

SAN JUAN HEALTH'S UNILATERAL CONTROL OVER SPEECH IS CONCERNING

By Rachel Suh

As we have all seen the controversy surrounding the Health Department- to the point we have had investigational committees to determine how to remove ourselves from their chilling grip- they now make front page news with backlash from parents about a COVID-19 contest geared towards propaganda creation to our children, without our prior knowledge, attempting to use their social media accounts and indemnify themselves from potential harm related to the contest by even these childrens' progeny. I am here today to discuss the lack of legal authority the Health Department has in practicing Prior Restraint.

The Health Department has tried to censor me many, many times with a nameless, faceless administrator on Facebook. After pointing out that their community guidelines break free speech laws, they have begrudgingly allowed me to continue posting information, but only on a tiered, second-class platform. Yes, you have read correctly: The Government Officials running the health department have given themselves more freedom of expression than their constituents in forum platforms, using photos and other media to express their ideas, while restricting that use for the people they represent on their social media pages, creating tiered Expression for the approved narrative v. the unapproved narrative, and practicing Prior Restraint.

The issue comes down to what the HD states is, "Misinformation." The problem with the term, "Misinformation," and using it as a reason to censor anyone, ever, is that there is no consensus on what misinformation actually is. Beyond the potential harm of misinformation is the lack of conceptual clarity in defining the problem and frequent lack of agreement on what actually constitutes misinformation. If we do not KNOW, or do not AGREE on what it is, the definition, therefore, becomes a political tool, to be defined and redefined to suppress minority viewpoints that go against Government narratives. No Government should ever have a political tool to censor an opposing view, and the Supreme Court agrees. Furthering their opinion, they state that the government CAN NOT be trusted to decide what ideas or information the people should be allowed to hear. Government may not regulate speech because of, "Its message, its ideas, its subject matter, or its content... it is rare that a regulation or rule restricting speech because of its content would ever be permissible." The government needs a compelling interest to restrict any speech, but are we in a situation that warrants that?

Are we in a pandemic? It appears only through declaration, as the SCOTUS recently ruled that COVID-19 is a "Universal Hazard" that can be caught anywhere at anytime, and is, "No different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases." As of right now, our recovery rate in Pagosa Springs, for all intents and purposes, is 100%, with, sadly, 9 deaths out of 2561 cases as of this writing. A recovery rate of 99.9964857478%...rounds up to 100%, meaning there is actually no pandemic, but simply a new virus that is a Universal Hazard like any other communicable disease. With CDC studies showing a large majority of people who have died had underlying medical conditions (94.1% of hospitalized patients have at least one underlying condition) It can and should be extrapolated that COVID-19, while scary and the symptoms can be severe, is not causing a pandemic, and, as SCOTUS stated, with vaccines available, this is simply a hazard we may encounter in our daily lives.

Can Alternate Viewpoints be expressed elsewhere? No. The Supreme Court has ruled that speech restriction occurs when a speaker identifies one particular place as uniquely suited to conveying a message (what better place to have an honest discussion about COVID-19 than in the very contest trying to educate young people about it?) but the government insists that the speaker take up position in an alternative location. Would the speaker be provided a forum that is accessible and where the intended audience is to pass? No. The entire purpose of this contest is to produce approved material specifically for display by the health department. As a matter of fact, SJBPH's rules in this contest are extremely chilling in regards to viewpoint discrimination.

SJBPH has repeatedly stated they focus on prevention and not treatment. However, this does not fall in line with their Mission, which is two-fold, "To protect human and environmental health and inspire well-being in our community." or their Vision, "We are leaders to achieve healthy communities and health equity." They have deemed treatments as misinformation, simply because a government agency has stated as such. Despite worldwide studies and Department of Defense documents showing efficacy of early treatments, they have stated that information on these treatments is misinformation. When Department of Defense papers came out via FOIA request, they were again pressed by others as to why they have never discussed these treatments, and they state it is because, "They focus on prevention." Prevention is not the only approach that creates a healthy community, as clearly seen with the surge in cases of Omicron. Countless times I have been told my information is false, simply because my news sources were more quick to publish than the department's preferred sources. I've been told that I am spreading misinformation about the legal change of the terms vaccine, unvaccinated, fully vaccinated, Colorado anti-discrimination laws for public accommodations and workplaces, about the efficacy of the vaccines, the side effects of the vaccines, and even Dr. Fauci's financial records availability on their forums by people who support their narrative. All of this information turned out to be factually true, but SJBPH and other constituents have deemed it "False" and, "Misinformation." It appears they have their own definition of what is "False," so we must be concerned when, under their rules, the contest states that they have, "Sole and Absolute Discretion to determine and disqualify any submission contrary to public health...any false information provided within the context of the challenge by any participant may result in elimination of entry from the challenge." The health department does not get to censor speech based on content, ever, and using a government entity to chill speech for a contest is quite different from other government contests, such as building a robot for NASA, and sets a remarkable legal precedent for prior restraint on free expression through a loophole used by creating, "incentives" to further government messages while censoring minority viewpoints. Simply put, the government is paying our children to create propaganda pieces to further an incomplete and sometimes misleading narrative about public health.

Also of concern in their agreement is the ability to "use freely, irrevocably and into perpetuity reproductions, edits, displays, transmissions, preparing derivative works, modifying, publishing, and otherwise making use of an entry for the purpose of Promoting COVID-19 education or any lawful purpose." This grants them unilateral control in using your child's likeness in any way they deem, and this should be deeply concerning for Intellectual Property Rights Advocates who want minors to be protected during this digital age when companies prey upon people to provide free marketing.

It is clear this is a marketing ploy and not actually for any real public health concern. In an unbelievable display of conflict of interest, the Federal Government has given out billions of

dollars for hospitals, health departments, and schools that are willing to tout their narrative about COVID-19. Recently resigned superintendent Dr. Kim stated she was unaware the Health Department came to school to push their agenda on the children, while simultaneously touting over a million dollars in funds being granted during the COVID-19 pandemic to the district. This is a serious conflict of interest and concerning to public health, as the longer closures occur and funding is created because of them, the longer they will push an incomplete narrative. This incomplete narrative is what is contrary to public health, and also our fundamental rights.

The Universal Declaration of Human Rights, which the US Government has signed, provides protections for freedom of expression, and states, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or thought any other media of his choice.” We have the right to hold opinions, based on our own research, that are contrary to the health department, they are simply not the sole authority on public health, and faith in them has crumbled as they repeatedly change their narrative in the name of, “Science”. We have the right to express these viewpoints, the right to access information, and the right to receive information through all media. They do not get to derogate their obligations during COVID-19 in the name of public health. Vague provisions, changing legal definitions, giving broad or discretionary authority to officials is not a legal response, as any limitation on the freedom of expression for public health purposes must meet the tests of necessity and proportionality. Given the near 100% recovery rate, previous education campaigns, and even illegal use of road signage to get the message out about available vaccines to minors since last summer, there is no compelling government reason to restrict speech at this time. Everyone knows about vaccine availability, even people like myself living offgrid in the mountains.

The Right to information is especially strong when the information is in the public interest and has a sincere concern for public health. Governments act contrary to International, National, and Local Laws when they prosecute and censor expression that is truthful or that criticizes government. The departure from law during COVID-19 is unnecessary to address the public health crisis, the methods used (suppression of factual information, solely determined by a government agency as misinformation) were not proportionate to the crisis, and studies have shown it likely exacerbated the crisis. They have impeded their own ability to respond to the pandemic by disseminating false information and creating an environment of fear to communicate and uncertainty over the facts of the virus and the vaccine. This is amply displayed just by the very creation of this contest and its intended purpose.

References:

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