

CAUSE NO. _____

AMERICA FIRST POLICY INSTITUTE, INC.	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT 5
	§	
META PLATFORMS, INC.,	§	
d/b/a Instagram	§	
DEFENDANT	§	TARRANT COUNTY, TEXAS

PETITION: SMALL CLAIMS CASE

- I. DEFENDANT(S) ADDRESS: 1601 Willow Rd. Menlo Park, CA 94025**
- II. COMPLAINT:** Plaintiff files this suit against Defendant based upon the following facts:

INTRODUCTION

- 1. This civil action seeks to reclaim damages from Meta Platforms, Inc. (“Meta” or “Defendant”) for engaging in viewpoint censorship of and unfair discrimination against the America First Policy Institute (“AFPI”).

PARTIES

- 2. Plaintiff AFPI is a non-profit, non-partisan research institution organized under the laws of Texas. Resident in Fort Worth, Texas, AFPI is dedicated to the advancement of policies that put the American people first. Its guiding principles are political, religious, and economic liberty, the rule of law, America-First foreign policies, and a belief that American workers, families, and communities are indispensable to the success of our country. In AFPI’s view, it is the mandate of policymakers, from local school boards to the United States Congress, to advance and serve these interests above all others. AFPI accomplishes its mission, in part, through litigation, regulatory comment, FOIA requests, research papers, blog posts, and notably, public outreach and education through its several social media accounts.

3. Defendant Meta Platforms, Inc., d/b/a Instagram (“Meta” or “Instagram”) is a foreign corporation with a principal place of business at 1 Meta Way, Menlo Park, California 94025, and conducts business in the State of Texas, through the United States, and internationally. Meta operates principally in the technology industry and owns and operates numerous social media companies, including, *inter alia*, Instagram.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to Article 5, Section 19 of the Texas Constitution and Texas Government Code, Chapter 27, Section 27.031, and Texas Civil Practice and Remedies Code.
5. Venue is proper in this Court pursuant to Chapter 15, Subchapter E, Section 15.088.
6. Additionally, the contractual agreement between the parties contained in Instagram’s Terms of Use¹ specifically calls for disputes to be litigated in the small claims court with jurisdiction over the plaintiff (emphasis added):

Instead of using arbitration, you [AFPI] or we [Meta] can bring claims in *your local “small claims” court*, if the rules of that court will allow it.

FACTUAL ALLEGATIONS

7. Meta operates and maintains several internet-based services (*e.g.*, Facebook, Instagram, WhatsApp), which digitally host content generated by third parties; these internet-based services are commonly referred to as social media platforms.
8. In 2012, Meta, then doing business as Facebook, Inc., purchased Instagram, a social media platform that emphasized hosting images and video created or shared by users (“Users”) of the platform.

¹Instagram’s Terms of Use (last visited 1/18/24): <https://help.instagram.com/581066165581870>

9. A User may be an individual, a collection of individuals, a corporation, a non-profit organization, or any other arrangement of persons.
10. Since its 2012 purchase, Meta has maintained sole ownership of Instagram.
11. To meaningfully engage with this service, Users are required to create a personalized “Account” or “Profile.”
12. As part of the process of creating an Account, Users must agree to the Instagram Terms of Use.
13. The Terms of Use state as follows:

These Terms of Use (or “Terms”) govern your use of Instagram, except where we expressly state that separate terms (and not these) apply, and provide information about the Instagram Service (the “Service”), outlined below. When you create an Instagram account or use Instagram, you agree to these terms. The Meta Terms of Service do not apply to this Service.

The Instagram Service is one of the [Meta Products](#), provided to you by Meta Platforms, Inc. These Terms of Use therefore constitute an agreement between you and Meta Platforms, Inc.
14. Accordingly, the Terms of Use form a contract between the User and Instagram.
15. The Terms of Use contract of adhesion is offered on a take-it-or-leave-it basis, with no individualized decision as to whether and on what terms to deal with Users.
16. Once a User agrees to the Terms of Use, the User is fully able to engage with the platform.
17. As evidence of Instagram’s “open to all” policy, as of 2022 Instagram had more than 2 billion active Users.
18. The Profile serves as unique digital space where a User can upload material that is then available to others who may use the platform.
19. User-created material is commonly referred to as “Content.” An individual piece of Content published by a User is commonly referred to as a “Post.”

20. Instagram provides Users the opportunity to select whether their published Content will be available to anyone with internet access, all other Instagram Users, or a select list of Users.
21. The platform allows others to view a User's content, as well as to engage with the Content by making comments.
22. Instagram has proven itself to be a powerful platform for communicating with the public.
23. Instagram promotes itself as a vehicle through which platforms can grow their businesses ("Enterprise Users"), touting that its Users visit more than 200 million business accounts every day.²
24. Instagram allows Enterprise Users to build relationships with followers through interactive "stickers on Stories" and one-to-one direct message conversations.
25. Enterprise Users can use Instagram as a means to reach out and connect with followers who visit an account.
26. Also, and importantly, Instagram offers real-time data, allowing Enterprise Users to know messages are resonating with followers.
27. Instagram is able to offer an open-to-all policy as a result of the protections offered by Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("Section 230").
28. Congress enacted Section 230 to immunize platforms from publisher liability when they host and distribute third-party content, such as User Posts to Instagram.

² Instagram's business webpage (last visited 1/18/24): https://business.instagram.com/getting-started?content_id=EgRUv9KMP51c8Nu&ref=sem_smb&utm_term=dsa-1876982531654&gclid=EAIaIQobChMI_prz7dHYgwMVc0VHAR0tJg2BEAAYASAAEgKcTPD_BwE

29. Section 230 was enacted to promote more content on the internet, and entities—such as Instagram—that take advantage of its special privilege of immunity are engaged in public work, established by public authority, and offering services intended for public use and benefit.
30. Instagram furthers this goal of more content on the internet by soliciting, hosting, and distributing User Content.
31. Given its use of the special privilege of Section 230 immunity and its furtherance of United States policy to encourage the use of the internet, Instagram is a common carrier and prohibited from unfairly discriminating against its Users.
32. AFPI has been an active Instagram User with its own account (“@a1policy”) for more than two years.
33. Since it started using the service, AFPI has never been disciplined by Instagram nor received any notice that AFPI has violated Instagram’s policies regulating permissible content, the “Community Guidelines.”³
34. AFPI uses Instagram and other social media platforms to connect with millions of Americans and to promote ideas of freedom, American workers, and the America First Agenda.
35. AFPI’s posts have addressed topics as varied as economics, healthcare, and national security.
36. In 2023 alone, AFPI’s Instagram posts and videos were viewed millions of times by other users.

³ Instagram’s Community Guidelines (last visited 1/18/24):
https://help.instagram.com/477434105621119/?helpref=hc_fnav

37. With more than 39,000 followers, @a1policy is in the top 85th percentile of Instagram accounts by follower count.
38. AFPI has also posted about important legal issues, including what has been referred to as a “two-tiered legal system,” whereby favored political actors receive less severe scrutiny from the criminal justice system.
39. The veritable “poster child” for this “two-tiered legal system” is Hunter Biden, son of President Joe Biden.
40. On January 10, 2024, AFPI published a post to Instagram about Hunter Biden.
41. Specifically, AFPI published a post with several images and with text that stated the following:
- a. The Biden Administration has DISMANTLED THE RULE OF LAW IN OUR NATION.”
 - b. “HUNTER BIDEN RECENTLY *DEFIED A CONGRESSIONAL SUBPOENA.*”
 - c. “THE BIDEN ADMINISTRATION HAS *PROSECUTED CONSERVATIVES* FOR FAILING TO HONOR CONGRESSIONAL SUBPOENAS. WILL THE BIDEN ADMINISTRATION HOLD HUNTER ACCOUNTABLE?”
 - d. “STEVE BANNON WAS CONVICTED FOR IGNORING A CONGRESSIONAL SUBPOENA AND SENTENCED TO *FOUR MONTHS IN PRISON.*”
 - e. “PETER NAVARRO WAS CONVICTED FOR IGNORING A CONGRESSIONAL SUBPOENA AND FACES UP TO *TWO YEARS IN PRISON.*”
 - f. “THE BIDEN ADMINISTRATION ATTEMPTED TO GIVE HUNTER BIDEN A *SWEETHEART PLEA DEAL* FOR SERIOUS ALLEGATIONS OF TAX FRAUD THAT NO ORDINARY AMERICAN WOULD HAVE RECEIVED.”
 - g. “IRS WHISTLEBLOWERS REVEALED THAT THE DEPARTMENT OF JUSTICE (DOJ) SLOW-WALKED AND *PREVENTED THE IRS FROM THOROUGHLY INVESTIGATING* THE BIDEN FAMILY’S INTERNATIONAL BUSINESS DEALINGS.”
 - h. “THE DOJ EVEN *TIPPED OFF THE BIDEN TRANSITION TEAM* SO THEY WOULD KNOW SENSITIVE DETAILS OF THIS INVESTIGATION, A COMPLETELY UNPRECEDENTED MOVE.”

42. This post was published at 8:21 a.m. (E.T.), on January 10, 2024.
43. Just 28 minutes later, at 8:49 a.m. (E.T.), Instagram suspended AFPI's account.
44. No explanation was provided for the suspension.
45. The custodian of the AFPI account appealed the decision using a link provided by Instagram to initiate appeals of their account decisions.
46. An appeal was submitted this same day at 9:13 am (E.T.).
47. Just three minutes later, at 9:16 a.m. (E.T.), Instagram responded by stating they had completed their review of the AFPI appeal and had determined that AFPI was in violation of the "community standards" prohibiting "fraud and deception."
48. Instagram's email further stated that the AFPI account had "been permanently disabled."
49. Instagram advised that "no one can see or find your [AFPI's] account and you can't use it. All your information will be permanently deleted. You cannot request another review of this decision."
50. AFPI's message was to challenge the integrity of the Biden Administration and its equal application of the law regarding President Joe Biden's son, Hunter Biden.
51. Meta has a rich history of targeting and censoring content regarding President Biden's son, including the infamous Hunter Biden laptop story.⁴
52. The story was published by the nation's oldest newspaper, the *New York Post*, and Facebook, Instagram's sister platform and Meta subsidiary, censored the *Post* for days after the publication of the Hunter Biden story.

⁴ Emma-Jo Morris & Gabrielle Fonrouge, "Smoking-gun email reveals how Hunter Biden introduced Ukrainian businessman to VP dad," *New York Post* (Oct. 14, 2020 at 5:00 a.m. ET),

53. Meta’s CEO, Mark Zuckerberg, recognized the misstep in Meta’s censorship of the Hunter Biden laptop story and the public conversation it created.⁵
54. While AFPI has regularly challenged an apparent “two-tiered legal system” in its Instagram posts, and always without issue or account suspension, only upon challenging the Biden Administration’s treatment of Joe Biden’s son did Instagram choose to suspend AFPI’s account.
55. In reaction to Instagram’s permanent disabling of the AFPI account, AFPI took to other social media platforms to complain of Instagram’s censorship.
56. AFPI’s concerns attracted considerable attention across these platforms.
57. Among others, presidential candidate Vivek Ramaswamy⁶ and United States Senator Mike Lee (R-UT)⁷ expressed their concerns on X.
58. After the reaction from Ramaswamy, Sen. Lee, and others, Instagram reversed its decision and returned AFPI’s account to an active status.
59. At 1:01 p.m. (E.T.) on January 10, 2024, Instagram advised that “You can use a policy again.”
60. This communication advised that Instagram was “sorry we got this wrong” and that AFPI’s account “does follow our Community Guidelines on fraud and deception.”
61. Despite the restoration of the account, Instagram has nevertheless injured AFPI.
62. Specifically, Instagram’s decision to censor AFPI is a clear violation of its Terms of Use.

⁵ See, # 1863 – Mark Zuckerberg, The Joe Rogan Experience (August 25, 2022), <https://open.spotify.com/episode/51gxrAActH18RGhKNza598>.

⁶ Vivek Ramaswamy (@VivekGRamaswamy), Twitter (Jan 10, 2024, 12:36 PM), <https://twitter.com/VivekGRamaswamy/status/1745137574799192572>

⁷ Mike Lee (@BasedMikeLee), Twitter (Jan 10, 2024), <https://twitter.com/BasedMikeLee/status/1745145916120617457>

63. Instagram states that agreement to the Terms of Use allows access to “all of the Instagram products, features applications, services, technologies and software” that Instagram provides.
64. In exchange for this Service, Instagram requires all users to agree to follow Instagram’s Terms of Use and the Instagram Community Guidelines.
65. As stated in the Terms of Use, Instagram commits itself to “Developing and using technologies that help us *consistently* serve our growing community” and to “Providing *consistent* and seamless experiences across other Meta company products” (emphasis added).
66. Instagram’s treatment of AFPI was anything but consistent.
67. Instagram subsequently advised AFPI that the account was disabled in error by one of their systems and then restored within a few hours after internal review.
68. Instagram further advised AFPI that:
- This was a false positive, and a technical mistake made by an automated system used to detect fraudulent accounts. This technical error impacted a variety of accounts around the globe which address a number of different topics - which we also quickly restored. Our team reviewed your account, and there are no current penalties or any other issues that would prevent you from posting and sharing your content on Instagram or Facebook.
69. Less than one hour passed from the publication of AFPI’s Hunter Biden post and the notification from Instagram that AFPI’s appeal had failed, that access to the AFPI account was permanently suspended, and that AFPI’s data had been deleted.
70. Based on Meta’s pattern and practice of *inconsistent* application of its own Community Guidelines and Terms of Use, AFPI has reason to believe its account suspension was a result of Instagram’s unlawful viewpoint censorship and unfair discrimination.

71. AFPI has reason to believe Instagram unfairly discriminates against Users posting about the inequities of a “two-tiered legal system,” as well as criticisms of President Biden’s policies, and that this was the cause of the AFPI suspension, not the proffered reason of “technical mistake” by “an automated system.”
72. Further suggesting viewpoint censorship and unfair discrimination is the fact that—also on January 10, 2024, and within hours of the restoration of AFPI’s account due to this “technical mistake” by “an automated system”—Instagram removed *another* post by *another* User that was also critical of Joe and Hunter Biden and the “two-tiered legal system.”
73. Specifically, on January 10, 2024, a User uploaded a video that showed a split screen, where on one side is seen then Sen. Joe Biden (D-DE) speaking on the Senate floor about enhanced criminal penalties for crack cocaine users, while on the other side of the screen is seen a video of his son, Hunter Biden, smoking crack cocaine.⁸
74. Utley made two posts to X, and the first contained the video he posted to Instagram with the statement that “Instagram removed this video of Joe Biden discussing the laws his very own son broke. They removed it with [sic] 5 seconds of it being posted. I know it’s embarrassing but come on. Let’s make this viral so folks actually can judge for themselves.”
75. Utley made a second post to X which contained an image showing a notification from Instagram that the posted video had been removed for violating the Instagram Community Guidelines on privacy.⁹

⁸ Derek Utley tweet: <https://twitter.com/realDerekUtley/status/1745204183127490907>

⁹ Derek Utley tweet: <https://twitter.com/realDerekUtley/status/1745204591304556571>

76. Instagram’s cat-like reflex when censoring conservative commentary stands in stark contrast to its treatment of other figures across the globe.
77. Based on information and belief, the “technical mistake” by “an automated system,” which Instagram states affected the AFPI account, did not impair the accounts of:
- a. Vladimir Putin, president of Russia (@russian_kremlin), 546,000 followers;
 - b. Nicolas Maduro, president of Venezuela (@nicolasmaduro), 1,300,000 followers;
- or,
- c. Hassan Rouhani, president of Iran (@hrouhani), 2,100,000 followers.
78. Accordingly, AFPI brings this action against Instagram for unlawful viewpoint censorship and unfair discrimination.

COUNT I

VIEWPOINT DISCRIMINATION

CHAPTER 143A, TEXAS CIVIL PRACTICE AND REMEDIES CODE

79. The Plaintiff restates the allegations in paragraphs 1 through 78 above.
80. Tex. Civ. Prac. & Rem. Code (“CPRC”) Chapter 143A prohibits viewpoint censorship by social media platforms. CPRC § 143A.002.
81. Instagram is a social media platform with more than 50 million active users in the United States during a calendar month.
82. Plaintiff is an Instagram user residing in the State of Texas.
83. Instagram censored Plaintiff due to AFPI’s viewpoint on the “two-tiered legal system” and its application to Hunter Biden, son of President Joe Biden.
84. Plaintiff seeks relief under CPRC § 143A.007(b)(1), specifically:
- a. declaratory relief under Chapter 37;

- b. costs and reasonable attorneys' fees; and,
- c. injunctive relief.

COUNT II

UNFAIR DISCRIMINATION

FEDERAL COMMON LAW COMMON CARRIER

- 85. The Plaintiff restates the allegations in paragraphs 1 through 78 above.
- 86. The public has a general right of access to common carriers.
- 87. Under federal common law, Instagram is a common carrier.
- 88. Instagram solicits and hosts content from third-party Users from across the world.
- 89. Instagram engages in no inquiry as to whether and on what terms to deal with Users, offering everyone the same uniform contract of adhesion that must be consented to before using the platform.
- 90. By hosting and distributing an absolutely massive volume of third-party content, Instagram is furthering the national interest established by Congress, and for which Congress granted Section 230 immunity.
- 91. As a common carrier, Instagram is prohibited from engaging in unfair discrimination against Users of its platform.
- 92. Instagram has nevertheless engaged in a systematic pattern of discriminatory behavior toward Plaintiff by censoring politically disfavored content that is otherwise consistent with its terms of service.
- 93. Instagram censored Plaintiff due to AFPI's viewpoint on the "two-tiered legal system" and its application to Hunter Biden, son of President Joe Biden.

94. Plaintiff suffered injury from the deprivation of access to Instagram and the loss of the ability to communicate with its followers.

95. Plaintiff seeks the following relief from this Court:

- a. injunctive relief to ensure Defendants do not engage in further unfair discrimination;
- b. damages; and,
- c. costs and reasonable attorney's fees.

III. **RELIEF:** Plaintiff seeks:

- damages in the amount of approximately \$15,000 to \$20,000, including attorneys' fees.
- return of personal property as described as follows (*be specific*): N/A.

Additionally, Plaintiff seeks the following:

- a) Declaratory relief Defendant violated Chapter 143A; and,
- b) Injunctive relief prohibiting Defendant from unfairly discriminating against Plaintiff.

IV. **SERVICE OF CITATION:** Service is requested on Defendant(s) by:

- Personal service at home or work,
- Registered mail, or
- Certified mail return receipt requested.

If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are: N/A.

V. **ONGOING INTEREST:** Plaintiff does or does not seek ongoing interest. If so: The effective interest rate claimed is _____%; this interest rate is based upon contract statute and began accruing on _____; the dollar amount of interest claimed as of _____ is \$_____.

VI. **JURY REQUEST**

I request a jury trial. (*The fee is \$22 and must be paid at least 14 days before trial unless you file a Statement of Inability to Afford Payment of Court Costs in compliance with Rule 502.3.*)

I do not request a jury at this time.

VII. **SERVICE BY EMAIL** (*Normally, documents in this case are sent by mail. If it is easier for you, you can choose to get some of the documents sent by email. If you choose to get documents by email, you must have an email account where you can receive, open, and view large attachments, and it is important that you check this email account every day. Even if you receive some documents by email, you will still receive some documents about the case*)

by mail or personal service, so you must not ignore any documents from the court or other parties received by mail or personal service.)

X: Yes, I would like to receive documents related to this case by email at this email address:

dusty@fillmorefirm.com

jsteinmann@americafirstpolicy.com

JPanebianco@americafirstpolicy.com

pnation@americafirstpolicy.com

rlawson@americafirstpolicy.com

No, I do not want to receive any documents by email.

VIII. REMOTE PARTICIPATION

Hearing by Phone Call: *(When a hearing happens by phone call, you will be able to talk to and hear the judge, Plaintiff, or any witnesses, but you will not be able to see them. Copies of any evidence to be used must be exchanged by the parties and sent to the judge before the hearing.)*

X: Yes, I am able to have any hearings in this case, except a jury trial, by phone call with the judge and Plaintiff and understand that I must have a phone to use on the date and time of the hearing.

No, I am not able to have hearings by phone call.

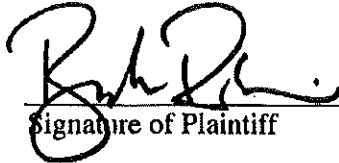
Hearing by Video Conference: *(When a hearing happens by video conference, you can hear, see, and talk to the judge, Plaintiff, and any witnesses. You will be able to see any evidence presented during the hearing. You will need to have a computer, a smartphone, or tablet that has a camera feature. You will also need access to the internet to be able to have a video conference.)*

X: Yes, I am able to have any hearings in this case, except a jury trial, by video conference. I understand that I am responsible for having the equipment and internet access needed to participate in a video conference on the date and time of the hearing.

No, I am not able to have hearings by video conference.

NOTE: Your responses in this section do not guarantee that hearings will be held remotely, but rather they help the court know how you are able to participate.

Respectfully submitted,



Signature of Plaintiff

Printed Name: Brooke Rollins

Name:

Address: 1635 Rogers Rd.

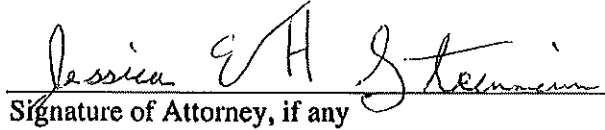
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ne:

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Signature of Attorney, if any

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