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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ROBERT F. KENNEDY, JR.,
AMERICAN VALUES 2024, and
JESSICA REED KRAUS,
Plaintiffs,

-v.-

META PLATFORMS, INC., FACEBOOK
OPERATIONS, LLC, INSTAGRAM, LLC,
MARK ZUCKERBERG, and JOHN DOES 1-
10,
Defendants.

Case Number: 3:24-cv-02869

**PLAINTIFFS’ NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM OF
SUPPORT; DECLARATION OF BRIGID
RASMUSSEN; AND DECLARATION OF
JESSICA REED KRAUSS**

**Date: August 28, 2024
Time: 2:00 PM
Courtroom: 2, 17th Floor**

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TABLE OF AUTHORITIES

Cases

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Daschle v. Thune, No. 04-cv5 Case 1:22-cv-00581-CNS-NRN (D.S.D. Nov. 2, 2004)..... 11

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Flathead-Lolo-Bitterroot Citizen Task Force v. Montana, 98 F.4th 1180 (9th Cir. 2024) 9

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K-2 Ski Co. v. Head Ski Co., 467 F.2d 1087 (9th Cir. 1972)..... 1

Kennedy v. Biden, No. 23-CV-00381, 2024 U.S. Dist. LEXIS 26751 (W.D. La. Feb. 14, 2024).. 3

Krabach v. King Cnty, No. 2:22-cv-1252-BJR, 2023 U.S. Dist. LEXIS 191870 (W.D. Wash. Oct. 25, 2023)..... 11, 12, 18

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Murthy v. Missouri, No. 23-411, 2024 U.S. LEXIS 2842 (U.S. June 26, 2024)..... 21

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O. H. v. Oakland Unified Sch. Dist., No. C-99-5123 JCS, 2000 U.S. Dist. LEXIS 21725 (N.D. Cal. Apr. 17, 2000)..... 17

Paynes v. Lee, 377 F.2d 61 (5th Cir. 1967) 16

Ramos v. Wolf, 975 F.3d 872 (2020) 10

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Salonclick LLC v. SuperEgo Mgmt. LLC, No. 16 Civ. 2555 (KMW), 2017 U.S. Dist. LEXIS 6871 (S.D.N.Y. Jan. 18, 2017)..... 13

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Thalheimer v. City of San Diego, 645 F.3d 1109 (9th Cir. 2011)..... 1
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Washington v. Duty Free Shoppers, 696 F. Supp. 1323 (N.D. Cal. 1988)..... 17

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MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION AND STATEMENT OF ISSUES TO BE DECIDED

It was Plaintiffs’ hope, when they filed this case on May 13, 2024, that the Complaint would put Defendants on notice of the illegality of their brazen censorship of speech supporting Independent presidential candidate Robert F. Kennedy, Jr., and persuade them to halt their unlawful conduct. Instead, Defendants’ censorship has intensified so radically that Plaintiffs are now required to amend their Complaint and seek immediate injunctive relief.

In the last sixty days, Defendants have begun preventing users from simply expressing support for Mr. Kennedy’s candidacy or urging others to vote for him. For example, Defendants have blocked the following posts on Facebook and Instagram:

- “Kennedy all the way!”
- “VOTE KENNEDY”
- “Time to add Kennedy to the mix”
- “#letbobbydebate”¹

At the same time, Defendants are now removing and suppressing² links concerning Kennedy campaign events. (FAC ¶ 12.) One major such event was the online “Real Debate,” in which Mr. Kennedy answered on camera (in real time) the same questions put to candidates Donald Trump and Joe Biden at CNN’s June 27 presidential debate. On X (formerly known as

¹ See Verified First Amended Complaint (hereafter “FAC”) ¶ 8. “A verified complaint may be treated as an affidavit, and, as such, it is evidence that may support injunctive relief.” *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011); accord, *K-2 Ski Co. v. Head Ski Co.*, 467 F.2d 1087, 1088 (9th Cir. 1972) (“verified complaint . . . may afford the basis for a preliminary injunction”); WRIGHT & MILLER, 11A FED. PRAC. & PROC. CIV. § 2949 (3d ed. 2020) (“pleadings may be considered” in support of injunction “if they have been verified”).

² Meta uses a variety of devices and strategies to secretly demote, hide, and/or limit the visibility and reach of disfavored content—practices known, among other names, as “shadow-banning,” “demoting,” “sand-boxing,” or “de-boosting.” (FAC ¶¶ 11 n.1, 48.)

1
2 the basis of a voluminous evidentiary record by the United States District Court for the Western
3 District of Louisiana—“Government officials have asked social media platforms to block Mr.
4 Kennedy’s efforts to communicate with the public,” and “the platforms have complied.” *Murthy*
5 *v. Missouri*, 144 S. Ct. 32, 32 (2023) (Alito, J., dissenting from denial of leave to intervene)
6 (describing factual findings made in *Missouri v. Biden*, 680 F. Supp. 3d 630 (W.D. La. 2023)).

7 Last February, the Western District of Louisiana issued an injunction against numerous
8 federal actors in favor of Mr. Kennedy to halt such censorship. *See Kennedy v. Biden*, No. 3:23-
9 CV-00381, 2024 U.S. Dist. LEXIS 26751 (W.D. La. Feb. 14, 2024).³ In that ruling, the District
10 Court made express, specific factual findings Meta Platforms had worked jointly with the
11 Federal Government to specifically target Mr. Kennedy for censorship. *Id.* at *13-14.⁴ The
12 District Court found it likely that social media censorship in collusion with the Federal
13 Government was still ongoing and “certainly likely that Defendants could use their power over
14 millions of people to suppress alternative views or moderate content they do not agree with in the
15 upcoming 2024 national election.” *Id.* at *27-28. Unfortunately, the District Court’s prediction
16 has now vividly materialized.

17 On May 3, 2024, Plaintiff American Values 2024 (“AV24”), a political action committee
18 supporting Mr. Kennedy, released online a thirty-minute documentary film called *Who Is Bobby*
19

20
21 ³ That injunction is currently on appeal before the Fifth Circuit. (No. 24-30252 (5th Cir.).)

22 ⁴ The Supreme Court’s recent decision reversing an injunction in a related case, *see Murthy v.*
23 *Missouri*, No. 23-411, 2024 U.S. LEXIS 2842 (U.S. June 26, 2024), was based solely on
24 standing, did *not* reach the merits, and has no effect on the relevant factual findings in *Kennedy*
25 *v. Biden*. All three Justices who did reach the merits in *Murthy* agreed with the lower courts’
26 First Amendment holdings. *See id.* at *47, 51, 78-92 (Alito, J., dissenting) (“What the officials
did in this case ... was blatantly unconstitutional, and the country may come to regret the Court’s
failure to say so.”).

1
2 *Kennedy*?⁵ (FAC ¶ 23.) The film is the property of AV24, which paid approximately one
3 million dollars to make it, and is narrated by award-winning actor Woody Harrelson. (FAC ¶¶
4 25-26.) *Who Is Bobby Kennedy* offers a simple, honest look at Mr. Kennedy’s life, formative
5 experiences, accomplishments, character, and values—especially his belief in America and her
6 founding principles—inviting voters to make up their own minds about him, rather than
7 accepting falsehoods repeatedly asserted by major news outlets and social media companies.
8 (FAC ¶ 24.) Clips of past interviews with Mr. Kennedy are featured prominently in *Who Is*
9 *Bobby Kennedy*, so that his own speech is central to the film. (FAC ¶ 27.)

10 *Who Is Bobby Kennedy* quickly began trending on X, but Defendants censored it.
11 Facebook blocked and removed the film’s trailer when users tried to post it on their own pages.
12 Facebook and Instagram users who attempted to watch, share, or simply post links to the film
13 were prevented from doing so and threatened with suspension of their accounts and other
14 punitive action if they persisted in such activity.⁶ (FAC ¶¶ 28-35.) Defendants made good on
15 these threats, imposing account restrictions and suspensions on those who tried to share the film.
16 (FAC ¶¶ 36, 47.) Defendants’ censorship of *Who Is Bobby Kennedy* has prevented the film from
17 reaching tens of millions of Facebook and Instagram users, and millions more people with whom
18 those Facebook and Instagram users would have shared the film. (FAC ¶ 53.)

19 Facebook and Instagram users received messages asserting a wide variety of fraudulent
20 explanations for this censorship, including suggestions that *Who Is Bobby Kennedy* was “spam,”
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22
23 ⁵ The film can be viewed at www.whoisbobbykennedy.com. (Rasmussen Dec. ¶ 34.)

24 ⁶ The Kennedy campaign has received hundreds of screenshots from third-party users showing
25 the threats, intimidation and sanctions the users themselves received from Meta for attempting to
26 watch, post or link to the film. A true and correct copy of a representative selection of these
screenshots is attached as Rasmussen Ex. A.

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2 that it “praise[d] organized crime or hate groups,” that it “solicit[ed] sexual services,” that it
3 contained “sexual activity,” that it contained “violent or graphic content,” that it offered the “sale
4 of firearms or drugs,” that it “may be malicious,” or that it contained COVID-related
5 misinformation. (FAC ¶ 37; Rasmussen Dec. at ¶¶ 8-14 & Ex. A.)

6 All these suggestions were absurd. There is no sexual content in *Who Is Bobby Kennedy*,
7 no graphic or violent content, no offers for the sale of firearms or drugs, no misinformation about
8 COVID (indeed virtually no references to COVID at all), and nothing else that comes close to a
9 violation of any social media platform’s “community standards.” (FAC ¶¶ 39, 41.)

10 On the morning of May 5, 2024, Meta admitted in a statement to the New York Times
11 that it was censoring *Who Is Bobby Kennedy*. (FAC ¶ 43.) But Meta claimed that this was the
12 result of a “mistaken” determination that the film was “spam,” that the “mistake” had been
13 corrected, and that the film was no longer being censored. (*Id.*)

14 These claims too were false. To begin with, Defendants did *not* stop censoring *Who Is*
15 *Bobby Kennedy*; they continued to censor it after May 5, and they are shadow-banning it even
16 now.⁷ Moreover, the notion that *Who Is Bobby Kennedy* was being accidentally censored
17 because it was mistaken for “spam” is implausible on its face: “spam” refers to in-bulk

18
19 ⁷ Both before and after May 5, Facebook and Instagram users were hit with account suspensions
20 for trying to share or link to *Who Is Bobby Kennedy*. To give just one of many examples, on May
21 7, a Kennedy supporter located in California sought to post a link to *Who Is Bobby Kennedy* on
22 both Instagram and Facebook, but was blocked from doing so. Rasmussen Ex. A at 11-12. When
23 he continued trying to share the film through his Facebook page, he received a message from
24 Facebook stating that his account had been placed under a 24-hour suspension during which he
25 would not be able to post any further content on it. *Id.* at 12; FAC ¶ 47. Even now, Meta is
26 continuing to shadow-ban the film, for example by preventing links to the film from appearing
on users’ timelines or feeds, techniques through which Meta deliberately but surreptitiously
reduces the dissemination of content. At the same time, Meta has continued to send messages to
users falsely stating that the film is “spam” or contains “sexual” or “violent” content. Rasmussen
Ex. A at 8, 10; Rasmussen Ex. B at 1, 4, 6-8, 10, 12-21.

1
2 dissemination of messages, especially commercial messages, to large numbers of recipients,
3 whereas Defendants were censoring individual users from merely posting a link on their own
4 pages to a website displaying a political film. In addition, Meta’s claim that it had mistaken *Who*
5 *Is Bobby Kennedy* for “spam” is contradicted by: a) the numerous messages users received from
6 Meta offering other, equally bogus explanations; and (b) the fact that Defendants are now
7 brazenly censoring messages merely expressing support for Mr. Kennedy, establishing that
8 Defendants are systematically targeting pro-Kennedy content.

9 Plaintiffs filed this suit on May 13, 2024. Even then, in addition to blocking *Who Is*
10 *Bobby Kennedy*, Defendants were already censoring some pro-Kennedy speech unrelated to the
11 film. For example, on May 8, a Meta user tried to post the following statement to her Facebook
12 page: “RFKjr needs 180,000 signatures to get on the ballot in #Texas and time is running out. Go
13 to kennedy24.com/events and find a petition signing event near you.” She received the following
14 message: “We removed your comment.” And she was warned that “[r]epeatedly breaking our
15 rules can cause more account restrictions.” (FAC ¶ 59; Rasmussen Ex. A at 14.)

16 Since the filing of this suit, however, Defendants’ censorship of pro-Kennedy speech has
17 radically intensified. (FAC ¶ 60.) In the past 60 days, the Kennedy Campaign has received
18 reports from over 200 individual Facebook and/or Instagram users who have been prevented
19 from sharing links to www.kennedy24.com, censored for posting pro-Kennedy content,
20 threatened with account suspensions or terminations for posting such content, and/or have
21 suffered suspensions or terminations based upon their support or advocacy of Mr. Kennedy.
22 (FAC ¶ 61; Rasmussen Dec. ¶¶ 15-23 and Rasmussen Exs. B, C.)

23 The pro-Kennedy content being censored on Facebook and Instagram does not violate
24 any Meta terms of service or “community standards.” (FAC ¶ 62.) On the contrary, the content
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2 now being blocked includes bare expressions of support for Mr. Kennedy, such as “Kennedy all
3 the way!” “VOTE KENNEDY,” “Time to add Kennedy to the mix,” or “checkout Kennedy’s
4 policy page on his website.” (FAC ¶ 63; Rasmussen Ex. B at 2-4, 15-16.)

5 Nor can there be any claim that Defendants were enforcing their “community standards”
6 when Facebook and Instagram users were prevented from: sharing links to “The Real Debate”
7 (an online debate event described *supra*); sharing links to a petition for the inclusion of Kennedy
8 in the presidential debates; posting the hashtags #letbobbydebate and #boycottCNN; and sharing
9 links to news coverage of a RFK, Jr. Debate Rally in Miami, Florida. (FAC ¶ 64; Rasmussen Ex.
10 B at 2-3, 7-8, 11.) Defendants even blocked private messages between users with links to “RFK,
11 Jr.”, making them unavailable on Instagram. (FAC ¶ 66; Rasmussen Ex. B. at 9, 20, 24.) And
12 with respect to all the censored content just described, Defendants sent threats to users warning
13 them that further attempts to post the censored content would result in account restrictions,
14 suspensions, and/or terminations. (FAC ¶ 65.)

15 Almost comically, Meta is deploying its AI ChatBot to deflect simple queries about
16 whether Mr. Kennedy is running for President with erroneous, deceitful responses such as
17 “Robert F Kennedy, Jr. has not announced his candidacy for president” and “As for the current
18 political landscape, there are no Kennedys currently running for president in the 2024 elections.”
19 (FAC ¶ 68; Rasmussen Ex. B. at 22-23.) In addition, Defendants are removing posts that share a
20 link to www.kennedydebunked.com, a website offering refutations of false statements made
21 about Mr. Kennedy. (FAC ¶ 67.)

22 Finally, adding obstruction to injury, Defendants are now blocking links to a dedicated
23 off-platform website, www.kennedycensored.com, where social media users are invited to report
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2 and submit evidence of their own experience of being censored for posting pro-Kennedy content.
3 (FAC ¶ 69; Rasmussen Dec. at 2-3.)

4 One illustration of the intimidating censorship of pro-Kennedy content faced by users of
5 Meta’s platforms is provided by Plaintiff Jessica Reed Kraus, an independent journalist with an
6 Instagram following of 1.2 million and more than 330,000 paid subscribers to her Substack blog,
7 @HouseInhabit. Covering politics and popular culture with behind-the-scenes insights, Ms. Reed
8 Kraus monetizes her work by posting free content on Instagram that draws subscribers to her
9 paid Substack account. Since October 2023, she has invested significant time following
10 candidates Trump and Kennedy on the campaign trail. Her Instagram account has been widely
11 censored and demoted for her coverage of Mr. Kennedy, but not for her coverage of President
12 Trump. (FAC ¶¶ 70-72; Declaration of Jessica Reed Kraus (hereafter “Reed Kraus Dec.”) at 3.)

13 Last October, Ms. Reed Kraus wrote on Instagram about Kennedy’s “divorce” from the
14 Democrats, and her account lost 40,000 followers overnight. (FAC ¶ 73; Reed Kraus Dec. at 3.)
15 Surreptitious “demoting” or “de-boosting” of her account by Defendants is the only explanation
16 for such an immediate, drastic change. In November, 2023, after a month of covering Kennedy
17 regularly in her daily Instagram feed, her story views plummeted—again, an unprecedented
18 event explainable only by the fact that Defendants were “shadow-banning” her content (i.e.,
19 reducing its dissemination and reach). (Reed Kraus Dec. at 5.) Her posts supporting Mr.
20 Kennedy were flagged with “COVID-19 misinformation” warnings, and her account was
21 restricted from being shown to non-followers—a critically damaging restriction, because it
22 prevented her from recruiting new subscribers. (FAC ¶¶ 74-77; Reed Kraus Dec. at 3-5.)

23 On May 3, 2024, Ms. Reed Kraus was given an exclusive opportunity to launch *Who is*
24 *Bobby Kennedy* online. Within minutes of posting excerpts on Instagram, she was locked out of
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2 the account, and her account was again disabled from being shared with new followers or being
3 recommended-to-follow. Her Instagram Story views shrank from 200,000 to 60,000 per day.
4 Since May 3, she has tried to post other comments about Kennedy’s campaign with similar
5 threats and restrictions. Before the June 27 debate, she posted to Instagram a poll in which 90%
6 of the 300,000 respondents said that Kennedy should be allowed to debate. Within minutes,
7 Instagram blocked this post as “inappropriate” because it “violates our community standards”
8 and warned Ms. Reed Kraus that further such posts would lead to account restriction or
9 termination. (FAC ¶¶ 78-81; Reed Kraus Dec. at 4-5.)

10 As a result of Defendants’ actions, Ms. Reed Kraus has been put in fear of posting
11 additional content online supporting or advocating for Mr. Kennedy or urging others to vote for
12 him. Moreover, Defendants’ restrictions have prevented new followers from seeing her posts,
13 eliminating potential new subscribers to her Substack and causing monetary loss. (FAC ¶¶ 85-
14 86; Reed Kraus Dec. ¶¶ 1, 5-14.)

15 As will be shown below, Defendants’ censorship and intimidation of users who post pro-
16 Kennedy content is in violation of the Voting Rights Act, of the Support or Advocacy Clauses of
17 Section 1985(3), and—because it is the result of years-long collusion with the federal
18 government—the First Amendment.

19 ARGUMENT

20 **I. PRELIMINARY INJUNCTION STANDARD OF REVIEW.**

21 In the Ninth Circuit, plaintiffs are entitled to a preliminary injunction if they establish: (1)
22 “serious questions going to the merits,” (2) “a balance of hardships that tips sharply towards
23 [them],” (3) “a likelihood of irreparable injury,” and (4) that “the injunction is in the public
24 interest.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir.
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1
 2 2024) (citation omitted). “[T]he serious questions standard is ‘a lesser showing than likelihood of
 3 success on the merits.’” *Id.* (quoting *Alliance for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217
 4 (9th Cir. 2017)). Plaintiffs are also entitled to a TRO or preliminary injunction if they establish:
 5 (1) a likelihood of success on the merits; (2) irreparable harm; (3) a favorable balance of equities;
 6 and (4) that an injunction will be in the public interest. *Id.* All the above-listed factors, from both
 7 tests, are satisfied here.

8 **II. PLAINTIFFS HAVE ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE**
 9 **MERITS OR, AT A MINIMUM, HAVE ESTABLISHED SERIOUS QUESTIONS**
 10 **GOING TO THE MERITS.**

11 **A. Plaintiffs’ Voting Rights Act Claim is Likely to Succeed on the Merits**

12 Section 11(b) of the Voting Rights Act of 1965 forbids anyone, “whether acting under
 13 color of law or otherwise,” to “intimidate, threaten, or coerce any person for urging . . . any
 14 person to vote.” 52 U.S.C. § 10307(b). That is exactly what Defendants have done here.

15 1. Section 11(b) overview

16 “Despite limited case law on the provision, the relevant text, history, and precedent
 17 confirm” certain “bedrock principles of Section 11(b).” STATEMENT OF INTEREST OF THE UNITED
 18 STATES OF AMERICA, Jan. 23, 2023, at 1, ECF No. 74 in *Colorado State Area Conference of the*
 19 *NAACP v. United States Election Integrity Plan*, No. 1:22-cv-581-CNS-NRN (D. Colo.)
 20 (hereafter “STATEMENT OF THE UNITED STATES”) (attached hereto). Among those bedrock
 21 principles are the following:

22 *First*, “Section 11(b) ‘is to be given an expansive meaning.’” *Id.* at 3 (quoting *Jackson v.*
 23 *Riddell*, 476 F. Supp. 849, 859 (S.D. Miss. 1979)); *see also, e.g., League of United Latin Am.*
 24 *Citizens v. Pub. Int. Legal Found.*, No. 18-cv-423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13,
 25 2018) (referring to “[Section] 11(b)’s deliberately unqualified reach”).

1
2 *Second*, “[p]rivate plaintiffs may bring suit to enforce Section 11(b).” STATEMENT OF THE
3 UNITED STATES, *supra*, at 7 (collecting numerous authorities); *see also, e.g., Krabach v. King*
4 *Cnty*, No. 2:22-cv-1252-BJR, 2023 U.S. Dist. LEXIS 191870, at *7-8 (W.D. Wash. Oct. 25,
5 2023) (recognizing private right of action under Section 11(b) and collecting authorities).

6 *Third*, Section 11(b) “comprehensively” protects voting. STATEMENT OF THE UNITED
7 STATES, *supra*, at 1. The provision “protects not just voting but voting-related conduct, which
8 includes encouraging others to vote” for a particular party or candidate months before an
9 election, for example through a voter registration drive. *Allen v. City of Graham*, No. 20-cv-997,
10 2021 WL 2223772, at *24 (M.D.N.C. June 2, 2021); *Nat’l Coalition on Black Civic*
11 *Participation v. Wohl*, 498 F. Supp. 3d 457, 476 (S.D.N.Y. 2020) (hereafter *Wohl*) (same).

12 *Fourth*, “the provision **does not require proof of subjective intent** to intimidate, threaten,
13 or coerce.” STATEMENT OF THE UNITED STATES, *supra*, at 3, 5-6 (quoting legislative history)
14 (emphasis added); *Ariz. Alliance for Retired Americans v. Clean Elections USA*, 638 F. Supp. 3d
15 1033, 1041 (D. Ariz. 2022) (Section 11(b) violated “regardless of whether defendants acted with
16 the specific intent of intimidating or threatening voters.”); *League of United Latin Am. Citizens*,
17 2018 WL 3848404, at *4 (no “showing of specific intent . . . is required under [Section] 11(b).”);
18 *Wohl*, 498 F. Supp. 3d at 480 (“no explicit requirement of intent” in the provision); *Daschle v.*
19 *Thune*, No. 04-cv5 Case 1:22-cv-00581-CNS-NRN, ECF No. 6 (D.S.D. Nov. 2, 2004) (granting
20 temporary restraining order and holding that “[w]hether the intimidation was intended or simply
21 the result of excessive zeal is not the issue, as the result was the intimidation of prospective . . .
22 voters”).

23 *Finally*, as a result, “the crux of a Section 11(b) claim is whether the conduct at issue was
24 *objectively* intimidating, threatening, or coercive.” STATEMENT OF THE UNITED STATES, *supra*, at
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2 6 (original emphasis). Thus where (as here) a defendant has sent warning messages to
3 individuals engaged in activity that Section 11(b) protects (such as urging others to vote for a
4 particular candidate), the test is whether, regardless of subjective intent, defendant sent
5 “messages that a reasonable recipient familiar with the context of the message would interpret as
6 a threat of injury tending to deter individuals” from engaging in the protected activity. *Krabach*,
7 2023 U.S. Dist. LEXIS 191870, at *17 (quoting *Wohl*, 498 F. Supp. 3d at 476).

8 2. Defendants are violating Section 11(b).

9 Under these precedents, and by the clear terms of the statute, Defendants are plainly
10 violating Section 11(b) on a massive scale: Plaintiffs, together with countless other Facebook and
11 Instagram users, were urging people to vote, and Defendants responded thereto with threats,
12 intimidation, and coercion.

13 To “urge” is to “advocate” or to “try to persuade,” *see* Merriam-Webster, Definition of
14 Urge, <https://www.merriam-webster.com/dictionary/urge>, and “urging” can of course be implicit
15 as well as explicit.⁸ By releasing *Who Is Bobby Kennedy*, Plaintiff AV24 was “advocating” for
16 Mr. Kennedy’s candidacy and “try[ing] to persuade” people to vote for him. (FAC ¶ 104.)
17 Through his own speech in that film, Plaintiff Kennedy was urging Americans to vote for him.
18 When attempting to launch that film on Instagram, Plaintiff Reed Kraus was implicitly urging
19 others to vote for Mr. Kennedy, as were countless other Kennedy supporters who were prevented
20 from posting links to the film on Facebook and Instagram. (FAC ¶ 104; Reed Kraus Dec. at ¶ 13;
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23 ⁸ *See, e.g., United States v. Farias-Contreras*, 104 F.4th 22, 2024 U.S. App. LEXIS 13231, at *5
24 (9th Cir. June 3, 2024) (en banc) (“government *implicitly urged* the district court to impose a
25 harsher sentence”) (emphasis added); *United States v. Palomino*, 599 F. Appx. 638, 639 (9th Cir.
26 2015) (“Under these circumstances, the prosecutor’s repeated and exclusive emphasis on
aggravating factors . . . *implicitly urged* a higher sentence.”) (emphasis added).

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2 Rasmussen Ex. A at 1-12.) And when she posted the pro-Kennedy content that led to her account
3 restrictions, Ms. Reed Kraus, along with countless other Facebook and Instagram users, was
4 again encouraging others to vote for him. (FAC ¶ 105; Reed Kraus Dec. at ¶ 13; Ex. C.)

5 Nor can there be any doubt that Defendants responded to such urging with “threat[s],”
6 “intimidat[ion],” and “coerc[ion].” 52 U.S.C. § 10307(b). First, threats: Defendants repeatedly
7 sent messages that would reasonably have been understood as, and were understood as, warnings
8 that users’ accounts would be suspended if they continued urging people to vote for Mr.
9 Kennedy. (Reed Kraus Dec, at ¶¶ 13-14.) Because social media accounts are the property of the
10 user,⁹ and because the content in question was not in violation of any Meta terms of service,
11 Defendants were threatening users with substantial harm to their property. *See United States v.*
12 *Taylor*, 596 U.S. 845, 854-55 (2022). (“[T]he word ‘threat’ and its cognates usually denote ‘[a]
13 communicated intent to inflict physical or other harm on any person or on property.’”).

14 Next, intimidation: to “intimidate” is to “to make timid or fearful: inspire or affect with
15 fear.” *United States v. Bibbins*, 637 F.3d 1087, 1092 (9th Cir. 2011) (quoting WEBSTER’S THIRD
16 NEW INTERNATIONAL DICTIONARY 1184 (1993 ed.)); *Wohl*, 498 F. Supp. 3d at 477 (so
17 interpreting the word “intimidate” in Section 11(b)). Defendants’ warnings and especially their
18 account suspensions objectively did just that. These suspensions would have made reasonable
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21 ⁹ *See, e.g., hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 995 (9th Cir. 2019) (“users retain
22 ownership” over their social media accounts and content “contributed by” them); *Erisat-Eritrean*
23 *Satellite TV v. Gebrekidan*, No. CV 24-1121-DMG, 2024 U.S. Dist. LEXIS 55623, at *2 (C.D.
24 Cal. Mar. 5, 2024) (referring to “social media accounts” as “property” of user); *Viera v. Gen.*
25 *Auto. Ins. Servs. & Permanent Assur. Corp.*, No. 3:19-cv-00901, 2021 U.S. Dist. LEXIS 21424,
at *62 (M.D. Tenn. Feb. 4, 2021) ((holding and collecting “authority that social media accounts
are property interests”); *Salonclick LLC v. SuperEgo Mgmt. LLC*, No. 16 Civ. 2555 (KMW),
2017 U.S. Dist. LEXIS 6871, at *10 (S.D.N.Y. Jan. 18, 2017) (“social media accounts” are
property).

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2 people frightened that if they continued encouraging people to vote for Mr. Kennedy, their
3 accounts would be frozen or permanently terminated, cutting them off from the modern public
4 square and in some cases causing substantial economic loss. That is exactly the effect
5 Defendants’ actions and threats had on Ms. Reed Kraus, who lost followers and revenue due to
6 Defendants’ censorship and has now become afraid to post pro-Kennedy content. (FAC ¶ 85;
7 Reed Kraus Dec. ¶ 14.)

8 Moreover, the term “intimidation” in voting-rights statutes also includes disseminating
9 “false utterances” intended to chill, or having the effect of chilling, individuals from engaging in
10 the protected activity. *See, e.g., United States v. Mackey*, No. 21-CR-80 (AMD), 2023 U.S. Dist.
11 LEXIS 186646, at *65-66 (E.D.N.Y. Oct. 17, 2023) (upholding conviction for disseminating
12 false information online intended to trick people into not voting, and holding that the words
13 “injure, oppress, threaten, or intimidate” in 18 U.S.C. § 241 encompass not only “violence,” but
14 also “false utterances” deterring individuals from engaging in protected voting-related conduct).
15 Here, Defendants disseminated wild falsehoods about *Who Is Bobby Kennedy*, which would have
16 caused (and did cause) reasonable users to stop trying to share it.

17 Lastly, Defendants are “coerc[ing]” users by blocking and shadow-banning their content.
18 To “coerce” is to “compel by force,” and the force used need not be “violent” or physical. *United*
19 *States v. Elliott*, 835 F. Appx. 78, 82 (6th Cir. 2020) (quoting BLACK’S LAW DICTIONARY 315
20 (10th ed. 2014)). To be sure, a platform’s content moderation is not coercive when it simply
21 enforces a platform’s agreed-upon terms of service. Here, however, the censored content was
22 and is entirely consistent with Defendants’ terms of service. When Defendants block pro-
23 Kennedy content, in violation of their own terms of service, they are literally coercing users—
24 compelling them by mechanical force—to stop urging others to vote.
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2 For all these reasons, Plaintiffs have established a likelihood of success on—or at the
3 very least serious questions going to the merits of—their claim that Defendants are repeatedly
4 violating Section 11(b) of the Voting Rights Act by responding with threats, intimidation, and
5 coercion when users, including Plaintiffs, urge other persons to vote for Mr. Kennedy.

6 **B. Plaintiffs’ Civil Rights Act Claims Are Likely to Succeed on the Merits**

7 1. Sections 1985(3) and 1986 overview.

8 Section 1985(3) contains two independent and legally distinct sets of prohibitions (now
9 joined together in one statutory section as a result of various recodifications). The Equal
10 Privileges Clauses (not at issue here), which prohibit deprivation of “equal protection” rights or
11 other “equal privileges and immunities,” 42 U.S.C. § 1985(3), protect only against violations of
12 the Constitution’s equal protection guarantee, and hence a claim under these clauses must allege
13 state action and race- or class-based misconduct. *See, e.g., Bray v. Alexandria Women’s Health*
14 *Clinic*, 506 U.S. 263, 267-68, 278 (1993).

15 The Support or Advocacy Clauses of Section 1985(3) are entirely different. Originally
16 enacted as part of the Ku Klux Klan Act of 1871 (also referred to as the Civil Rights Act of
17 1871), these Clauses prohibit two different kinds of conspiracies:

18 (1) conspiracies “to injure any citizen in person or property on account of” such
19 citizen’s “giving his support or advocacy in a legal manner, toward or in favor of the
20 election of any lawfully qualified person as an elector for President,” *and/or*

21 (2) conspiracies to “prevent by force, intimidation, or threat, any citizen who is
22 lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward
23 or in favor of the election of any lawfully qualified person as an elector for President.”

24 42 U.S.C. § 1985(3). With respect to both such conspiracies, Section 1985(3) gives a cause of
25 action to any person (voter or otherwise) “injured in his person or property” as a result of “any
26 act in furtherance” of the conspiracy. Although the statute refers to money damages, it is well

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2 established that Section 1985(3) plaintiffs may seek injunctive relief as well. *See, e.g., McAlister*
3 *v. Alaska*, No. 3:23-cv-0029-HRH, 2023 U.S. Dist. LEXIS 85067, at *21 (D. Alaska May 16,
4 2023) (so holding and collecting cases). In addition, under Section 1986, any person who knows
5 that a Section 1985(3) “wrong” is “about to be committed,” and who has the power “to prevent
6 or aid in preventing the commission thereof,” is subject to suit if he “neglects or refuses to do
7 so.” 42 U.S.C. § 1986.

8 By contrast to the Equal Privileges Clauses, the Support or Advocacy Clauses do *not*
9 protect only against constitutional violations, do *not* apply only to racial or class-based
10 misconduct, and do *not* require state action or the involvement of government officials. *See,*
11 *e.g., Kush v. Rutledge*, 460 U.S. 719, 724-25 (1983) (distinguishing Section 1985’s Support or
12 Advocacy clauses and stating that they “contain no language requiring that the conspirators act
13 with intent to deprive their victims of the equal protection of the laws”); *Gill v. Farm Bureau*
14 *Life Ins. Co. of Mo.*, 906 F.2d 1265, 1269 n.21 (8th Cir. 1990) (“support or advocacy” clause not
15 “subject to the racial or other invidious discrimination requirement applicable to equal protection
16 claims”); *Paynes v. Lee*, 377 F.2d 61, 64 (5th Cir. 1967) (“support or advocacy” clause provides
17 “protect[ion] from individual as well as from State interference”); *Cervini v. Cisneros*, 593 F.
18 Supp. 3d 530, 539 (W.D. Tex. 2023) (“Support or Advocacy” clauses create independent rights
19 and do not require state action).

20 The Support or Advocacy Clauses apply to and protect support or advocacy of a
21 presidential candidate, not merely a presidential elector. *See, e.g., Kush*, 460 U.S. at 724 (Section
22 1985(3) protects “right to support candidates in federal elections”); *Cervini*, 593 F. Supp. 3d at
23 532, 539 (recognizing cause of action under Support or Advocacy Clause where defendants
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2 allegedly harassed individuals riding in a Biden-Harris campaign tour bus). or Advocacy Clauses
3 protect “support or advocacy of candidates in federal elections.”).

4 Here, Defendants engaged in both kinds of conspiracy prohibited by the Support or
5 Advocacy Clauses: Defendants conspired to injure citizens on account of their support or
6 advocacy of Mr. Kennedy; and they conspired to prevent such support or advocacy by threat,
7 intimidation, and coercion.

8 2. Defendants have conspired to injure citizens on account of their support or
9 advocacy for Mr. Kennedy.

10 A defendant violates the Support or Advocacy Clauses if he conspires with another
11 person to injure any “citizen in person or property on account of” such citizen’s “giving his
12 support or advocacy in a legal manner, toward or in favor of” a presidential candidate. 42 U.S.C.
13 § 1985(3). All these elements are fully established here.

14 A conspiracy for purposes of Section 1985(3) is an agreement or “tacit understanding”
15 between two or more persons “to carry out the prohibited conduct.” *Wohl*, 498 F. Supp. 3d at
16 487 (quoting *Cine Sk8, Inc. v. Town of Henrietta*, 507 F.3d 778, 792 (2d Cir. 2007)).
17 Importantly, as this Court influentially held years ago, the intra-corporate conspiracy doctrine—
18 an antitrust rule under which a corporation, its subsidiaries, and/or its employees cannot conspire
19 with one another—does *not* apply to suits under Section 1985. *Washington v. Duty Free*
20 *Shoppers*, 696 F. Supp. 1323, 1326 (N.D. Cal. 1988) (Orrick, J.), *followed by, e.g., Rashdan v.*
21 *Geissberger*, No. 10-00634 SBA, 2011 U.S. Dist. LEXIS 4792, at *19 (N.D. Cal. Jan. 14, 2011);
22 *O. H. v. Oakland Unified Sch. Dist.*, No. C-99-5123 JCS, 2000 U.S. Dist. LEXIS 21725, at *13-
23 27 (N.D. Cal. Apr. 17, 2000). Thus agreements among a corporation’s employees, or among a
24 corporation and its subsidiaries, or between a corporation and its employees, or between a
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2 corporation’s Chief Executive Officer and its employees, satisfy the conspiracy requirement of
3 Section 1985. *See Washington*, 696 F. Supp. at 1327 (“agreements . . . between a business and its
4 employees threaten exactly the group danger at which conspiracy liability is aimed by the
5 enactment of §§ 1985(3) and 1986”).

6 Accordingly, it cannot be seriously disputed that Section 1985’s conspiracy requirement
7 is satisfied here, because Defendants are conspiring *with and among each other*. (FAC ¶¶ 119-
8 26.) It would strain credulity beyond the breaking point to suppose that Facebook and Instagram,
9 which are under the common control of Defendants Meta and Zuckerberg, are by pure
10 *coincidence* both censoring the same pro-Kennedy content that does not violate either platform’s
11 terms of service. Facebook and Instagram each use human review teams to make significant
12 “content moderation” decisions, and particularly important matters (or matters concerning
13 political figures) are elevated to more senior corporate officers. (FAC ¶¶ 121-23.) Plainly the
14 two corporations’ review teams, along with their responsible officers, and/or Meta and Meta’s
15 responsible officers are acting in concert with one another. (Meta’s responsible officers,
16 including Defendant Zuckerberg, are well aware of Meta’s involvement and controversial
17 content moderation in past elections and must certainly be exercising oversight of the company’s
18 content moderation in this election. (FAC ¶ 124.)) Even if there were no cross-corporate
19 agreement, at a bare minimum an agreement and therefore a Section 1985 conspiracy would still
20 exist within *each* of Facebook and Instagram. *See Washington*, 696 F. Supp. at 1327 (agreement
21 “between a business and its employees” satisfies Section 1985 conspiracy requirement).
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23 This conspiracy is a clear violation of Section 1985(3) because it is nothing other than an
24 agreement to inflict injury on innumerable users, including innumerable citizens, who support or
25 advocate for Mr. Kennedy. An “injury” to “person or property” for Section 1985(3) purposes
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2 “does not need to be one of violence or bodily harm; rather, ‘economic harm, legal action,’ and
3 intangible invasions of protected interests “can qualify depending on the circumstances.”
4 *Krabach*, 2023 U.S. Dist. LEXIS 191870, at *17 (quoting *Wohl*, 498 F. Supp. 3d at 477). As
5 stated above, controlling precedent establishes that a social media account is the user’s
6 property,¹⁰ and hence unlawful suspensions of those accounts—where the suspension is not
7 justified under the platform’s own terms of service—constitute harm to property.

8 Thus Plaintiffs are likely to succeed on—or at the very least have raised serious questions
9 going to the merits of—their claim that Defendants are violating Section 1985(3) by conspiring
10 to injure citizens in their person or property on account of their lawful support and advocacy for
11 a presidential candidate.

12 3. *Defendants have conspired to prevent citizens by force, intimidation, or threat*
13 *from giving their support or advocacy to Mr. Kennedy.*

14 For the reasons given above, Defendants further violated Section 1985(3) by conspiring
15 to “prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from
16 giving his support or advocacy” to a presidential candidate. 42 U.S.C. § 1985(3).

17 First, as shown immediately above, under this Court’s decision in *Washington v. Duty*
18 *Free Shoppers* (and numerous other precedents), Defendants’ intra-corporate agreement (their
19 agreement among themselves) to censor pro-Kennedy content constitutes a conspiracy for
20 Section 1985 purposes. Second, just as Defendants’ conduct constitutes intimidation, threat, and
21 coercion under Section 11(b) of the Voting Rights Act, *see supra* Point II(A)(2), so too it
22 necessarily constitutes “force, intimidation, or threat” under Section 1985(3) of the Civil Rights
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25 ¹⁰ *See, e.g., hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 995 (9th Cir. 2019) (“users retain
ownership” over their social media accounts and content “contributed by” them).

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2 Act. *See, e.g., Wohl*, 498 F. Supp. 3d at 487 (terms “intimidation” and “threat” have same
3 meaning in both Section 11(b) of the Voting Rights Act and the Support or Advocacy Clauses of
4 Section 1985(3)). Finally, because Defendants are deliberately seeking to block and suppress
5 pro-Kennedy content, the manifest object of Defendants’ conspiracy was to “prevent” Facebook
6 and Instagram users, including citizens, from expressing their support and advocacy of a
7 presidential candidate, thereby violating Section 1985(3).

8 4. *Plaintiffs have Section 1985(3) standing to sue.*

9 As stated above, Section 1985(3) confers standing to sue on “any person injured in
10 person or property” by any acts taken in “furtherance” of any conspiracy prohibited by that
11 section. 42 U.S.C. § 1985(3). Under the clear statutory language, “any person” so injured may
12 sue; i.e., standing to enforce the Support or Advocacy Clauses of Section 1985(3) is not limited
13 to voters or to those whose support and advocacy was suppressed. *Id.* Although only one plaintiff
14 need have standing, *see Biden v. Nebraska*, 600 U.S. 477, 489 (2023) (“If at least one plaintiff
15 has standing, the suit may proceed.”), each Plaintiff here has suffered the requisite injury.

16 Plaintiff AV24, which owns and spent approximately one million dollars producing *Who*
17 *Is Bobby Kennedy*, has suffered an injury to reputation and property by and as a result of
18 Defendants’ countless acts of suppressing and falsely defaming that film, which reduced its
19 value, its effectiveness, and the donation revenue drawn therefrom. (FAC ¶ 133.) Moreover,
20 Plaintiff Kennedy has suffered both personal injury (reputational harm and damage to his
21 presidential campaign) and economic injury (loss of donation revenue). *See, e.g., Fulani v.*
22 *League of Women Voters Educ. Fund*, 882 F.2d 621, 624, 626 (2nd Cir. 1989) (holding that
23 candidate’s exclusion from televised debate constituted “personal injury” for standing purposes
24 and asking, “In this era of modern telecommunications, who could doubt the powerful beneficial
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2 effect that mass media exposure can have today on the candidacy of a significant aspirant
3 seeking national political office?”). Finally, Plaintiff Reed Kraus suffered injury to property
4 when her Instagram account (which is her property) was restricted, and she suffered significant
5 economic harm when Defendants’ acts caused a dramatic loss of followers, reducing her
6 Substack audience and revenue. (Reed Kraus Dec. at ¶ 7.) Thus all Plaintiffs have standing to
7 sue under Section 1985(3).

8 **C. Plaintiffs’ Have At Least Established Serious Questions Going to the Merits**
9 **of their First Amendment Claims.**

10 In *Missouri v. Biden*, based on a copiously documented evidentiary record, the United
11 States District Court for the Western Court of Louisiana and the United States Court of Appeals
12 for Fifth Circuit found that the federal government has for years been violating the First
13 Amendment by pressuring and working jointly with social media platforms to censor protected
14 speech. *Missouri v. Biden*, 680 F. Supp. 3d 630 (W.D. La. 2023), *aff’d*, 83 F.4th 350 (5th Cir.
15 2023), *rev’d on standing grounds sub nom. Murthy v. Missouri*, No. 23-411, 2024 U.S. LEXIS
16 2842 (U.S. June 26, 2024).

17 Defendant Meta has been a principal participant in this censorship campaign. As the
18 District Court found, Meta has acted as a “partner” with the White House, censoring individuals
19 and factual material identified by the Government as objectionable, in order “to drive behavior.”
20 *See, e.g., Missouri v Biden*, 680 F. Supp. 3d at 647 (“Meta also stated [in email communications
21 with the White House], ‘We think there is considerably more we can do in “partnership” with
22 you and your team to drive behavior.’”) (emphasis by the Court)). And as the District Court also
23 found, on the basis of internal emails and other documents, the Meta-governmental partnership
24 aggressively, specifically, and repeatedly targeted Mr. Kennedy for censorship. *See, e.g.,*

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2 *Kennedy v. Biden*, 2024 U.S. Dist. LEXIS 26751 at *13-14; *see also* FAC at 26-27 (summarizing
3 congressional findings detailing Mr. Kennedy’s de-platforming from Instagram under pressure
4 from, and in “collusion” with, the federal government).

5 Internal Meta communications admit that, in its speech-suppression partnership with the
6 Government, Meta’s platforms do not merely block so-called “misinformation.” On the contrary,
7 “Facebook noted [in internal emails] that in response to White House demands, it was censoring,
8 removing, and reducing the virality of content discouraging vaccines ‘that does not contain
9 actionable misinformation.’” *Missouri v. Biden*, 680 F. Supp. 3d at 648. Weighing all the
10 evidence together, the District Court described the government-platform censorship campaign as
11 “arguably the most massive attack against free speech in United States history.” *Id.* at 641. And
12 the Court specifically found that the platforms’ censorship of Mr. Kennedy was the result of joint
13 action with, and coercive pressure from, the federal government, so that this censorship was state
14 action and a violation of the First Amendment. *Kennedy v. Biden*, 2024 U.S. Dist. LEXIS 26751
15 at *22-23, 25.

16 While federal courts do not take judicial notice of other courts’ findings, the holdings
17 handed down in these cases, together with the voluminous evidentiary record on which the courts
18 relied, demonstrate that Plaintiffs have at a bare minimum raised “serious questions going to the
19 merits” of their First Amendment claim—which is all Plaintiffs need do on this preliminary
20 injunction motion. *Flathead-Lolo-Bitterroot Citizen Task Force*, 98 F.4th at 1190; *Alliance for*
21 *the Wild Rockies*, 865 F.3d at 1217.

22 **III. AS A MATTER OF LAW, IRREPARABLE HARM, THE EQUITIES, AND THE**
23 **PUBLIC INTEREST ALL SHARPLY FAVOR PLAINTIFFS**

24 As a matter of law, all the other preliminary injunction factors—irreparable harm, the
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2 balance of equities, and the public interest—sharply favor Plaintiffs. *See, e.g., CTIA v. City of*
3 *Berkeley*, 928 F.3d 832, 851 (9th Cir. 2019) (a “party seeking preliminary injunctive relief in a
4 First Amendment context can establish irreparable injury . . . by demonstrating the existence of a
5 colorable First Amendment claim”); *American Bev. Ass’n v. City & County of San Francisco*,
6 916 F.3d 749, 758 (9th Cir. 2019) (the “fact that [Plaintiffs’] have raised serious First
7 Amendment questions compels a finding that . . . the balance of hardships tips sharply in [their]
8 favor”); *id.* (“it is always in the public interest to prevent the violation of a party’s constitutional
9 rights”) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). By contrast,
10 Defendants have no legitimate interests whatsoever in continuing to censor core political
11 speech—not in violation of any Meta terms of service—favoring a candidate in the upcoming
12 presidential election.

13 CONCLUSION

14 For the foregoing reasons, Plaintiffs respectfully ask this Court to issue an order
15 enjoining Defendants to cease and desist their censorship (including both removal and shadow-
16 banning) of support for, advocacy of, and other speech encouraging or urging people to vote for,
17 Mr. Kennedy.

18
19 Respectfully Submitted,

20 DATED: July 23, 2024

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