chairman

The Honorable Steve Cohen, Chairman
Subcommittee on the Constitution, Civil Rights, and Civil Liberties