

HEALTH INFORMATION PURGES, SUPPRESSION, AND DISTORTION

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The Trump Administration's health information policies have created an unprecedented assault on medical data integrity, including widespread information purges, suppression efforts, and deliberate distortions. Federal agencies have removed thousands of health-related webpages, censored scientific publications, and, under Secretary Robert F. Kennedy Jr.'s leadership, disseminated misinformation about vaccines, fluoride, and other medical topics. These activities represent a dramatic departure from traditional government practices of providing reliable health information to clinicians, researchers, and the public, and they can endanger many lives.

This Article provides a first-of-its-kind analysis of the legal frameworks that govern contemporary federal health information abuses and examines potential remedies for aggrieved parties. The analysis demonstrates that current practices may violate multiple legal provisions, including the First Amendment, the Due Process Clause, the Administrative Procedure Act, the Paperwork Reduction Act, the Federal False Statements Act, and the Federal Records Act.

The Article argues that, while courts are unlikely to award monetary damages through existing legal mechanisms such as Bivens claims or the Federal Tort Claims Act, claims for injunctive relief offer plaintiffs a promising litigation pathway. Recent successes demonstrate that courts can effectively compel restoration of purged health-related information and halt unconstitutional censorship practices. As government health

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information abuses continue to proliferate, litigation serves as democracy's essential safeguard against the erosion of medical truth and public health protections.

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INTRODUCTION

On February 13, 2025, Robert F. Kennedy Jr. was sworn in as the twenty-sixth Secretary of the U.S. Department of Health and Human Services (“HHS”).¹ Secretary Kennedy is a long-time opponent of vaccines and water fluoridation.² Another early development in Donald J. Trump’s presidency was Executive Order 14168, directing agencies to combat “gender ideology.”³ To implement this order, the Office of Personnel Management (“OPM”) instructed agencies to “[t]ake down all outward facing media (websites, social media accounts, etc.) that inculcate or promote gender ideology.”⁴ HHS then issued its own directive, instructing relevant personnel to act promptly to comply with the Executive Order and OPM guidance.⁵

At the start of the Trump presidency, the government’s activities frequently included health information purges, suppression, and distortions.⁶ Throughout the Article these activities are, at times, grouped together and termed “government health information abuses.” For example, in an apparent effort to comply with Executive Order 14168, the Centers for Disease Control and Prevention (“CDC”) removed thousands of pages from its website, though some of these were restored by court order.⁷ Government agencies also scrubbed

1. Press Release, U.S. Dep’t of Health & Hum. Servs., Robert F. Kennedy, Jr. Sworn in as 26th Secretary at HHS, President Trump Signs Executive Order to Make America Healthy Again (Feb. 13, 2025), <https://www.hhs.gov/press-room/eo-maha.html> [<https://perma.cc/TLZ4-JQK9>].

2. Arthur Allen, *How Measles, Whooping Cough and Worse Could Roar Back on RFK Jr.’s Watch*, NPR (Dec. 6, 2024, at 6:00 ET), <https://www.npr.org/sections/shots-health-news/2024/12/06/nx-s1-5218574/rfk-vaccines-anti-vaccine-infectious-disease> [<https://perma.cc/H46K-53LV>]; Fenit Nirappil, *RFK Jr. Wants Fluoride out of Drinking Water. Oregon Shows What’s Coming*, WASH. POST (Nov. 20, 2024), <https://www.washingtonpost.com/health/2024/11/20/rfk-fluoride-drinking-water-oregon/> [<https://perma.cc/D79M-YSJL>]; Teddy Rosenbluth, *Nobel Laureates Urge Senate to Turn Down Kennedy’s Nomination*, N.Y. TIMES (Dec. 9, 2024), <https://www.nytimes.com/2024/12/09/health/kennedy-hhs-nobel-laureates.html> [<https://perma.cc/W95H-3VE2>].

3. Exec. Order No. 14,168, 90 Fed. Reg. 8615, 8616 (Jan. 20, 2025).

4. Memorandum from Charles Ezell, Acting Dir., U.S. Off. of Pers. Mgmt., to Heads and Acting Heads of Dep’ts and Agencies, Initial Guidance Regarding President Trump’s Exec. Order *Defending Women* (Jan. 29, 2025), <https://www.opm.gov/media/yv1h1r3i/opm-memo-initial-guidance-regarding-trump-executive-order-defending-women-1-29-2025-final.pdf> [<https://perma.cc/KGX3-RNFM>].

5. Letter from Scott W. Rowell, Deputy Chief of Staff, Dep’t of Health & Hum. Servs., to Heads of Operating and Staff Divs., Dep’t of Health & Hum. Servs. (Jan. 31, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.277069/gov.uscourts.dcd.277069.54.2.pdf> [<https://perma.cc/QRU7-ZYWZ>]; *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 125 (D.D.C. 2025).

6. *See infra* Part II.

7. *See infra* Section II.A.

hundreds of words that they deemed unacceptable from websites and documents.⁸ Separately, Secretary Kennedy has famously made numerous false statements about autism and measles.⁹

This Article analyzes the legal provisions that government health information abuses may violate and the litigation pathways that may be available to aggrieved individuals. It argues that the federal government's attacks on health information availability and veracity are unprecedented in their nature and scope and require committed resistance.¹⁰

Information access and integrity are particularly vital in the health arena because both patients and health care providers often rely on trusted online sources to make critical decisions.¹¹ The public should feel assured that government sources are among the most dependable and valuable that exist.¹² But that confidence is now ebbing.¹³

8. AJ Connelly, *Federal Government's Growing Banned Words List Is Chilling Act of Censorship*, PEN AM. (Oct. 1, 2025), <https://pen.org/banned-words-list/> [<https://perma.cc/EV6B-4DGG>].

9. See *infra* Section II.C.

10. Editorial, *Trumping Science*, 38 NATURE BIOTECHNOLOGY 1105, 1105 (2025), <https://www.nature.com/articles/s41587-020-0713-y> [<https://doi.org/10.1038/s41587-020-0713-y>].

11. Amanda Jacot, *Medical Information Websites: Does It Help or Hurt Patient Care?*, MED. PROS. REFERENCE (Sep. 14, 2023), <https://www.empr.com/features/medical-information-websites/> [<https://perma.cc/B795-DX5B>]; *How To Find Reliable Health Information Online*, NAT'L INST. ON AGING, <https://www.nia.nih.gov/health/healthy-aging/how-find-reliable-health-information-online> [<https://perma.cc/3E66-HV93>] (reviewed Jan. 12, 2023); *How To Evaluate Health Information on the Internet: Questions and Answers*, NAT'L INSTS. OF HEALTH, https://ods.od.nih.gov/HealthInformation/How_To_Evaluate_Health_Information_on_the_Internet_Questions_and_Answers.aspx [<https://perma.cc/3SBJ-RD3Z>] (reviewed May 4, 2022); Margaret A. Winker et al., *Guidelines for Medical and Health Information Sites on the Internet: Principles Governing AMA Web Sites*, 283 JAMA 1600, 1600 (2000), <https://jamanetwork.com/journals/jama/fullarticle/192531> [<http://doi.org/10.1001/jama.283.12.1600>].

12. See *How To Find Reliable Health Information Online*, *supra* note 11; see also *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 146 (D.D.C. 2025) (“The reliance interests here are staggering, in no small part due to the defendants’ [government agencies’] long-term provision of high-quality health care resources and the defendants’ recognition—indeed, their encouragement—of widespread reliance on those resources.”). *But see* Janet Freilich, *Government Misinformation Platforms*, 172 U. PA. L. REV. 1537, 1537 (2024) (arguing that “the government frequently collects information from third-party private entities and publishes it with no review or vetting” and that “this information is riddled with errors and inaccuracies,” yet “scholars, policymakers, and the public treat the information with unwarranted confidence because it derives from the government”). Freilich, however, also acknowledges that “government information is frequently produced by experts or carefully examined and can be trusted.” *Id.* at 1552.

13. Lucas Munson, *A Crisis of Trust in Federal Data*, BOS. INDICATORS (Mar. 3, 2025), <https://www.bostonindicators.org/article-pages/2025/march/federal-data-brief> [<https://perma.cc/Y4EP-G62R>].

Data revisionism can cause extensive and severe harms. In one case that challenged HHS practices, several physicians asserted in their complaint that the removal of webpages from the CDC and Food and Drug Administration (“FDA”) websites significantly hindered their ability to treat their low-income and underserved patients.¹⁴ The vaccine hesitancy that government officials have encouraged has also had evident consequences. During 2025, 2,255 measles cases were confirmed in the United States across forty-five states.¹⁵ Some experts link the growing outbreak to reduced government support for vaccinations.¹⁶ In addition, Secretary Kennedy’s statements that Vitamin A can prevent and treat measles have led parents to give their children excessive amounts of Vitamin A, which is toxic in high doses.¹⁷ As a result, some children in West Texas have in fact needed treatment for Vitamin A toxicity.¹⁸

A diminished commitment to decision making based on evidence and sound data can adversely affect public health in other ways as well. In May 2025, Secretary Kennedy announced that COVID-19 shots were no longer recommended for healthy children and pregnant women.¹⁹ He did so to the consternation of many prominent medical experts and before the CDC’s Advisory Committee on Immunization Practices (“ACIP”) had met to reassess COVID-19 vaccine recommendations.²⁰

14. *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 766 F. Supp. 3d 39, 45 (D.D.C. 2025); *Doctors for Am.*, 793 F. Supp. 3d at 127.

15. *Measles Cases and Outbreaks*, CTRS. FOR DISEASE CONTROL & PREVENTION (Jan. 23, 2026), <https://www.cdc.gov/measles/data-research/index.html> [<https://perma.cc/3MGB-TXCS>].

16. Heidi Ledford, *Will RFK Jr’s Vaccine Agenda Make America Contagious Again?*, NATURE (Mar. 13, 2025), <https://www.nature.com/articles/d41586-025-00709-9> [<https://perma.cc/C3QR-D222>].

17. *Id.*; Teddy Amenabar, *Can Vitamin A Treat Measles? RFK Jr. Suggests So. Kids Are Overdosing.*, WASH. POST (Apr. 7, 2025), <https://www.washingtonpost.com/wellness/2025/04/07/vitamin-a-poisoning-measles-rfk-jr/> [<https://perma.cc/U484-B4PN>].

18. David Martin Davies, *West Texas Children Treated for Vitamin A Toxicity as Medical Disinformation Spreads Alongside Measles Outbreak*, TEX. PUB. RADIO (Mar. 27, 2025, at 22:16 CT), <https://www.tpr.org/public-health/2025-03-27/west-texas-children-treated-for-vitamin-a-toxicity-as-medical-disinformation-spreads-alongside-measles-outbreak> [<https://perma.cc/2MVD-VVSA>].

19. Rob Stein, *RFK Jr. Says COVID Shots No Longer Recommended for Kids, Pregnant Women*, NPR (May 27, 2025, at 12:47 ET), <https://www.npr.org/sections/shots-health-news/2025/05/27/nx-s1-5413179/covid-vaccine-children-pregnant-rfk-cdc> [<https://perma.cc/B7KL-NEUM>].

20. *Id.*; See Kevin A. Ault, *COVID Vaccine Guidance in Pregnancy Has Shifted—But the Science Hasn’t*, MEDPAGE TODAY (May 30, 2025), <https://www.medpagetoday.com/opinion/second-opinions/115826> [<https://perma.cc/J9F5-8FTQ>] (“It is very clear that COVID-19 infection during pregnancy can be catastrophic.”); Shannon Firth, *Infectious Disease Docs Slam New COVID Vaccine Recommendations*, MEDPAGE TODAY (June 6, 2025), <https://www.medpagetoday.com/infectiousdisease/covid19vaccine/115949> [<https://perma.cc/DMX9-5LBM>].

Notably, on its website, the CDC articulated a somewhat different recommendation for children. It advised parents to engage in a shared decision making process with their health care providers and thus did not explicitly discourage them from pursuing vaccination.²¹ The FDA planned to approve new COVID-19 vaccines only for seniors and high-risk individuals until drug manufacturers could conduct new clinical trials.²² Yet, at the time, the CDC itself still recommended COVID-19 vaccines for anyone who was six months and older and touted their safety and efficacy.²³ In fact, the agency stated that “[d]uring the COVID-19 pandemic, COVID-19 vaccines underwent the most intensive safety analysis in U.S. history.”²⁴ In June 2025, Secretary Kennedy reconstituted ACIP, firing and replacing all seventeen of its sitting members.²⁵ ACIP now recommends “individual-based decision-making” regarding COVID-19 vaccines.²⁶

Secretary Kennedy’s changed vaccine policy will likely prevent many nonelderly Americans from obtaining insurance coverage for COVID-19 vaccines and may eliminate access for some altogether.²⁷ This is because under the Affordable Care Act (“ACA”), private insurers are required to cover only routine immunizations that ACIP recommends.²⁸ Medicaid and the Children’s Health Insurance Program

21. *Childhood Immunization Schedule Notes*, CTRS. FOR DISEASE CONTROL & PREVENTION: VACCINES & IMMUNIZATIONS (May 29, 2025), <https://www.cdc.gov/vaccines/hcp/imz-schedules/child-adolescent-notes.html#note-covid-19> [<https://perma.cc/V9YU-RPN9>]; Kristina Fiore, *CDC Now Advises Shared Decision-Making for Kids’ COVID Shots*, MEDPAGE TODAY (May 30, 2025), <https://www.medpagetoday.com/infectiousdisease/covid19vaccine/115822> [<https://perma.cc/54GE-47HT>].

22. Stephanie Armour, *Trump’s Team Cited Safety in Limiting COVID Vaccines. Some See More Risk.*, MEDPAGE TODAY (May 27, 2025), <https://www.medpagetoday.com/infectiousdisease/covid19vaccine/115770> [<https://perma.cc/4WVP-VTC5>]; Vinay Prasad & Martin A. Makary, *An Evidence-Based Approach to Covid-19 Vaccination*, 392 NEW ENG. J. MED. 2484, 2484 (2025).

23. *Coronavirus Disease 2019 (COVID-19) Vaccine Safety*, CTRS. FOR DISEASE CONTROL & PREVENTION: VACCINE SAFETY (Jan. 31, 2025), <https://www.cdc.gov/vaccine-safety/vaccines/covid-19.html> [<https://perma.cc/25LH-AUZ9>].

24. *Id.*

25. Press Release, U.S. Dep’t of Health & Hum. Servs., HHS Takes Bold Step to Restore Public Trust in Vaccines by Reconstituting ACIP (June 9, 2025), <https://www.hhs.gov/press-room/hhs-restore-public-trust-vaccines-acip.html> [<https://perma.cc/N9TH-7L5A>].

26. Press Release, Ctrs. for Disease Control & Prevention, CDC Immunization Schedule Adopts Individual-Based Decision-Making for COVID-19 and Standalone Vaccination for Chickenpox in Toddlers (Oct. 6, 2025), <https://www.cdc.gov/media/releases/2025/cdc-immunization-schedule-adopts-individual-based-decision.html> [<https://perma.cc/AH9U-BD7C>].

27. Ault, *supra* note 20.

28. *Preventive Services Covered by Private Health Plans Under the Affordable Care Act*, KFF (Feb. 28, 2024), <https://www.kff.org/womens-health-policy/>

are likewise required to pay only for ACIP-recommended vaccines.²⁹ Consequently, many individuals will be unable to obtain COVID-19 vaccinations either because they cannot afford to pay out of pocket or because health care providers refuse to administer vaccines contrary to HHS recommendations.³⁰ In July 2025, several medical and public health groups, along with a pregnant physician, filed suit, asking the Massachusetts district court for injunctive relief to restore traditional recommendations for vaccinating children and pregnant women.³¹

Secretary Kennedy has also attacked water fluoridation, claiming that it causes arthritis, bone cancer, thyroid disease, loss of IQ, and neurodevelopmental problems.³² Consequently, Florida and Utah prohibited the addition of fluoride to drinking water, and other states may follow suit.³³ In truth, fluoride has long been an effective tool to fight tooth decay, especially in underserved communities with little access to dental care.³⁴ While a few small studies have raised concerns about adverse effects from fluoride in much higher concentrations than those in the U.S. water supply, mainstream studies have repeatedly found no health risks arising from the fluoride levels used in the United States.³⁵ Moreover, experts estimate that removing fluoride from drinking water

fact-sheet/preventive-services-covered-by-private-health-plans/ [https://perma.cc/NWX3-NF49].

29. Madison Hluchan, *Shaping Vaccine Cost and Coverage for Medicaid-Eligible Individuals*, ASS'N OF STATE & TERRITORIAL HEALTH OFFS. (June 18, 2025), <https://www.astho.org/communications/blog/2025/shaping-vaccine-cost-coverage-for-medicaid-eligible-individuals/> [https://perma.cc/664H-Z7AA].

30. See Rita Rubin, *The CDC No Longer Recommends COVID-19 Shots During Pregnancy—Now What?*, 334 JAMA 469, 470 (2025), <https://jamanetwork.com/journals/jama/fullarticle/2836638> [https://doi.org/10.1001/jama.2025.11889].

31. Complaint for Declaratory & Injunctive Relief at 3, 40, Am. Acad. of Pediatrics v. Kennedy, No. 1:25-cv-11916 (D. Mass. July 7, 2025).

32. Saima S. Iqbal, *What the Evidence Says About Fluoride in Drinking Water*, SCI. AM. (Nov. 27, 2024), <https://www.scientificamerican.com/article/fluoride-in-drinking-water-is-safe-heres-the-evidence/> [https://perma.cc/K836-KLFM].

33. Natalie Neysa Alund, *Two States Have Now Passed Fluoride Bans. These Other Ones Introduced Bills.*, USA TODAY (May 16, 2025), <https://www.usatoday.com/story/news/nation/2025/05/16/fluoride-bans-states-florida-utah/83667361007/> [https://perma.cc/UJ3D-92HH]; Stephany Matat & Kate Payne, *DeSantis Signs a Bill Making Florida the 2nd State to Ban Fluoride from Its Water System*, AP NEWS (May 15, 2025, at 14:40 EST) <https://apnews.com/article/fluoride-ban-florida-ron-desantis-9bb4713fb27d966d963e559cab98f992> [https://perma.cc/MRQ3-SDBR].

34. Iqbal, *supra* note 32; *Fact Checked: Fluoride Is a Powerful Tool for Preventing Tooth Decay*, AM. ACAD. OF PEDIATRICS (Nov. 3, 2025), <https://www.aap.org/en/newsroom/fact-checked/fact-checked-fluoride-is-a-powerful-tool-for-preventing-tooth-decay/> [https://perma.cc/Z59K-JFBX].

35. Iqbal, *supra* note 32.

could lead children to suffer over twenty-five million more cavities and cost \$9.8 billion over a five-year period.³⁶

The Trump Administration is certainly deviating from traditional health information norms. But do its practices constitute violations of law? This Article provides a first-of-its kind analysis of this question and argues that they may well contravene both constitutional and legislative requirements.³⁷ Potentially, government health information abuses violate the First Amendment right to free speech and its corollary right to the free flow of information, as well as the substantive due process rights to decline unwanted medical care and direct the upbringing of one's children.³⁸ They may also violate the Administrative Procedure Act ("APA"), the Paperwork Reduction Act ("PRA"), the Federal Records Act ("FRA"), and the Federal False Statements Act ("FFSA").³⁹

Identifying violations of law, however, does not guarantee aggrieved individuals a remedy. Finding avenues for legal redress can be very challenging for plaintiffs.⁴⁰ Americans generally cannot sue the federal government or its officials because of sovereign immunity and qualified immunity.⁴¹ Nevertheless, in limited circumstances, immunity is waived and plaintiffs may obtain relief.⁴²

This Article provides a thorough assessment of several legal tools that may serve enterprising litigants. These include actions for injunctive relief under the APA, the First Amendment, and the Fifth Amendment's Due Process Clause.⁴³ It also considers whether individuals aggrieved by government health data abuses could obtain money damages, but it

36. Sung Eun Choi & Lisa Simon, *Project Outcomes of Removing Fluoride from US Water Systems*, JAMA HEALTH F., May 2025, at 1, 5.

37. See *infra* Part III.

38. See *infra* Sections III.C, III.D.

39. See *infra* Sections III.A, III.B.

40. John F. Preis, *How the Federal Cause of Action Relates to Rights, Remedies, and Jurisdiction*, 67 FLA. L. REV. 849, 861 (2015) ("[T]he doctrine of sovereign immunity is a jurisdictional doctrine that bars suit against a state or the federal government unless the party waives the immunity or Congress abrogates it.").

41. Dep't of Agric. Rural Dev. Hous. Serv. v. Kirtz, 601 U.S. 42, 48 (2024) (asserting that "the United States, as sovereign, is generally immune from suits seeking money damages" though "Congress may choose to waive that immunity"); Wood v. Moss, 572 U.S. 744, 757 (2014) ("The doctrine of qualified immunity protects government officials from liability for civil damages 'unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct.'" (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011))).

42. See Kirtz, 601 U.S. at 48; Wood, 572 U.S. at 757.

43. See *infra* Sections IV.B, IV.C.

concludes that they could not.⁴⁴ This analysis is informed by recently filed lawsuits and court opinions.⁴⁵

The Article is rooted in the Trump Administration's approach to health information, but its arguments are relevant to future government health information abuses as well. For purposes of clarity and brevity, the Article addresses health information policies at the federal level and does not discuss data-related activities by the states.

It is important for Americans to understand that they are not helpless in the face of health information abuses. According to many experts, the courts are democracy's strongest safeguard.⁴⁶ Currently they appear to serve as "the *lone* constitutional check on presidential power."⁴⁷ Admittedly, courts have very limited power to enforce their rulings—they can do so only by holding governmental parties in contempt of court and sanctioning them, the latter of which virtually never happens.⁴⁸ In addition, courts themselves sometimes make unpredictable decisions that are inconsistent with established precedent.⁴⁹ Nevertheless, litigation remains a fruitful and necessary, if imperfect, mechanism for

44. See *infra* Section IV.A.

45. See *infra* Part IV.

46. See Stephen Cody, *Dark Law: Legalistic Autocrats, Judicial Deference, and the Global Transformation of National Security*, 6 U. PA. J.L. & PUB. AFFS. 643, 670–71 (2021) ("[C]ourts are presumed to be sentinels of the rule of law in liberal democracies and serve as bulwarks to safeguard citizens' rights and freedoms against state encroachment."); Donald J. Smythe, *SCOTUS in the Strait of Messina: Steering the Course Between Private Rights and Public Powers*, 25 TEX. REV. L. & POL. 437, 469 (2021) (speaking of "political abuses of government power against which the courts in a constitutional democracy have always been the last safeguard").

47. Emily Bazelon & Mattathias Schwartz, *Seven Chaotic Months in the Life of a New Federal Judge*, N.Y. TIMES (July 3, 2025), <https://www.nytimes.com/2025/06/30/magazine/federal-judge-amir-ali-trump-usaid.html> [<https://perma.cc/QLL9-89D8>].

48. See Nicholas R. Parrillo, *The Endgame of Administrative Law: Governmental Disobedience and the Judicial Contempt Power*, 131 HARV. L. REV. 685, 697–98 (2018) (explaining that while district courts are willing to find government agencies and officials in contempt, courts of appeal generally block the imposition of any sanctions for these violations); Hon. Liz Cheney, Keynote Address at the Administrative Law Review Spring 2024 Symposium: We the People? The Future of U.S. Elections & Democracy (Feb. 23, 2024), in 9 ADMIN. L. REV. ACCORD 105, 121 (2024) ("[T]he rulings of our courts have no power unless the executive understands his obligation or her obligation to enforce them.").

49. Eric Helland, *The Role of Ideology in Judicial Evaluations of Experts*, 62 J.L. & ECON. 579, 579 (2019) ("Even after controlling for law, I find robust evidence that ideology plays an important role in the decision to grant a motion to exclude a witness."); Anthony Niblett, *Tracking Inconsistent Judicial Behavior*, 34 INT'L REV. L. & ECON. 9, 9 (2013) (analyzing 174 California Court of Appeal decisions regarding the enforceability of arbitration clauses and finding "that cases are inconsistent with about one-quarter of relevant precedents").

redressing wrongs.⁵⁰ In fact, plaintiffs have filed hundreds of lawsuits against the Trump Administration for a multitude of reasons.⁵¹ In many of these cases, plaintiffs have prevailed.⁵² Among these lawsuits are two health data cases that have experienced early success.⁵³ Both challenged the government's expungement of medical resource materials from publicly accessible websites.⁵⁴ These lawsuits received considerable media attention.⁵⁵ Consequently, beyond providing relief to aggrieved parties, litigation can serve the function of educating the public and raising awareness about information abuse harms.

The remainder of this Article will proceed as follows. Part I illustrates that federal government health information abuses are not unprecedented and that, in the past, victims have often obtained relief. Prior instances include deceptions in the human research context, exemplified by the Tuskegee syphilis study, sexually transmitted disease experiments in Guatemala, and radiation experiments. They also include untruths concerning Agent Orange, alleged death panels under the ACA, and COVID-19. Part II addresses contemporary health information obfuscation in the form of information purges, suppression, and distortion. Part III analyzes the federal statutory and constitutional provisions that such government practices potentially violate. Part IV

50. Matthew A. Shapiro, *Litigation as Accommodation*, 76 U.C. L.J. 511, 560 (2025) (explaining that “the institution of civil litigation” provides “a valuable forum in which individuals” promote their own interests while participating in an “essential public enterprise”).

51. *Litigation Tracker: Legal Challenges to Trump Administration Actions*, JUST SEC. (Nov. 24, 2025), <https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/> [<https://perma.cc/P8PU-ZNXU>] (tracking 561 cases as of Nov. 25, 2025).

52. Zoe Tillman & Christopher Cannon, *In Court, Trump Is Losing More than He's Winning*, BLOOMBERG (May 8, 2025), <https://www.bloomberg.com/graphics/2025-lawsuits-against-trump-administration/> [<https://perma.cc/8DY7-3PG5>].

53. *See* *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 766 F. Supp. 3d 39, 56 (D.D.C. 2025); *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 150 (D.D.C. 2025); *Schiff v. U.S. Off. of Pers. Mgmt.*, 784 F. Supp. 3d 380, 400–01 (D. Mass. 2025). In the *Doctors for America* litigation, plaintiffs initially obtained a temporary restraining order and subsequently won a permanent injunction and prevailed in part on summary judgment. *Doctors for Am.*, 766 F. Supp. 3d at 39; *Doctors for Am.*, 793 F. Supp. 3d at 150.

54. *See infra* Section IV.B.

55. *See, e.g.*, Anil Oza, *Harvard Medical Physicians Sue over Removal of Articles Mentioning 'LGBTQ' from Government Website*, STAT NEWS (Mar. 12, 2025), <https://www.statnews.com/2025/03/12/trump-dei-first-amendment-test-case-harvard-medical-physicians-aclu-challenge-hhs/> [<https://perma.cc/6TSE-C7XL>]; Melissa Quinn, *Judge Orders HHS, CDC and FDA to Restore Deleted Webpages With Health Information*, CBS NEWS (Feb. 12, 2025, at 9:33 ET), <https://www.cbsnews.com/news/judge-orders-hhs-cdc-fda-restore-deleted-webpages-health-information/> [<https://perma.cc/FC47-VXKF>].

examines the legal remedies that may be available to aggrieved individuals. It argues that the law most likely precludes monetary damages, but injunctive relief is a realistic and promising option.

I. HISTORICAL PERSPECTIVE: FEDERAL HEALTH AUTHORITIES AND TRUTHFULNESS

It is naïve to believe that government deception is a new phenomenon in the United States. One article by a well-respected scholar begins with the words: “Governments lie.”⁵⁶ History is rife with instances of hidden medical truths and outright falsehoods that hurt a multitude of Americans. The examples below are not directly analogous to Trump Administration policies. Some imposed direct physical and psychological harm on discrete groups of individuals, and not all of them involved official statements made on behalf of a government agency. But they all illustrate misconduct by government health authorities and demonstrate that it can be challenged. Many generated litigation, legal remedies, and policy shifts.

A. *Human Research Studies*

In several notorious cases, the federal government conducted research on human subjects that was abusive and reprehensible by modern standards. To achieve its objectives, the government deliberately withheld vital information from research participants, many of whom were members of vulnerable populations. As a consequence, participants unknowingly signed up for significant suffering with long lasting and even fatal adverse effects. In several of these cases, however, victims and their family members obtained judicial relief.

1. *The Tuskegee Syphilis Study*

The U.S. Public Health Service conducted the Tuskegee syphilis study from 1932 until 1972.⁵⁷ Involving six hundred Black men who were not asked to provide informed consent to their participation, the

56. Helen Norton, *The Government's Lies and the Constitution*, 91 IND. L.J. 73, 73 (2015).

57. *About the Untreated Syphilis Study at Tuskegee*, CTRS. FOR DISEASE CONTROL & PREVENTION: THE U.S. PUB. HEALTH SERV. UNTREATED SYPHILIS STUDY AT TUSKEGEE (Sep. 4, 2024), <https://www.cdc.gov/tuskegee/about/index.html> [<https://perma.cc/NA72-3DXA>]; see FRED D. GRAY, *THE TUSKEGEE SYPHILIS STUDY: THE REAL STORY & BEYOND* 14 (1998) (providing an overview of the Tuskegee syphilis study).

study was designed to examine the effects of untreated syphilis.⁵⁸ The researchers professed to treat the patients for their “bad blood” but did not provide them with penicillin, an antibiotic that is a fully effective cure for syphilis and was available as early as 1943.⁵⁹ The research participants therefore continued to suffer debilitating and deadly symptoms while believing that they were receiving adequate care.⁶⁰ Victims eventually sued under the Federal Tort Claims Act (“FTCA”)⁶¹ and obtained a \$10 million settlement from the U.S. government and an apology from President Bill Clinton.⁶² In addition, government experts developed ethics principles for research and robust research regulations.⁶³

2. *Sexually Transmitted Disease Experiments in Guatemala*

Between 1946 and 1948, the U.S. Public Health Service, with the cooperation of the Guatemalan government, conducted a now infamous study funded by the National Institutes of Health (“NIH”).⁶⁴ The 5,128 participants included members of many vulnerable populations, such as children, orphans, prostitutes, Guatemalan Indians, leprosy and mental health patients, prisoners, and soldiers, none of whom were asked to provide informed consent.⁶⁵ Health officials deliberately infected at least 1,308 of these individuals with syphilis, gonorrhea, and chancroid.⁶⁶ Many obtained no treatment for their diseases.⁶⁷ Moreover, in this case, none of the victims received any compensation from the U.S.

58. *The Untreated Syphilis Study at Tuskegee Timeline*, CTRS. FOR DISEASE CONTROL & PREVENTION: THE U.S. PUB. HEALTH SERV. UNTREATED SYPHILIS STUDY AT TUSKEGEE (Sep. 4, 2024), <https://www.cdc.gov/tuskegee/about/timeline.html> [<https://perma.cc/3PHN-SSVP>].

59. *Id.*; John Frith, *Syphilis - Its Early History and Treatment Until Penicillin and the Debate on its Origins*, 20 J. MIL. & VETERANS' HEALTH 49, 54 (2012).

60. See Ruqaiyah Yearby, *Exploitation in Medical Research: The Enduring Legacy of the Tuskegee Syphilis Study*, 67 CASE W. RESV. L. REV. 1171, 1172 (2017).

61. See *infra* Section IV.A.2; *Pollard v. United States*, 384 F. Supp. 304, 309–12 (M.D. Ala. 1974).

62. *About the Untreated Syphilis Study at Tuskegee*, *supra* note 57.

63. *The U.S. Public Health Service Untreated Syphilis Study at Tuskegee: Effects on Research*, CTRS. FOR DISEASE CONTROL & PREVENTION: THE U.S. PUB. HEALTH SERV. UNTREATED SYPHILIS STUDY AT TUSKEGEE (Sep. 4, 2024), <https://www.cdc.gov/tuskegee/about/effects-research.html> [<https://perma.cc/R29P-7U4X>].

64. Michael A. Rodriguez & Robert García, *First, Do No Harm: The US Sexually Transmitted Disease Experiments in Guatemala*, 103 AM. J. PUB. HEALTH 2122, 2122 (2013).

65. *Id.*

66. *Id.*

67. *Id.*; Susan S. Lee & Aurora J. Grutman, *Seeking Justice for Victims of the Guatemalan Sexually Transmitted Disease Experiments 1946-48*, 39 COLUM. J. GENDER & L. 54–55, 63–64 (2020).

government because the harm they suffered grew out of activities in a foreign country, and litigation was thus legally barred.⁶⁸ Government officials both failed to inform the subjects of the true nature of their experiments and chose not to disclose or publish their work.⁶⁹ The atrocity was unearthed by Susan Reverby, a Wellesley College professor who was researching the Tuskegee syphilis study.⁷⁰

3. *Radiation Experiments*

After detonating the atomic bombs in Japan, the U.S. government sought to understand the effects of nuclear warfare.⁷¹ To that end, with the support of the U.S. Atomic Energy Commission, the military placed thousands of soldiers in the vicinity of atomic detonations without informing them of potential health risks or obtaining informed consent.⁷²

Testing was not limited to military personnel.⁷³ Collaborating with prestigious academic institutions such as the University of Chicago and the University of California, researchers injected civilians with radioactive materials without seeking their informed consent.⁷⁴ Between April 1945 and July 1947, eighteen individuals received plutonium injections, six received uranium, five polonium, and at least one americium.⁷⁵

Government-funded human radiation studies continued into the 1970s.⁷⁶ For example, in one government-sponsored experiment, school children ate cereal laced with radioactive elements so that researchers could study the elements' pathway through the digestive system.⁷⁷ Other experiments involved different vulnerable populations, such as prisoners and pregnant women.⁷⁸

68. 28 U.S.C. § 2680(k); Lee & Grutman, *supra* note 67, at 72 (explaining that the Federal Tort Claims Act has a “‘foreign country exception,’ which, in effect, bars claims arising in foreign countries”).

69. Lee & Grutman, *supra* note 67, at 55, 63, 67.

70. *Id.* at 55.

71. Efthimios Parasidis, *Justice and Beneficence in Military Medicine and Research*, 73 OHIO ST. L.J. 723, 734 (2012).

72. *Id.*

73. *Id.* at 735.

74. *Id.*

75. *Human Radiation Experiments*, ATOMIC HERITAGE FOUND. (July 11, 2017), <https://ahf.nuclearmuseum.org/ahf/history/human-radiation-experiments/> [https://perma.cc/9E78-99WD].

76. Parasidis, *supra* note 71, at 735.

77. *Id.* at 735–36.

78. *Human Radiation Experiments*, *supra* note 75.

President Clinton established the Advisory Committee on Human Radiation Experiments in 1994.⁷⁹ The Committee found that between 1944 and 1974, the government intentionally released radiation into the environment hundreds of times in order to study weapons operation, equipment safety, or how radiation was dispersed into the environment.⁸⁰ These activities were not disclosed to the public.⁸¹ The Committee concluded that the “greatest harm from past experiments and intentional releases may be the legacy of distrust they created.”⁸²

At least some victims have obtained monetary compensation. In 1990, Congress passed the Radiation Exposure Compensation Act (“RECA”), which established a compensation program for injuries related to atmospheric nuclear testing and uranium industry employment.⁸³ In the ensuing years, the Department of Justice has awarded over \$2.6 billion to more than 41,000 claimants under RECA.⁸⁴ In addition, in 1996, the federal government settled a case brought by twelve individuals who were injected with radioactive materials for \$4.8 million.⁸⁵ The plaintiffs asserted a variety of constitutional claims, including violation of their substantive due process right to bodily integrity as a result of nonconsensual medical interventions.⁸⁶

B. Agent Orange

During the Vietnam War, the U.S. Airforce sprayed vast swaths of land with the herbicide Agent Orange in order to more easily spot enemy soldiers hiding in forests and to inflict starvation on the population.⁸⁷

79. *Advisory Committee on Human Radiation Experiments - Executive Summary*, GEO. BIOETHICS ARCHIVE, <https://bioethicsarchive.georgetown.edu/achre/final/summary.html> [<https://perma.cc/AS3S-P7CF>].

80. *Id.*

81. *Id.*

82. *Id.*

83. 42 U.S.C. § 2210 note (describing RECA’s purpose as “establish[ing] a procedure to make partial restitution” to parties injured by radiation produced as a result of government testing); SCOTT D. SZYMENDERA, CONG. RSCH. SERV., R43956, THE RADIATION EXPOSURE COMPENSATION ACT (RECA): COMPENSATION RELATED TO EXPOSURE TO RADIATION FROM ATOMIC WEAPONS TESTING AND URANIUM MINING 5 (2024); *Radiation Exposure Compensation Act*, U.S. DEP’T OF JUST. CIV. DIV., (July 10, 2025), <https://www.justice.gov/civil/common/reca> [<https://perma.cc/7JL3-QZUJ>].

84. SZYMENDERA, *supra* note 83, at 5.

85. *See In re Cincinnati Radiation Litig.*, 874 F. Supp. 796, 796–97 (S.D. Ohio 1995); Philip J. Hiltz, *U.S. to Settle for \$4.8 Million in Suits on Radiation Testing*, N.Y. TIMES (Nov. 20, 1996), <https://www.nytimes.com/1996/11/20/us/us-to-settle-for-4.8-million-in-suits-on-radiation-testing.html> [<https://perma.cc/U5F3-NHRD>].

86. *Cincinnati Radiation Litig.*, 874 F. Supp. at 810; *see infra* Section III.D (discussing substantive due process).

87. Leslie J. Reagan, *Representations and Reproductive Hazards of Agent Orange*, 39 J.L. MED. & ETHICS 54, 55 (2011) (“Agent Orange, named for the color of the stripe

Agent Orange exposure caused respiratory problems, chloracne (skin blistering), and cancers.⁸⁸ The substance contained the dioxin TCDD, which also caused miscarriages, stillbirths, and severe birth defects.⁸⁹ Experts consider TCDD to be “one of the most toxic chemicals known to man.”⁹⁰

In the aftermath of the Vietnam War, a multitude of veterans and their families brought claims for injuries suffered because of Agent Orange exposure.⁹¹ A class action that was filed against seven manufacturers and included millions of alleged victims settled out of court for \$180 million in 1984, the largest settlement amount in history at that time.⁹² The settlement created a fund that grew as it accrued interest and ultimately distributed \$197 million to 52,000 individuals and \$74 million to eighty-three social services organizations between 1988 and 1997.⁹³ Victims were not able to sue the federal government itself because the “Feres doctrine” prevents military personnel from suing for injuries sustained as an “incident to service.”⁹⁴ However, the Veterans Administration provides compensation to veterans with illnesses arising from Agent Orange exposure.⁹⁵

There is evidence that the U.S. government knew of the dangers of Agent Orange and TCDD but chose to use the substance nonetheless.⁹⁶ According to a *Chicago Tribune* article, “[a]s the U.S. military

on the drums holding it, induced extremely fast growth that killed plants and trees within two or three days.”).

88. *Id.* at 55.

89. *Id.*; Dennis Normile, *The Fog of War*, SCIENCE (Apr. 25, 2025), <https://www.science.org/content/article/vietnam-health-effects-agent-orange-remain-uncertain-50-years-later> [<https://perma.cc/9FMP-32K2>]. The technical name for the dioxin TCDD is 2,3,7,8-tetrachlorodibenzo-p-dioxin. *Id.*

90. John J. Kulewicz, *Agent Orange: The States Fight Back*, 44 OHIO ST. L.J. 691, 691–92 (1983) (citation omitted).

91. *Compensation: Agent Orange Settlement Fund*, U.S. DEP’T OF VETERANS AFFS., (June 21, 2025), <https://www.benefits.va.gov/compensation/claims-postservice-agent-orange-settlement-settlementFund.asp> [<https://perma.cc/2AZG-G4W3>].

92. *Id.*; Peter H. Schuck, *The Role of Judges in Settling Complex Cases: The Agent Orange Example*, 53 U. CHI. L. REV. 337, 341–42 (1986).

93. *Compensation: Agent Orange Settlement Fund*, *supra* note 91; Joseph P. Fried, *Judge Rules on Allocation of the Agent Orange Fund*, N.Y. TIMES (May 29, 1985), <https://www.nytimes.com/1985/05/29/nyregion/judge-rules-on-allocation-of-the-agent-orange-fund.html> [<https://perma.cc/6MG6-MKXK>].

94. *Feres v. United States*, 340 U.S. 135, 146 (1950).

95. *Agent Orange Exposure and Disability Compensation*, U.S. DEP’T OF VETERANS AFFS., (Sep. 16, 2025), <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/agent-orange/> [<https://perma.cc/7J3K-AVEM>].

96. Jack Anderson & Dale Van Atta, *Pattern of Denial on Agent Orange*, WASH. POST (Aug. 29, 1990), <https://www.washingtonpost.com/archive/lifestyle/1990/08/30/pattern-of-denial-on-agent-orange/3c9c270a-4c7b-4f5d-aa91-04fee5dcebc/> [<https://perma.cc/8R5T-H4C4>]; David Burnham, *Dow Says U.S. Knew Dioxin Peril of Agent*

aggressively ratcheted up its spraying of Agent Orange over South Vietnam in 1965, the government and the chemical companies that produced the defoliant knew it posed health risks to soldiers and others who were exposed.”⁹⁷ The Agent Orange saga is yet another example of government suppression of vital data to the detriment of countless people.

C. Death Panels

Not all past health information abuses involved the government inflicting actual bodily harm on individuals. Some caused injury in more indirect ways. One example is an episode related to the ACA. In 2009, former Alaska Governor and vice-presidential candidate Sarah Palin coined the term “death panels” to attack a provision of the ACA.⁹⁸ The provision at issue enabled Medicare to pay physicians for end-of-life discussions with patients to ensure that their care preferences would be followed.⁹⁹ But conservative opponents, including federal government officials, falsely claimed that rather than promoting autonomy and dignity, this provision authorized “death panels” to decide whether patients should receive treatment.¹⁰⁰ Thus, in one instance, Republican Senator Chuck Grassley declared to an Iowa audience, “We should not have a government program that determines you’re gonna pull the plug on Grandma.”¹⁰¹ By 2010, an astonishing forty-one percent of Americans believed the ACA included death panels.¹⁰²

In the face of this outcry, the provision authorizing Medicare payments for end-of-life counseling was eliminated from the law.¹⁰³ It was only years later, in 2015, that HHS finally authorized Medicare to pay for “advance care planning,” thus fulfilling the original ACA

Orange, N.Y. TIMES (May 5, 1983), <https://www.nytimes.com/1983/05/05/us/dow-says-us-knew-dioxin-peril-of-agent-orange.html> [<https://perma.cc/V56X-C7MW>].

97. Jason Grotto & Tim Jones, *Agent Orange’s Lethal Legacy: Defoliants More Dangerous than They Had to Be*, CHI. TRIB. (June 19, 2018), <https://www.chicagotribune.com/2009/12/17/agent-oranges-lethal-legacy-defoliants-more-dangerous-than-they-had-to-be-2/> [<https://perma.cc/ZM7J-4NZL>].

98. Don Gonyea, *From the Start, Obama Struggled with Fallout from a Kind of Fake News*, NPR (Jan. 10, 2017, at 16:08 ET), <https://www.npr.org/2017/01/10/509164679/from-the-start-obama-struggled-with-fallout-from-a-kind-of-fake-news> [<https://perma.cc/GL2D-P8MP>].

99. Drew Altman, *What “Death Panels” Can Teach Us About Health Misinformation*, KFF (July 16, 2024), <https://www.kff.org/from-drew-altman/what-death-panels-can-teach-us-about-health-misinformation/> [<https://perma.cc/NMV4-VMNE>].

100. Gonyea, *supra* note 98.

101. *Id.*

102. Altman, *supra* note 99.

103. *Id.*

goal.¹⁰⁴ In the meantime, however, countless seniors were deprived of an opportunity that may have eased their end-of-life experiences.

D. COVID-19

Government-generated misinformation proliferated during the COVID-19 pandemic. President Donald Trump admitted publicly that he recognized the threat of COVID-19 in February 2020, when the United States had fewer than 1,000 cases, but he opted to play it down to avoid causing panic.¹⁰⁵ There are noteworthy historical precedents for this approach. During the Spanish flu epidemic of 1918, President Wilson, who was worried about American morale during World War I, used the Espionage and Sedition Acts to silence newspapers that were trying to provide readers with accurate medical reports.¹⁰⁶ Likewise, although the CDC first became aware of AIDS cases in 1981, the Reagan Administration engaged in a “concerted policy of non-action” until 1987, when it finally took significant steps to raise public awareness about the deadly disease.¹⁰⁷

President Trump continued to falsely reassure the public that COVID-19 would quickly disappear and that the United States had an adequate supply of testing kits.¹⁰⁸ President Trump also made numerous

104. Jim Young, *Medicare to Pay for End-of-Life Discussions*, NBC NEWS (July 8, 2015, at 18:13 ET), <https://www.nbcnews.com/health/health-care/medicare-pay-end-life-discussions-n388941> [<https://perma.cc/63A5-7T6L>]; *MLN Fact Sheet: Advance Care Planning*, CTRS. FOR MEDICARE & MEDICAID SERVS., (March 2025), <https://www.cms.gov/files/document/mln-advanced-care-planning.pdf> [<https://perma.cc/9GEK-7VXY>].

105. Dareh Gregorian, *Trump Told Bob Woodward He Knew in February that COVID-19 Was ‘Deadly Stuff’ but Wanted to ‘Play it Down,’* NBC NEWS (Sep. 9, 2020, at 19:13 ET), <https://www.nbcnews.com/politics/donald-trump/trump-told-bob-woodward-he-knew-february-covid-19-was-n1239658> [<https://perma.cc/FTQ7-KKJG>]; H. Holden Thorp, *Trump Lied About Science*, SCIENCE (Sep. 18, 2020), <https://www.science.org/doi/10.1126/science.abe7391> [<https://doi.org/10.1126/science.abe7391>].

106. Carrie Cochran & Karen Rodriguez, *Fake News and the 1918 Flu*, SCRIPPS NEWS (July 24, 2024, at 12:36 ET), <https://www.scrippsnews.com/us-news/news-literacy/fake-news-and-the-1918-flu> [<https://perma.cc/39VR-CDV9>]; Robert Kessler, *Outbreak: Lies and Misinformation*, ECHOHEALTH ALL., <https://www.ecohealthalliance.org/2018/05/outbreak-lies-and-misinformation> [<https://perma.cc/5255-T9KG>]; *Spanish Flu and the First Amendment*, FIRST AMEND. MUSEUM, <https://firstamendmentmuseum.org/learn/spanish-flu-and-the-first-amendment/> [<https://perma.cc/3M5F-ZV98>].

107. Tasleem J. Padamsee, *Fighting an Epidemic in Political Context: Thirty-Five Years of HIV/AIDS Policy Making in the United States*, 33 Soc. HIST. MED. 1001, 1004, 1006 (2018).

108. Oliver Milman, *Seven of Donald Trump’s Most Misleading Coronavirus Claims*, GUARDIAN (Mar. 31, 2020, at 16:24 ET), <https://www.theguardian.com/us-news/2020/mar/28/trump-coronavirus-misleading-claims> [<https://perma.cc/B8YG-N72S>]; *Coronavirus: Trump Hopes US Will Shake off Pandemic by Easter*, BBC (Mar. 24, 2020), <https://www.bbc.com/news/world-us-canada-52029546> [<https://perma.cc/>].

discredited claims promoting “miracle cures” for the disease, such as the antimalarial drug hydroxychloroquine, disinfectants, and ultraviolet light.¹⁰⁹

Another unfortunate example of misinformation is early advice about masks. Dr. Anthony Fauci, former Director of the National Institute of Allergy and Infectious Diseases, who played a key role in pandemic response initiatives, acknowledged that initially, the public was advised not to wear masks because of concern that there was an inadequate supply of masks for health care providers.¹¹⁰ Masks later became a key tool for limiting disease spread.¹¹¹ Data concealment and misinformation propagated by the federal government undoubtedly cost lives during the COVID-19 pandemic.¹¹²

II. CONTEMPORARY HEALTH INFORMATION ABUSES

Several of the federal government’s past health information abuses were egregious and inflicted acute injuries on victims.¹¹³ Yet, prior data concealments and deceptions were confined to specific matters such as Agent Orange or COVID-19.¹¹⁴ Since 2025, we have faced an unprecedented, broad-based assault on medical truth. This attack comes in the form of a multitude of information purges, suppression efforts, and distortions. All of these methods hurt patients, clinicians, researchers, and policymakers who are accustomed to relying on sound

7QTW-SBHG] (reporting that President Trump stated: “We’re going to be opening relatively soon I would love to have the country opened up and just raring to go by Easter.”).

109. Sarah Boseley, *Hydroxychloroquine: Trump’s Covid-19 ‘Cure’ Increases Deaths, Global Study Finds*, GUARDIAN (May 22, 2020, at 12:32 ET), <https://www.ncbi.nlm.nih.gov/search/research-news/9896/> [<https://perma.cc/3B6S-SAWA>]; Sheryl Gay Stolberg & Noah Weiland, *Study Finds ‘Single Largest Driver’ of Coronavirus Misinformation: Trump*, N.Y. TIMES (Oct. 6, 2021), <https://www.nytimes.com/2020/09/30/us/politics/trump-coronavirus-misinformation.html> [<https://perma.cc/HWL6-TNCZ>].

110. Alexandra Kelley, *Fauci: Why the Public Wasn’t Told to Wear Masks When the Coronavirus Pandemic Began*, THE HILL (June 16, 2020), <https://thehill.com/changing-america/well-being/prevention-cures/502890-fauci-why-the-public-wasnt-told-to-wear-masks/> [<https://perma.cc/YTB8-FUMA>]; *Meet Anthony S. Fauci, M.D., Former Director of the National Institute of Allergy and Infectious Diseases*, NIH MEDLINEPLUS MAG. (Jan. 31, 2023), <https://magazine.medlineplus.gov/article/meet-anthony-s-fauci-m-d-former-director-of-the-national-institute-of-allergy-and-infectious-diseases> [<https://perma.cc/PQ8M-GRR3>].

111. Kelley, *supra* note 110.

112. Dean Obeidallah, *Trump’s Covid Lies Were a Tragedy. Were They Also a Crime?*, MSNBC (Jan. 27, 2021, at 14:58 ET), <https://www.msnbc.com/opinion/trump-s-covid-lies-were-tragedy-were-they-also-crime-n1255849> [<https://perma.cc/AG84-MFKN>].

113. *See supra* Part I.

114. *See supra* Part I.

and robust government resources.¹¹⁵ This Part provides a non-exhaustive discussion of each type of obstruction.

A. Information Purges

As used in this Article, the term “information purges” means the deliberate removal of documents, records, or other information from data collections. In response to Executive Order 14168 and OPM’s ill-defined guidance regarding “gender ideology,”¹¹⁶ the CDC removed more than 3,000 pages relating to HIV, LGBTQ health, and other topics from its website.¹¹⁷ A few examples are:

- The HIV index page, testing information, national surveillance reports, and datasets.
- Websites focused on the health of LGBTQ youth, including pages on their risk of suicide, those focused on creating safe schools for them, and a page focused on health disparities among them.
- The Youth Risk Behavior Surveillance System, which tracks U.S. high school students’ health behaviors.
- A food safety page called “Safer Food Choices for Pregnant People.”
- AtlasPlus, a tool for analyzing CDC data on HIV, sexually transmitted diseases, tuberculosis, and viral hepatitis.
- The Social Vulnerability Index, which helps researchers and public policy leaders identify communities that are vulnerable to the effects of disasters and public health emergencies.¹¹⁸

The heads of the Infectious Diseases Society of America and the HIV Medicine Association issued a joint statement regarding the

115. *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 146 (D.D.C. 2025); Caren Grown & Fred Dews, *The US Government Data Purge Is a Loss for Policymaking and Research*, BROOKINGS, (Mar. 21, 2025), <https://www.brookings.edu/articles/the-us-government-data-purge-is-a-loss-for-policymaking-and-research/> [<https://perma.cc/HW2F-WFTX>].

116. *See supra* notes 3–4.

117. Ethan Singer, *Thousands of U.S. Government Web Pages Have Been Taken Down Since Friday*, N.Y. TIMES (Feb. 3, 2025), <https://www.nytimes.com/2025/02/02/upshot/trump-government-websites-missing-pages.html> [<https://perma.cc/N3AM-8NMQ>] (reporting that overall, “[m]ore than 8,000 web pages across more than a dozen U.S. government websites have been taken down”); *Key CDC Health Websites Vanish Following Trump Orders*, NEUROLOGY ADVISOR (Feb. 6, 2025), <https://www.vaccineadvisor.com/news/key-cdc-health-websites-vanish-following-trump-orders/> [<https://perma.cc/4YML-235B>].

118. *Key CDC Health Websites Vanish Following Trump Orders*, *supra* note 117; *see also Doctors for Am.*, 793 F. Supp. 3d at 126 (discussing removed webpages).

data purges, asserting that “[a]ccess to this information is crucial for infectious diseases and HIV health care professionals who care for people with HIV and members of the LGBTQ community and is critical to efforts to end the HIV epidemic.”¹¹⁹ Many of the removed pages were restored by a temporary restraining order, but they feature the following tendentious statement:

Any information on this page promoting gender ideology is extremely inaccurate and disconnected from truth. The Trump Administration rejects gender ideology due to the harms and divisiveness it causes. This page does not reflect reality and therefore the Administration and this Department reject it.¹²⁰

Not all of the scrubbed material was included in the court order, and some remains unavailable.¹²¹

B. Information Suppression

The Trump Administration has targeted scientific publications with censorship, silencing, and intimidation. Funding cuts eliminated invaluable sources of information. The Trump Administration ended funding for the Patient Safety Network (“PSNet”), which features a collection of resources and training material aiming to reduce medical errors and promote patient safety.¹²² The project’s website ceased

119. Tina Tan & Colleen Kelley, *Removal of HIV- and LGBTQ-Related CDC Webpages*, INFECTIOUS DISEASES SOCIETY OF AM., <https://www.idsociety.org/news-publications-new/articles/2025/removal-of-hiv--and-lgbtq-related-cdc-webpages-creates-dangerous-gaps-in-scientific-information/> [<https://perma.cc/8QDA-7K7U>].

120. *Doctors for Am.*, 793 F. Supp. 3d at 128; see, e.g., *Social Vulnerability Index*, AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, (July 22, 2024), <https://www.atsdr.cdc.gov/place-health/php/svi/index.html> [<https://perma.cc/M5D5-RZCH>] (featuring the quoted statement at the top of the page). In the *Doctors for America* litigation, plaintiffs initially obtained a temporary restraining order and subsequently won a permanent injunction and prevailed in part on summary judgment. *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 766 F. Supp. 3d 39, 39–40 (D.D.C. 2025); *Doctors for Am.*, 793 F. Supp. 3d at 150.

121. *Doctors for Am.*, 793 F. Supp. 3d at 127; Larry Buhl, *Trump’s Massive Purge of HIV Health Data: What Was Lost, and Where to Find It*, THEBODYPRO (Mar. 5, 2025), <https://www.thebodypro.com/hiv/hiv-data-purge-2025-access-resources> [<https://perma.cc/3R9V-QP97>]; Alexander Tin, *Some CDC Health Data and Webpages Still Offline After Judge’s Order*, CBS NEWS (Feb. 13, 2025, at 9:36 ET), <https://www.cbsnews.com/news/some-cdc-health-data-webpages-still-offline-judge-order/> [<https://perma.cc/YD24-V3A8>] (listing several sources that were still unavailable at the time of this writing).

122. Jeremy Faust, *Patient Safety Network Abruptly Cut by Trump Administration*, MEDPAGE TODAY (Apr. 1, 2025), <https://www.medpagetoday.com/opinion/faustfiles/114913> [<https://perma.cc/VFL7-Z285>].

to be updated or maintained on March 24, 2025.¹²³ In addition, the administration planned to eliminate funding for two important open-access, peer-reviewed journals that the CDC publishes—*Emerging Infectious Diseases* and *Preventing Chronic Disease*.¹²⁴

CDC employees have complained that they cannot produce and distribute many of the newsletters and messages upon which health care providers and the public rely.¹²⁵ One CDC worker told a reporter: “We are functionally unable to operate communications” and added “[w]e feel like our hands are tied behind our backs.”¹²⁶

The CDC has also suppressed specific information that is inconsistent with the Trump Administration’s views.¹²⁷ In March of 2025, the CDC ordered staff not to release its experts’ findings that the risk of developing measles was high in areas near outbreaks with low vaccination rates.¹²⁸ A CDC spokesperson told *ProPublica* that the agency decided to withhold the assessment “because it does not say anything that the public doesn’t already know.”¹²⁹

Even the wording used by researchers and others engaged in scientific endeavors has been subject to scrutiny and censorship.¹³⁰ National Science Foundation (“NSF”) personnel examined thousands of projects to determine if they violate presidential orders relating to

123. *Patient Safety Network*, AGENCY FOR HEALTHCARE RSCH. & QUALITY, <https://psnet.ahrq.gov/> [<https://perma.cc/9FWJ-RAZ8>].

124. Catherine Offord, *Trump Administration Targets Academic Journals with Attorney Letter; Proposed Funding Cuts*, SCIENCE (Apr. 18, 2025, at 16:35 ET), <https://www.science.org/content/article/trump-administration-targets-academic-journals-attorney-letter-proposed-funding-cuts> [<https://doi.org/10.1126/science.zbt6r2>].

125. Chiara Eisner, *Diseases Are Spreading. The CDC Isn’t Warning the Public Like It Was Months Ago*, NPR (May 21, 2025, at 5:00 ET), <https://www.npr.org/2025/05/21/nx-s1-5387723/cdc-communications-cuts-social-media-public-health> [<https://perma.cc/6DPF-9LFS>].

126. *Id.* (stating that the CDC terminated almost all employees who were tasked with communicating with the press, providing records to the public, and running the agency’s digital media division).

127. Pien Huang & Will Stone, *Trump Administration Restricts CDC Research and Messaging with Layers of Oversight*, NPR (Feb. 14, 2025, at 13:55 ET), <https://www.npr.org/sections/shots-health-news/2025/02/13/nx-s1-5297177/cdc-scientists-publications-trump-administration> [<https://perma.cc/V5ZM-9VXR>].

128. Patricia Callahan, *The CDC Buried a Measles Forecast that Stressed the Need for Vaccinations*, PROPUBLICA (Mar. 28, 2025, at 16:35 ET), <https://www.propublica.org/article/measles-vaccine-rfk-cdc-report> [<https://perma.cc/C4F2-UJP9>].

129. *Id.*

130. Carolyn Y. Johnson, Scott Dance & Joel Achenbach, *Here Are the Words Putting Science in the Crosshairs of Trump’s Orders*, WASH. POST (Feb. 4, 2025), <https://www.washingtonpost.com/science/2025/02/04/national-science-foundation-trump-executive-orders-words/> [<https://perma.cc/XB25-GJXU>].

diversity, equity, and inclusion or the recognition of only two genders.¹³¹ NSF inspection was triggered by words such as “women,” “diverse backgrounds,” “institutional,” “historically,” “trauma,” “barrier,” “equity,” and “excluded.”¹³² In an opinion piece, the editors of six academic journals decried government censorship and asserted that “[b]y limiting how scientists can communicate their findings, these policies skew the evidence base that informs public health decisions.”¹³³

In addition, the administration has attempted to intimidate prestigious publications. In April 2025, Edward R. Martin Jr., a federal prosecutor, sent a letter to the prominent medical journals *CHEST*, *New England Journal of Medicine*, and *Obstetrics and Gynecology* asking how they handled “misinformation” and “competing viewpoints,” among other queries.¹³⁴ Some experts perceived the letter as an “effort to control academic inquiry and stifle scientific discourse” in abusive

131. *Id.*; Exec. Order No. 14,168, 90 Fed. Reg. 8615, 8615 (Jan. 20, 2025); *Trump’s Executive Orders on Diversity, Equity, and Inclusion, Explained*, THE LEADERSHIP CONF. ON CIV. AND HUM. RTS. (Feb. 12, 2025), <https://civilrights.org/resource/antideia-eos/> [<https://perma.cc/3U7S-TX34>].

132. Johnson, Dance & Achenbach, *supra* note 130; *see also* Connelly, *supra* note 8; Karen Yourish et al., *These Words Are Disappearing in the New Trump Administration*, N.Y. TIMES (Mar. 7, 2025), <https://www.nytimes.com/interactive/2025/03/07/us/trump-federal-agencies-websites-words-dei.html> [<https://perma.cc/47FH-PUM9>] (not specific to the NSF inspection).

133. Gonzalo Bearman et al., *Scientific Integrity Under Threat: The Role of the IDSA, PIDS, and SHEA Journals in an Evolving Political Landscape*, 80 CLINICAL INFECTIOUS DISEASES 937, 937 (2025), <https://academic.oup.com/cid/article/80/5/937/8120687> [<https://doi.org/10.1093/cid/ciaf136>].

134. Evan Bush, *Medical Journals Complain of ‘Harassment’ from Justice Department*, NBC NEWS (Apr. 25, 2025, at 17:31 ET), <https://www.nbcnews.com/science/science-news/medical-journals-complain-harassment-department-justice-rcna203091> [<https://perma.cc/PD4Y-KXDZ>]; Kristina Fiore, *Medical Journals Get Letters from DOJ*, MEDPAGE TODAY (Apr. 19, 2025), <https://www.medpagetoday.com/special-reports/exclusives/115180> [<https://perma.cc/M4PU-3FAY>]. The letter to *CHEST* asked the following questions:

- How do you assess your responsibilities to protect the public from misinformation?
- How do you clearly articulate to the public when you have certain viewpoints that are influenced by your ongoing relations with supporters, funders, advertisers, and others?
- Do you accept articles or essays from competing viewpoints?
- How do you assess the role played by government officials and funding organizations like the National Institutes of Health in the development of submitted articles?
- How do you handle allegations that authors of works in your journals may have misled their readers?

I am also interested to know if publishers, journals, and organizations with which you work are adjusting their method of acceptance of competing viewpoints. Are there new norms being developed and offered?

ways “to try to chill protected speech.”¹³⁵ Secretary Kennedy later threatened to bar NIH scientists from publishing in three top journals—the *New England Journal of Medicine*, the *Journal of the American Medical Association*, and *The Lancet*.¹³⁶ He claimed that the journals were “corrupt” because they published studies that were funded by drug manufacturers.¹³⁷ Secretary Kennedy ignored the fact that approximately seventy percent of clinical trials receive industry funding.¹³⁸

C. Distortions and Misinformation

Secretary Kennedy has routinely spread misinformation in what one expert called an “unprecedented assault on scientific truth that has adversely impacted public health in our nation.”¹³⁹ For example, Secretary Kennedy has stated that autism is caused by environmental exposure and denies the widely-accepted conclusion that it has a genetic component.¹⁴⁰ He has placed blame on childhood vaccines despite reliable evidence that they do not cause autism.¹⁴¹ In addition,

Letter from Edward R. Martin, Jr., U.S. Att’y, to Peter Mazzone, Editor-in-Chief, *CHEST J.*, DOCUMENTCLOUD (Apr. 14, 2025), <https://www.documentcloud.org/documents/25900701-chest-doj-letter/> [<https://perma.cc/E44N-UD6P>].

135. Fiore, *supra* note 134.

136. Chelsea Cirruzzo, *RFK Jr. Threatens to Bar Government Scientists from Publishing in Leading Medical Journals*, POLITICO (May 27, 2025, at 15:18 ET), <https://www.politico.com/news/2025/05/27/rfk-jr-nih-scientists-medical-journals-jama-lancet-nejm-00371349> [<https://perma.cc/VE96-8AUY>].

137. *Id.*

138. See X. Mona Guo & Emma L. Barber, *The Invisible Hand of Industry*, 65 CLINICAL OBSTETRICS & GYNECOLOGY 260, 261 (2022); Leonardo M. Siena et al., *Industry Involvement and Transparency in the Most Cited Clinical Trials, 2019-2022*, JAMA NETWORK OPEN (Nov. 14, 2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2811814> [<https://doi.org/10.1001/jamanetworkopen.2023.43425>] (reviewing “600 of the most-cited clinical trials published after 2018”).

139. Letter from Peter Marks, Dir., Ctr. for Biologics Evaluation & Rsch., U.S. Food & Drug Admin., to Sara Brenner, Acting Comm’r of Food & Drugs, U.S. Food & Drug Admin., DOCUMENTCLOUD (Mar. 18, 2025), <https://www.documentcloud.org/documents/25873243-peter-marks-resignation-letter/> [<https://perma.cc/NA3L-CZRU>].

140. Greg Laub, *Autism Science Leader Reacts to RFK Jr.’s Misinformation*, MEDPAGE TODAY (Apr. 22, 2025), <https://www.medpagetoday.com/pediatrics/autism/115223> [<https://perma.cc/WS5U-XPXV>].

141. Matthew Herper, *Here Is How We Know that Vaccines Do Not Cause Autism*, STAT NEWS (Feb. 3, 2025), <https://www.statnews.com/2025/02/03/vaccine-autism-rfk-jr-how-science-proves-vaccines-do-not-cause-autism/> [<https://perma.cc/RKZ5-25ZF>]; Melody Schreiber, *RFK Jr.’s Autism Comments Place Blame and Shift Research Responsibility to Parents, Critics Say*, GUARDIAN (May 12, 2025, at 7:00 ET), <https://www.theguardian.com/us-news/2025/may/12/rfk-jr-autism-comments-blame-parents> [<https://perma.cc/7YA9-T5T5>].

he promoted the unsubstantiated claim that taking Tylenol during pregnancy can cause one's baby to develop autism.¹⁴²

Other inaccuracies abound as well. Secretary Kennedy has been criticized for stating that “[w]hen [his] uncle [John F. Kennedy] was president [1961-63], 2 percent of American kids had chronic disease. Today, 66 percent have chronic disease.”¹⁴³ Yet, a study analyzing data from 1999–2018 found that approximately thirty percent of children had chronic diseases, though this too is a very alarming figure.¹⁴⁴ Without any scientific support, Secretary Kennedy stated in an interview with “Fox & Friends” that cellphones “produce electromagnetic radiation, which has been shown to do neurological damage to kids . . . and to cause . . . cancer.”¹⁴⁵ According to experts, cellphone radiation has not been shown to cause cancer or otherwise be harmful.¹⁴⁶

Most famously, Secretary Kennedy has disseminated false information about measles treatments and vaccinations. He has promoted the effectiveness of highly questionable therapies such as the antibiotic clarithromycin and Vitamin A.¹⁴⁷ His recommendations have already had adverse health effects. In West Texas, pediatric measles patients

142. Sunny Patel, *Does Tylenol Cause Autism? RFK Jr. Is Forcing America to Ask the Wrong Question*, TIME (Oct. 2, 2025, at 6:00 ET), <https://time.com/7322067/tylenol-autism-rfk-jr-science/> [<https://perma.cc/JMU7-5Q4E>]; Colin Poitras, *What the Research Says About Autism and Acetaminophen Use During Pregnancy*, YALE SCH. OF PUB. HEALTH (Sep. 23, 2025), <https://ysph.yale.edu/news-article/what-the-research-says-about-autism-and-tylenol-use-during-pregnancy/> [<https://perma.cc/8U3Z-W2JL>].

143. Glenn Kessler, *RFK Jr.'s Absurd Statistic on the Spike in Chronic Diseases in the U.S.*, WASH. POST (Apr. 25, 2025), <https://www.washingtonpost.com/politics/2025/04/25/rfk-jr-chronic-diseases-false/> [<https://perma.cc/RM4B-9JNJ>].

144. Enrique Rivero, *Pediatric Chronic Disease Prevalence Has Risen to Nearly 30% in the Last 20 Years*, UCLA HEALTH (Mar. 10, 2025), <https://www.uclahealth.org/news/release/pediatric-chronic-disease-prevalence-has-risen-nearly-30> [<https://perma.cc/D6BZ-GFZS>]; see also James M. Perrin, Sheila R. Bloom & Steven L. Gortmaker, *The Increase of Childhood Chronic Conditions in the United States*, 297 JAMA 2755, 2755 (2007) (“In 1960, only 1.8% of US children and adolescents were noted by their parents to have a limitation of activity due to a health condition of more than 3 months’ duration.”).

145. Aria Bendix, *Kennedy Praises Cellphone Bans in Schools, Citing Mix of Science and Misinformation*, NBC NEWS (Mar. 22, 2025, at 7:00 ET), <https://www.nbcnews.com/health/kids-health/kennedy-cell-phone-bans-schools-rcna197347> [<https://perma.cc/4JDE-T2RG>].

146. *Cell Phones and Cancer Risk*, NAT’L CANCER INST., <https://www.cancer.gov/about-cancer/causes-prevention/risk/radiation/cell-phones-fact-sheet> [<https://perma.cc/WFV2-FLUH>] (reviewed Apr. 4, 2024); Jennifer Henderson, *What Does the Science Say About Cell Phones and Cancer?*, MEDPAGE TODAY (Mar. 25, 2025), <https://www.medpagetoday.com/special-reports/features/114816> [<https://perma.cc/QD2M-SRP4>].

147. Maria Godoy, *RFK’s Vitamin A Recommendation for Measles Worries Disease Experts*, NPR (Mar. 6, 2025, at 17:43 ET), <https://www.npr.org/2025/03/06/nx-s1-5319161/rfks-vitamin-a-recommendation-for-measles-worries-disease-experts> [<https://perma.cc/KT5W-NA82>]; Kevin Griffis, *Why I Left My Job Leading Public Health Messaging for the CDC*, WASH. POST (Mar. 25, 2025), <https://www.washingtonpost.com>.

suffered liver damage because their parents gave them large amounts of cod liver oil (containing Vitamin A) to prevent or treat the disease.¹⁴⁸

Secretary Kennedy's statements about the measles, mumps, and rubella ("MMR") vaccine¹⁴⁹ have been distressingly inconsistent and often untrue. In April 2025, as public health officials identified a growing number of measles cases in a rising number states,¹⁵⁰ Secretary Kennedy encouraged Americans to obtain measles vaccines but simultaneously stated falsely that the vaccines provided only short-lived protection, and he has repeatedly and wrongly asserted that the measles vaccine is not safety-tested.¹⁵¹ Secretary Kennedy also embraces discredited claims that the vaccines contain "a lot of aborted fetus debris."¹⁵² He even incorrectly stated that the MMR vaccines cause deaths each year.¹⁵³

com/opinions/2025/03/25/rfk-hhs-cdc-public-health-misinformation-spread/ [https://perma.cc/87GE-XEC9].

148. Teddy Rosenbluth, *Remedy Supported by Kennedy Leaves Some Measles Patients More Ill*, N.Y. TIMES (Mar. 28, 2025), <https://www.nytimes.com/2025/03/25/health/measles-kennedy-vitamin-a.html> [https://perma.cc/R5ZY-2T6N].

149. See *Measles Vaccination*, CTRS. FOR DISEASE CONTROL & PREVENTION: MEASLES (RUBEOLA) (Jan. 17, 2025), <https://www.cdc.gov/measles/vaccines/index.html> [https://perma.cc/9A2Y-46UG] (explaining the vaccine and its benefits).

150. Jonathan Corum & Teddy Rosenbluth, *Tracking U.S. Measles Outbreaks*, N.Y. TIMES (Nov. 19, 2025), <https://www.nytimes.com/interactive/2025/health/measles-outbreak-map.html> [https://perma.cc/ET43-5JCJ].

151. Aria Bendix, *Robert F. Kennedy Jr. Falsely Claims Measles Vaccine Protection 'Wanes Very Quickly'*, NBC NEWS (Apr. 11, 2025, at 5:00 ET), <https://www.nbcnews.com/health/kids-health/health-secretary-rfk-jr-measles-vaccine-falsely-claims-wanes-rca200636> [https://perma.cc/RD6N-LFLQ]; Kristina Fiore, *Here's How We Know Vaccines Are Safe and Effective*, MEDPAGE TODAY (Mar. 15, 2025), <https://www.medpagetoday.com/special-reports/features/115588> [https://perma.cc/7TP3-6S9Q] (explaining that all new vaccines undergo placebo-controlled clinical testing prior to approval, but it is "unethical to do placebo-controlled studies when improving on vaccines that already exist, because that would deny control patients protection against preventable illness"); Sheryl Gay Stolberg & Christina Jewett, *Kennedy Advises New Parents to 'Do Your Own Research' on Vaccines*, N.Y. TIMES (Apr. 29, 2025), <https://www.nytimes.com/2025/04/29/us/politics/kennedy-vaccines-research.html> [https://perma.cc/HHF3-GHRC] (quoting Secretary Kennedy's claims that "[t]here's no safety studies at the outset, there's no surveillance system afterward" and that "[v]accines are the only medicine or medical product that is exempt from pre-licensing safety testing").

152. Jordan King, *RFK Jr Says Vaccine Contains 'Aborted Fetus Debris'*, NEWSWEEK (May 1, 2025, at 7:09 ET), <https://www.newsweek.com/rfk-jr-robert-f-kennedy-jr-vaccine-aborted-fetus-2066618> [https://perma.cc/RE9P-6MWU] (explaining that "[t]he MMR vaccine is produced using human cell lines that originated from two legal abortions in the 1960s but these cells are not present in the final vaccine"); Scarlett Salem, *Here's What to Know About the MMR Vaccine, Fetal Debris, and DNA*, MEDPAGE TODAY (July 10, 2025), <https://www.medpagetoday.com/special-reports/features/116451> [https://perma.cc/JYS4-FEK8].

153. Gregory Laub, *RFK Jr. Falsely Claims Measles Vax Causes Deaths 'Every Year'*, MEDPAGE TODAY (Mar. 14, 2025), <https://www.medpagetoday.com/infectiousdisease/vaccines/114662> [https://perma.cc/ST9Z-TJQ6].

According to the Infectious Disease Society of America, there have been no instances of MMR vaccine-caused deaths in healthy individuals.¹⁵⁴

Government officials' falsehoods have had adverse effects beyond measles as well. Expressions of concern about fluoride that lack evidence have led two states to ban water fluoridation.¹⁵⁵ This policy will be particularly injurious for disadvantaged populations with limited access to other sources of fluoride and dental care. Secretary Kennedy's removal of healthy children and pregnant women from the list of those for whom COVID-19 vaccines are recommended, a policy that is condemned by experts, may prevent many Americans from obtaining beneficial vaccines.¹⁵⁶ Those excluded from the recommended immunization schedule may be unable to obtain insurance coverage, absorb the out-of-pocket expense, or even find a clinician who is willing to give them the shot.¹⁵⁷

III. POTENTIAL VIOLATIONS OF LAW

Health information purges, suppression, and distortion can hurt all Americans and have catastrophic consequences for some. They have occurred in the past, they are occurring to a much greater extent in the present, and they will surely occur in the future. But do they constitute violations of any federal laws? This Part analyzes several laws and constitutional provisions that the government's health information abuses might contravene.

A. *The Administrative Procedure Act*

The APA, enacted in 1946, governs how administrative agencies propose and implement regulations, and it grants U.S. federal courts oversight powers over agency actions.¹⁵⁸ The APA aims to ensure fairness and accountability in the federal rulemaking process. It outlines procedures for rulemaking, adjudication, and judicial review of agency actions.¹⁵⁹

154. *Measles Vaccination: Know the Facts*, INFECTIOUS DISEASES SOC'Y OF AM., <https://www.idsociety.org/ID-topics/infectious-disease/measles/know-the-facts> [<https://perma.cc/5FF6-2CPY>] (acknowledging that “[t]here have been rare cases of deaths from vaccine side effects among children who are immune compromised, which is why it is recommended that they don't get the vaccine”).

155. See *supra* notes 32–36 and accompanying text.

156. See *supra* notes 19–31 and accompanying text.

157. See Rubin, *supra* note 30, at 470.

158. Christopher J. Walker, *The Lost World of the Administrative Procedure Act: A Literature Review*, 28 GEO. MASON L. REV. 733, 733–34 (2021).

159. *Id.*

The APA establishes that any “person suffering legal wrong because of agency action . . . is entitled to judicial review thereof.”¹⁶⁰ It thus provides a litigation pathway for private individuals to challenge government agency misconduct.

To be subject to judicial review, an agency action must be “final.”¹⁶¹ It cannot be preliminary or advisory, and it must determine “rights or obligations” and have “legal consequences.”¹⁶² Under the APA, a reviewing court is empowered to:

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law.¹⁶³

According to the Supreme Court, the APA obligates agencies to engage in “reasoned decisionmaking”¹⁶⁴ by examining relevant data and ensuring that they can justify any action they take.¹⁶⁵ Thus, agency decisions must be supported by sound factual evidence.¹⁶⁶ Agency actions may be invalidated as arbitrary and capricious “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency.”¹⁶⁷

160. 5 U.S.C. § 702. There is no private right of action when “statutes preclude judicial review” or “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a).

161. 5 U.S.C. § 704.

162. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (quoting *Port of Bos. Marine Terminal Ass’n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)).

163. 5 U.S.C. § 706 (2018).

164. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020).

165. *Id.* (noting that the Court must “assess only whether the decision was ‘based on a consideration of the relevant factors and whether there has been a clear error of judgment’”).

166. *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962) (stating that “[t]he agency must make findings that support its decision, and those findings must be supported by substantial evidence”).

167. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

One recent APA case, *Doctors for America v. U.S. Office of Personnel Management*, challenged HHS's removal and modification of webpages and datasets in early 2025 pursuant to Trump Administration information purging policies.¹⁶⁸ In partially granting plaintiffs' motion for summary judgment, a federal district court found that OPM's memo and HHS's guidance that established the policies¹⁶⁹ were arbitrary and capricious because they were not based on "reasoned decisionmaking."¹⁷⁰ Rather, they went well beyond what was required by Executive Order 14168 and gave government personnel inadequate time to make thoughtful decisions about data removal.¹⁷¹ A second case growing out of the 2025 information purging policies, *Schiff v. U.S. Office of Personnel Management*, was brought by two authors who asserted that removal of their papers from PSNet violated their First Amendment rights.¹⁷² In granting their motion for a preliminary injunction, the district court likewise held that OPM acted in an arbitrary and capricious manner when it issued its "Takedown Directive,"¹⁷³ with which agencies had to comply within two business days.¹⁷⁴ The court emphasized that "[w]holly absent from this process, it seems, was any consideration or reasoned explanation of what language 'promotes' or 'inculcates' gender identity or what information furthers the [Executive Order's] stated purpose of defending individuals it defines as 'women.'"¹⁷⁵

Another often complex APA question is what constitutes "agency action." The statute defines an "agency action" as "the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act."¹⁷⁶ It further defines an "order" as "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making."¹⁷⁷ Courts have interpreted the terms "agency action" and

168. 766 F. Supp. 3d 39, 46. See *infra* notes 383–92 and accompanying text for further details about the case. See *supra* notes 3–5 and accompanying text for discussion of Trump Administration information purging policies.

169. See *supra* notes 4–5 and accompanying text.

170. *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 144 (D.D.C. 2025).

171. *Id.*

172. 784 F. Supp. 3d 380, 384 (D. Mass. 2025); see *infra* notes 249–50 and accompanying text for further details about the case.

173. See *supra* note 4 and accompanying text.

174. *Schiff*, 784 F. Supp. 3d at 396.

175. *Id.*

176. 5 U.S.C. § 551(13) (2018).

177. *Id.* § 551(6).

“order” liberally.¹⁷⁸ Moreover, the Supreme Court has decreed that the APA “embodies the basic presumption of judicial review.”¹⁷⁹

In *Schiff*, the district court held that the removal of two papers from PSNet constituted “final agency action” for APA purposes.¹⁸⁰ It reasoned that the removal was the consummation of a decision-making process that determined rights and obligations.¹⁸¹ The *Doctors for America* court, however, disagreed, finding that the deletion of discrete items is not in itself a final agency action for APA purposes.¹⁸² It nevertheless ruled for plaintiffs, in part because it found that the OPM memo and HHS guidance fit very comfortably within the definition of “agency action.”¹⁸³

B. Federal Statutes Addressing Data Access and Integrity

The APA authorizes courts to invalidate agency actions that are contrary to law.¹⁸⁴ Several statutes furnish the American public with data access and transparency rights. None of them include private causes of action. That does not mean, however, that private parties cannot challenge violations of these laws. Rather, plaintiffs can use the APA as a litigation vehicle for statutory breaches.¹⁸⁵ Thus, the laws discussed below are important safeguards for Americans’ information rights.

178. See *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 478 (2001) (explaining that the word “action” is “meant to cover comprehensively every manner in which an agency may exercise its power”); *N.Y. Stock Exch. LLC v. SEC*, 2 F.4th 989, 992 (D.C. Cir. 2021) (noting that “an order is virtually any authoritative agency action other than a rule”).

179. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140 (1967) (stating that “judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress”); see also William N. Eskridge Jr. & John Ferejohn, *The APA as a Super-Statute: Deep Compromise and Judicial Review of Notice-and-Comment Rulemaking*, 98 NOTRE DAME L. REV. 1893, 1932 (2023) (recognizing that the APA contains “a presumption of prompt judicial review of rulemaking and other agency actions”).

180. *Schiff v. U.S. Off. of Pers. Mgmt.*, 784 F. Supp. 3d 380, 395 (D. Mass. 2025).

181. *Id.*

182. *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 141 (D.D.C. 2025). In its initial ruling granting a temporary restraining order, the court concluded that “defendants’ removals of the webpages and datasets likely constitute final agency actions.” *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 766 F. Supp. 3d 39, 52 (D.D.C. 2025). In its later opinion partially granting plaintiffs’ summary judgment motion, however, it changed its mind “with the benefit of additional briefing, and upon closer examination.” *Doctors for Am.*, 793 F. Supp. 3d at 141.

183. *Doctors for Am.*, 793 F. Supp. 3d at 138–41. See *supra* notes 4–5 and accompanying text for discussion of OPM memo and HHS guidance.

184. 5 U.S.C. § 706(2).

185. See *supra* note 160 and accompanying text.

1. *The Paperwork Reduction Act*

The PRA requires federal agencies to “ensure that the public has timely and equitable access to the agency’s public information.”¹⁸⁶ It also establishes that agencies must “provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products.”¹⁸⁷ According to HHS, “information dissemination products” include “any electronic document” or “web page.”¹⁸⁸

One relevant opinion addresses the PRA’s notice requirement with respect to contemporary health data practices. In granting a temporary restraining order, the *Doctors for America* district court held that CDC and HHS could not remove webpages that “guide medical practice, are essential to groundbreaking public health research, and are key to preventing disease outbreaks” without adequate notice.¹⁸⁹ Such information was “significant,” and the webpages were thus covered by the PRA.¹⁹⁰

2. *The Federal Records Act*

The FRA regulates the maintenance, disposal, and archiving of federal government records, including health-related documents.¹⁹¹ It requires federal agency heads to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency.”¹⁹² In addition, agency heads are obligated to develop record management policies, including procedures for identifying records that should be publicly available, posting these records online, and disposing of records of temporary value.¹⁹³ In doing so, they must cooperate with the Archivist of the United States.¹⁹⁴

186. 44 U.S.C. § 3506(d)(1) (2018).

187. *Id.* § 3506(d)(3).

188. *HHS Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated to the Public*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://aspe.hhs.gov/hhs-guidelines-ensuring-maximizing-disseminated-information> [<https://perma.cc/G752-B9PV>].

189. *Doctors for Am.*, 766 F. Supp. 3d at 52 (citation omitted).

190. *Id.*

191. Elaine M. Sedenberg & Deirdre K. Mulligan, *Public Health as a Model for Cybersecurity Information Sharing*, 30 BERKELEY TECH. L.J. 1687, 1722 (2015) (noting that “[t]he CDC complies with the Federal Records Act, which governs the retention, destruction, and archiving of federal records and . . . sets additional rules regarding retention of data collected for public health purposes”).

192. 44 U.S.C. § 3101 (2018).

193. *Id.* § 3102(2)–(3).

194. *Id.* § 3102(3).

The statute defines a “record” as recorded information that a federal agency creates or receives that is worthy of preservation “as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of [the] data.”¹⁹⁵ The definition explicitly includes digital information.¹⁹⁶ The FRA also establishes that agencies are to be bound by the Archivist’s determination as to whether information constitutes a record for statutory purposes.¹⁹⁷ Under the law, if an agency head does not take corrective action or is believed to be participating in noncompliance, the Archivist is to refer the matter to the U.S. Attorney General for recovery of the records.¹⁹⁸ Concealment, removal, or mutilation of federal documents or records can lead to fines and imprisonment of up to three years.¹⁹⁹

Several plaintiffs have been successful in challenging agency actions on FRA grounds while litigating their claims under the APA. *America First Legal Foundation v. Becerra* involved a CDC practice of deleting former employees’ emails within ninety days of their departure.²⁰⁰ The court found that this policy violated the FRA because the General Records Schedule 6.1, issued by the Archivist, required preservation of emails for at least three years.²⁰¹ Furthermore, the federal district court held that the Archivist violated her duties under the FRA by declining to seek enforcement assistance from the U.S. Attorney General.²⁰² Consequently, the court granted plaintiff’s motion for a preliminary injunction.²⁰³

Citizens for Responsibility and Ethics in Washington v. Department of Homeland Security involved the Department of Homeland Security’s (“DHS”) practice of periodically transferring large numbers of records to the White House and Office of the Vice President and then

195. *Id.* § 3301(a)(1)(A).

196. *Id.* § 3301(a)(2).

197. *Id.* § 3301(b).

198. *Id.* § 3106. The efficacy of this statutory intervention, of course, depends on the willingness of both the Archivist and the Attorney General to take corrective action.

199. 18 U.S.C. § 2071 (2018).

200. *Am. First Legal Found. v. Becerra*, No. CV 24-1092 (RC), 2024 WL 3741402, at *4 (D.D.C. Aug. 9, 2024).

201. *Id.* at *2, *9.

202. *Id.* at *8, *17.

203. *Id.* at *17. For a discussion of the difference between temporary restraining orders and preliminary injunctions, see Hon. Mark C. Dillon, *The Extent to Which “Yellowstone Injunctions” Apply in Favor of Residential Tenants: Who Will See Red, Who Can Earn Green, and Who May Feel Blue?*, 9 CARDOZO PUB. L. POL’Y & ETHICS J. 287, 292–307 (2011); Joshua L. Gablin, *Temporary Restraining Orders and Preliminary Injunctions*, NAT’L L. REV. (Mar. 5, 2025), <https://natlawreview.com/article/temporary-restraining-orders-and-preliminary-injunctions> [<https://perma.cc/7RK5-CRY8>].

deleting internal DHS copies of them.²⁰⁴ The court held that plaintiffs, who sought records relating to visitors to the White House and Vice President's residence,²⁰⁵ properly sued DHS and the Archivist under the APA to enforce the FRA requirement.²⁰⁶ Moreover, the Archivist was obligated to ask the U.S. Attorney General to initiate legal action to recover the deleted records.²⁰⁷

It follows that if HHS removes information of value to the public from its websites without justification and without following Archivist-approved procedures, the agency may well violate the FRA.

3. *The Federal False Statements Act*

The FFSA is a criminal law that prohibits knowingly and willfully making materially false statements or representations in matters within the jurisdiction of the executive, legislative, or judicial branch of the U.S. government.²⁰⁸ The statute is generally understood to apply to statements that civilians make *to* the federal government.²⁰⁹ But a plain reading of its language, which refers to “whoever” makes false assertions, does not preclude the law from applying to statements made *by* government officials.²¹⁰

The FFSA covers not only lies intended to influence government decisions to grant benefits or contracts, but also decisions regarding what matters the government will investigate and pursue.²¹¹ It follows that the law can potentially reach false statements by government officials that harm the public because they inappropriately divert government

204. *Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of Homeland Sec.*, 592 F. Supp. 2d 111, 120 (D.D.C. 2009).

205. *Id.* at 115.

206. *Id.* at 120–22.

207. *Id.* at 125–26.

208. 18 USC § 1001 (2018). The statute provides for potential monetary penalties and imprisonment for “whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.”

209. Helen Norton, *Lies and the Constitution*, 2012 SUP. CT. REV. 161, 193–94 (2012) (explaining that the Federal False Statements Act was enacted to protect the federal government from those seeking to “cheat or swindle” it).

210. *See supra* note 208 (providing overview of statutory language); Helen Norton, *Government Speech and the War on Terror*, 86 FORDHAM L. REV. 543, 560 (2017) (stating that the Federal False Statements Act “prohibits speakers, including but not limited to governmental speakers, from lying to federal officials”).

211. Norton, *supra* note 56, at 109.

resources from particular initiatives.²¹² For example, government officials' falsehoods about vaccine risks or efficacy may cause the CDC to change vaccine recommendations or defund vaccine projects and thus could potentially violate the FFSA.²¹³

C. *The First Amendment*

The First Amendment enshrines freedom of speech and freedom of the press in the U.S. Constitution.²¹⁴ The Supreme Court has emphasized that “constitutional protection does not turn upon ‘the truth, popularity, or social utility’” of proffered ideas, and generally, it even extends to false statements.²¹⁵ Consequently, the First Amendment is not an effective tool for combatting government falsehoods.²¹⁶ It is useful, however, for purposes of challenging health information purges and suppression.

Supreme Court jurisprudence has established that the First Amendment proscribes content-based and viewpoint discrimination.²¹⁷ Content-based discrimination is censorship based on subject-matter, and viewpoint discrimination is based on “the speaker’s specific motivating ideology, opinion, or perspective.”²¹⁸ For example, while a state may regulate commercial advertising, it may not prohibit advertising that is demeaning to men while allowing ads that are demeaning to women.²¹⁹ Likewise, a university may not deny funding to a student newspaper because of its “Christian editorial viewpoint.”²²⁰ In the words of now-Justice Elena Kagan, “the government may not restrict speech on the

212. *See id.*; *see also* United States v. Gilliland, 312 U.S. 86, 93 (1941) (“The amendment indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described.”).

213. *See* Julie Steenhuisen & Michael Erman, *Kennedy’s US Vaccine Panel Breaks Norms, Plans to Review Immunization Schedule*, REUTERS (June 26, 2025), <https://www.reuters.com/business/healthcare-pharmaceuticals/kennedys-us-vaccine-panel-set-break-norms-meant-ensure-sound-policy-2025-06-25/> [<https://perma.cc/HP7U-XB2B>].

214. U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech, or of the press. . . .”).

215. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271 (1964) (quoting *NAACP v. Button*, 371 U.S. 415, 445 (1963)).

216. *Id.* at 271–72 (“[E]rroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the ‘breathing space’ that they ‘need . . . to survive’” (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963))).

217. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387 (1992).

218. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 819–20 (1995) (quoting case syllabus).

219. *R.A.V.*, 505 U.S. at 388–89.

220. *Rosenberger*, 515 U.S. at 819, 831, 845.

basis of its own or the majority's view of what ideas are right or wrong, praiseworthy or shameful."²²¹

Under the First Amendment, barring exceptional circumstances, the government may not impose "prior restraints" on publications.²²² "Prior restraints" restrict speech before it occurs.²²³ The exceptions are narrow, including matters such as national security, incitement to violence, obscenity, fair trial protections, and licensure requirements.²²⁴ Exceptions to the prior restraint prohibition, therefore, are appropriate only when the speech may cause significant harm.²²⁵

The government's health information suppression efforts, consequently, may constitute a "prior restraint" that violates the First Amendment.²²⁶ Prohibiting authors from using particular words or addressing specific topics in publications growing out of federally funded research may well infringe upon free speech rights.²²⁷

The First Amendment similarly limits post-publication restraint.²²⁸ For example, the First Amendment precludes public officials from prevailing in defamation cases that challenge published material unless they can prove the offending statements were made with "actual malice."²²⁹

221. Elena Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. CHI. L. REV. 413, 431 (1996).

222. *Near v. Minnesota*, 283 U.S. 697, 701–02, 722–23 (1931) (invalidating a Minnesota law that allowed government officials to prevent the publication of "malicious, scandalous, and defamatory" newspapers, journals, and periodicals); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) ("Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity."); *N.Y. Times Co. v. United States* 403 U.S. 713, 714 (1971); Stephen R. Barnett, *The Puzzle of Prior Restraint*, 29 STAN. L. REV. 539, 539 (1977); Martin H. Redish, *The Proper Role of the Prior Restraint Doctrine in First Amendment Theory*, 70 VA. L. REV. 53, 53 (1984).

223. Peter Rathmell, Comment, "*The Enemy of the People*": *Suppressive Government Speech and Prior Restraint in the Era of Social Media*, 94 TUL. L. REV. 129, 133 (2019).

224. *Near*, 283 U.S. at 716; John Calvin Jeffries, Jr., *Rethinking Prior Restraint*, 92 YALE L.J. 409, 411–12 (1983); Redish, *supra* note 222, at 83–87; *First Amendment: Freedom of Speech Prior Restraint*, CONST. L. REP., <https://constitutionallawreporter.com/amendment-01/prior-restraint/> [<https://perma.cc/FAZ3-9577>].

225. Kagan, *supra* note 221, at 431 ("The critical inquiry is whether the government would have imposed the restriction in the absence of impermissible factors, solely on the basis of a neutral and legitimate evaluation of harm.")

226. *See supra* Section II.B. (discussing information suppression).

227. *See supra* notes 130–33 and accompanying text.

228. Philip A. Hamburger, *Getting Permission*, 101 NW. U. L. REV. 405, 413 (2007) ("[S]cholars and judges have extended the freedom of speech and the press to include a freedom from post-publication restraints.")

229. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964).

A particularly relevant illustration of an invalid post-publication restraint is found in *Board of Education, Island Trees Union Free School District No. 26 v. Pico*.²³⁰ The case addressed a board of education decision to remove certain books from junior high and high school libraries because the board deemed them to be “anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy.”²³¹ In a plurality opinion, the Supreme Court held that if the school board removed the books because it wished to deny students access to particular ideas, its conduct violated the First Amendment.²³²

The *Pico* decision is specific to the education setting.²³³ However, the Supreme Court stated more generally that the First Amendment does not permit government actors to “contract the spectrum of available knowledge.”²³⁴ Accordingly, Americans have a constitutional right to receive information both inside and outside of educational settings.²³⁵ The Supreme Court, in fact, has repeatedly reaffirmed the notion that the First Amendment protects “the free flow” of information and ideas.²³⁶ As a general principle, the government may not prevent willing speakers from conveying information to willing listeners.²³⁷

230. 457 U.S. 853 (1982).

231. *Id.* at 857.

232. *Id.* at 871. *But see* *Little v. Llano Cnty.*, 138 F.4th 834 (5th Cir. 2025) (en banc) (holding that public libraries exercise government speech, and thus the First Amendment does not limit their ability to remove books from their shelves based on their contents). *Little* is a Fifth Circuit rather than Supreme Court case, but it might portend future Supreme Court decisions.

233. Robert B. Keiter, *Judicial Review of Student First Amendment Claims: Assessing the Legitimacy-Competency Debate*, 50 MO. L. REV. 25, 30, 32 (1985).

234. *Pico*, 457 U.S. at 866 (quoting *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965)).

235. *Lamont v. Postmaster Gen.*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring) (“The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them.”). *But see infra* notes 300–02 (explaining that the Due Process Clause does not provide a right to receive information from unwilling speakers).

236. *See, e.g.*, *Hustler Mag. v. Falwell*, 485 U.S. 46, 50 (1988) (“At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern.”); *Associated Press v. United States*, 326 U.S. 1, 20 (1945) (emphasizing that the First Amendment mandates that “the government itself shall not impede the free flow of ideas”); *see also*, Barry P. McDonald, *The First Amendment and the Free Flow of Information: Towards a Realistic Right to Gather Information in the Information Age*, 65 OHIO ST. L.J. 249, 251 (2004) (explaining that the Court has focused “on the societal interest in maintaining a sufficient flow of information to the public about matters of social concern in order to foster our system of informed self-governance”).

237. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976) (“Freedom of speech presupposes a willing speaker.”); McDonald, *supra* note 236, at 271.

The matter is more complicated, however, when the speakers are government officials or when the speech venue is operated by the government. Unlike private individuals, public employees acting in their official capacity do not enjoy First Amendment protections and can be disciplined for their speech.²³⁸ Consequently, HHS personnel would not be able to rely on the First Amendment to resist efforts to censor or silence them in the workplace.

Private individuals may also face litigation barriers if they challenge removal of materials they contributed to government-sponsored websites that furnish publicly accessible resources, known as “limited public forums.”²³⁹ A prominent example of such a forum is PSNet.²⁴⁰ The Agency for Healthcare Research and Quality funded PSNet from April 2005 until March 2025, and a team from the University of California, Davis and the American Institutes for Research edited its content and selected items for inclusion based on specified criteria.²⁴¹

The government is not bound by the First Amendment prohibition against viewpoint discrimination when it is itself the speaker.²⁴² The “government speech doctrine” allows the government to express its own messages and choose the views it wishes to promote.²⁴³ Limited public forums, however, do not fall neatly into the government speech category because they contain material authored by private citizens.²⁴⁴

In the case of limited public forums, the government may impose content restrictions, but the restrictions must be “reasonable and viewpoint neutral.”²⁴⁵ Accordingly, even though limited public forums are government operated, public officials may not control their contents

238. *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

239. *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009) (“[A] government entity may create a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects.”); *Schiff v. U.S. Off. of Pers. Mgmt.*, 784 F. Supp. 3d 380, 392 (D. Mass. 2025) (“There is no dispute that, for First Amendment purposes, PSNet is a limited public forum.”); Freilich, *supra* note 12, at 1537 (highlighting “the ubiquity of government platforms for private, unvetted information”).

240. See *supra* note 122 and accompanying text; *About PSNet*, AGENCY FOR HEALTHCARE RSCH. & QUALITY, <https://psnet.ahrq.gov/about-psnet> [<https://perma.cc/CK6E-KE3H>].

241. *About PSNet*, *supra* note 240.

242. See *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 200 (2015) (holding that “Texas’s specialty license plate designs constitute government speech, and thus Texas was entitled to refuse to issue plates featuring” a Confederate battle flag (quoting case syllabus)); Kevin Francis O’Neill, *Viewpoint Discrimination*, FREE SPEECH CTR. (Mar. 31, 2025), <https://firstamendment.mtsu.edu/article/viewpoint-discrimination/> [<https://perma.cc/5CYX-AXC8>].

243. *Walker*, 576 U.S. at 207; Michael Kang & Jacob Eisler, *Rethinking the Government Speech Doctrine Post-Trump*, 2022 U. ILL. L. REV. 1943, 1945–47 (2022).

244. See *supra* notes 239–41 and accompanying text.

245. *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009).

in ways that are designed to suppress expression solely because they disagree with it.²⁴⁶ Furthermore, restrictions are not reasonable if they are unrelated to the purpose of the forum, such as PSNet’s purpose of promoting patient safety.²⁴⁷

Government censorship of health information and its deletion from websites and databanks can constitute First Amendment violations.²⁴⁸ Indeed, in March 2025, two Harvard Medical School professors filed a complaint alleging that removal of their articles from PSNet violated their First Amendment rights.²⁴⁹ According to the plaintiffs, the Agency for Healthcare Research and Quality engaged in impermissible viewpoint discrimination when it purged their articles because they contained the terms “LGBTQ” and “transgender.”²⁵⁰ All parties agreed that PSNet was a limited public forum because it featured private speech on a government online platform.²⁵¹ The defendants also conceded that their conduct constituted viewpoint discrimination but argued that it was not severe enough to violate the First Amendment.²⁵² The court indicated that it was puzzled about this defense, stating that defendants “offer no authority supporting this position, because there is none.”²⁵³ As discussed below, the plaintiffs were successful in obtaining a preliminary injunction in this case, *Schiff v. U.S. Office of Personnel Management*.²⁵⁴

D. Substantive Due Process

The Fifth Amendment of the U.S. Constitution prohibits the federal government from depriving individuals of “life, liberty, or property, without due process of law.”²⁵⁵ The Fourteenth Amendment extends this proscription to state governments.²⁵⁶ Due Process encompasses

246. *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 46 (1983); *Schiff v. U.S. Off. of Pers. Mgmt.*, 784 F. Supp. 3d 380, 393 (D. Mass. 2025).

247. *Schiff*, 784 F. Supp. 3d, at 395 (citing Memorandum of Law in Support of Motion for a Preliminary Injunction at 23, *Schiff v. U.S. Off. of Pers. Mgmt.*, 784 F. Supp. 3d 380 (D. Mass. 2025) (No. 25-cv-10595-LTS), ECF No. 26.).

248. *See supra* Section III.C.

249. *Schiff*, 784 F. Supp. 3d, at 385, 389.

250. *Id.* at 393–94. The two articles were entitled *Multiple Missed Opportunities for Suicide Risk Assessment* and *Endometriosis: A Common and Commonly Missed and Delayed Diagnosis*. Complaint at 1–2, 24, *Schiff v. U.S. Off. of Pers. Mgmt.*, 784 F. Supp. 3d 380 (D. Mass. 2025) (No. 25-cv-10595-LTS).

251. *Schiff*, 784 F. Supp. 3d, at 392–93, 394 n.6.

252. *Id.* at 394.

253. *Id.*

254. *See infra* notes 397–401 and accompanying text.

255. U.S. CONST. amend. V.

256. U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .”).

both procedural and substantive protections.²⁵⁷ Procedural rights require the government to adopt adequate processes, such as notice and hearings, before subjecting individuals to deprivations of life, liberty, or property.²⁵⁸ Substantive due process refers to constitutional rights that the government cannot violate even with procedural safeguards.²⁵⁹ Scholars have described substantive due process as one of the most elusive, controversial, and confusing areas of American law.²⁶⁰ Nevertheless, it is potentially a useful tool to challenge government health information abuses.

Professor Erwin Chemerinsky describes the elements of a substantive due process claim as follows: “First, there must be a deprivation, second, it must be of life, liberty or property, and third, it must be shown that the government did not have an adequate justification for its action.”²⁶¹ While this is a very useful framework, Fifth Amendment challenges to government misconduct in the health information arena will likely raise a variety of complications.

1. *Legislative vs. Executive Acts*

While many substantive due process cases focus on legislation that is allegedly unconstitutional, other cases focus on purportedly unconstitutional executive actions by government agencies or officials.²⁶² The constitutional test that the courts use for each type of case is different.²⁶³ The question of whether HHS data-related activities would be considered executive or legislative action has no clear answer.²⁶⁴

257. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (recognizing that the Fifth and Fourteenth Amendments’ Due Process clause “guarantees more than fair process” and “includes a substantive component that ‘provides heightened protection against government interference with certain fundamental rights and liberty interests’” (quoting *Washington v. Glucksberg*, 521 U.S. 702, 719–20 (1997))); Norton, *supra* note 56, at 90.

258. Leah M. Litman, *The New Substantive Due Process*, 103 TEX. L. REV. 564, 572 (2025).

259. *Id.*

260. Erwin Chemerinsky, *Substantive Due Process*, 15 TOURO L. REV. 1501, 1501 (1999); Rosalie Berger Levinson, *Reining in Abuses of Executive Power Through Substantive Due Process*, 60 FLA. L. REV. 519, 519 (2008).

261. Chemerinsky, *supra* note 260, at 1527.

262. Timothy M. Tymkovich, Joshua Dos Santos & Joshua J. Craddock, *A Workable Substantive Due Process*, 95 NOTRE DAME L. REV. 1961, 1964 (2020).

263. Lee Farnsworth, *Conscience Shocking in the Age of Trump*, 2020 WISC. L. REV. 805, 805 (2020).

264. *Id.* at 805 (“[T]here is the threshold problem of deciding what counts as ‘executive’ action.”).

The Eleventh Circuit has provided a useful explanation of the difference between executive and legislative action. In *McKinney v. Pate* the court asserted:

Executive acts characteristically apply to a limited number of persons (and often to only one person); executive acts typically arise from the ministerial or administrative activities of members of the executive branch. The most common examples are employment terminations.

Legislative acts, on the other hand, generally apply to a larger segment of—if not all of—society; laws and broad-ranging executive regulations are the most common examples.²⁶⁵

When HHS removes data or literature from its websites,²⁶⁶ its conduct can affect numerous viewers that rely on government information (rather than just one or a few individuals). Yet, while HHS may be *following* a policy or practice when it deletes information, the data removal does not constitute enactment of a statute or regulation; rather, it is an administrative task. It is thus uncertain whether a court engaging in a substantive due process analysis would categorize the alleged wrongdoing as executive or legislative action.²⁶⁷

Courts generally evaluate executive action (as opposed to legislative acts) under a “shocks the conscience” standard, which sets an extremely high bar for plaintiffs.²⁶⁸ What conduct is severe enough to meet the “shocks the conscience” substantive due process standard? One expert, Professor Rosalie Berger Levinson, explains that Supreme Court jurisprudence establishes that plaintiffs must prove “a breach of an affirmative duty and not merely a failure to act.”²⁶⁹ The misconduct

265. *McKinney v. Pate* 20 F.3d 1550, 1557 n.9 (11th Cir. 1994) (citations omitted); *see also* *Lewis v. Brown* 409 F.3d 1271, 1273 (11th Cir. 2005); *Littlejohn v. Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1242 (11th Cir. 2025).

266. *See supra* Section II.A (discussing data purges).

267. *See* Farnsworth, *supra* note 263, at 816–20 (discussing blurring of the “executive/legislative line”).

268. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (“[T]he cognizable level of executive abuse of power is that which shocks the conscience.”); *Christensen v. Cnty. of Boone*, 483 F.3d 454, 462 n.2 (7th Cir. 2007) (“When, as in the present case, a plaintiff complains of abusive executive action, this ‘conscience shocking’ test determines liability, rather than the traditional strict scrutiny standard used to measure the constitutionality of legislative acts”); Rosalie Berger Levinson, *Kingsley Breathes New Life into Substantive Due Process as a Check on Abuse of Government Power*, 93 NOTRE DAME L. REV. 357, 359 (2017); Tymkovich, Dos Santos & Craddock, *supra* note 262, at 1981.

269. Levinson, *supra* note 260, at 558.

must be egregious and must not be addressed by any other constitutional provision.²⁷⁰ Furthermore, the alleged abuse of power must cross the boundary separating an ordinary tort from a constitutional violation.²⁷¹ In *County of Sacramento v. Lewis*, the Court specified that “conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level.”²⁷²

A clear illustration is provided in *Rochin v. California*, which applied this standard to the behavior of deputy sheriffs who forcibly tried to extract two morphine capsules that the accused had just swallowed.²⁷³ When the officers were unsuccessful, they took the handcuffed man to a hospital, where they ordered a physician to administer an emetic solution through a tube into the defendant’s stomach, against his will, so that he would vomit and discharge the capsules.²⁷⁴ The Court found that “[t]his is conduct that shocks the conscience.”²⁷⁵

When legislative acts are at issue in substantive due process cases, courts apply a different standard of review. In this context, judicial analysis employs the strict scrutiny test, which focuses on whether the government had a compelling interest at stake and whether its conduct was narrowly tailored to achieve its goal.²⁷⁶ It is much more difficult for the government to prevail in strict scrutiny cases than in those utilizing the “shocks the conscience” standard.²⁷⁷

Courts apply strict scrutiny to litigation involving the violation of fundamental rights, as discussed below.²⁷⁸ If no fundamental right is at issue, courts use a “rational basis” test. This test requires the government to prove only that the challenged legislative act “bears a rational relation to some legitimate end.”²⁷⁹ This test is extremely favorable to the government.²⁸⁰

270. *Id.*

271. *Id.*; *Exec. 100, Inc. v. Martin Cnty.*, 922 F.2d 1536, 1541 (11th Cir. 1991).

272. *Cnty. of Sacramento v. Lewis*, 523 U.S. at 849. The Court found that a high-speed chase in pursuit of two teens, one of whom died as a result, did not shock the conscience because it was not intended to cause harm. *Id.* at 854–55.

273. 342 U.S. 165, 166 (1952).

274. *Id.*

275. *Id.* at 172.

276. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

277. See Farnsworth, *supra* note 263, at 814.

278. See *infra* Section III.D.2.

279. *United States v. Skrmetti*, 605 U.S. 495, 510 (2025) (quoting *Romer v. Evans*, 517 U.S. 620, 631 (1996)).

280. *Id.* (“We generally afford such laws ‘wide latitude’ under this rational basis review.”); Jeffrey D. Jackson, *Putting Rationality Back into the Rational Basis Test: Saving Substantive Due Process and Redeeming the Promise of the Ninth Amendment*,

2. *Infringement of a Fundamental Right*

To prevail in a strict scrutiny substantive due process case involving a legislative action, the plaintiff must first identify a fundamental right and prove that it is being infringed.²⁸¹ Likewise, in executive action cases, many courts require plaintiffs to prove that the government deprived them of a fundamental right.²⁸² The Supreme Court has recognized a variety of rights that are fundamental even though they are not explicitly identified in the U.S. Constitution.²⁸³ Several of these are relevant to health information because people exercising these rights need data upon which to base their decisions.

In *Cruzan v. Director, Missouri Department of Health*, the Supreme Court embraced the “principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment.”²⁸⁴ The Court confirmed the existence of a right to decline medical treatment in *Washington v. Glucksberg*, though it ruled that it did not extend to a constitutional entitlement to medical aid in dying.²⁸⁵

Professor Jessie Hill has argued for a broader understanding of the right to reject medical treatment.²⁸⁶ She advocates for recognition of a “constitutional right to protect one’s health,” which she believes is already suggested by Supreme Court precedent.²⁸⁷ Professor Hill does not believe that the right should be limitless, but rather that courts

45 U. RICH. L. REV. 491, 492 (2011) (observing that “a finding that a right is fundamental [and strict scrutiny applies] almost always leads to the conclusion that the law infringing it is invalid” but the rational basis test “almost always upholds the infringing law”).

281. *Glucksberg*, 521 U.S. at 720–21.

282. Tim Donaldson, *Federal Substantive Due Process Rights of Homeless Persons*, 58 U.S.F. L. REV. 39, 51–52 (2023); Farnsworth, *supra* note 263, at 814 (finding that “even where a fundamental right is not implicated, some circuit courts have applied the shocks-the-conscience test”); Rosalie Berger Levinson, *Time to Bury the Shocks the Conscience Test*, 13 CHAP. L. REV. 307, 320 (2010) (“Some appellate courts have ruled that absent a fundamental right, no substantive due process claim challenging executive action may be brought.”); *see, e.g.*, *Moran v. Clarke*, 296 F.3d 638, 651 (8th Cir. 2002) (Bye, J., concurring) (“In every case in which a plaintiff challenges the actions of an executive official under the substantive component of the Due Process Clause, he must demonstrate *both* that the official’s conduct was conscience-shocking . . . *and* that the official violated one or more fundamental rights”). *But see* Robert Chesney, *Old Wine or New: The Shocks-the Conscience Standard and the Distinction Between Legislative and Executive Action*, 50 SYRACUSE L. REV. 981, 999 (2000) (discussing cases in which courts appear to have focused on the “shocks the conscience” test without analyzing whether a fundamental right was at issue); Levinson, *supra* note 260, at 546.

283. Litman, *supra* note 258, at 572–73.

284. 497 U.S. 261, 278 (1990).

285. 521 U.S. 702, 720, 735 (1997).

286. Jessie Hill, *The Constitutional Right to Make Medical Treatment Decisions: A Tale of Two Doctrines*, 86 TEX. L. REV. 277, 278, 329 (2007).

287. *Id.* at 282, 329–32.

should balance patient autonomy against the government's legitimate regulatory and public health interests in each case.²⁸⁸

The Supreme Court has also spoken of a right to bodily integrity, which is closely associated with the right to reject medical treatment and the arguable right to protect one's health.²⁸⁹ But in the 2022 case of *Dobbs v. Jackson County Women's Health Organization*, the Court stunned reproductive health advocates by overturning *Roe v. Wade*²⁹⁰ and rejecting constitutional protection for abortion rights.²⁹¹ It ruled that there is no constitutional right to abortion, thus eliminating a long-recognized core component of bodily autonomy.²⁹² Nevertheless, the Court distinguished abortion from other existing liberty rights, such as those relating to sexual intimacy and contraception, emphasizing that abortion is different because it destroys fetal life.²⁹³ The right to bodily integrity, therefore, is not extinct. As recently as 2024, in a case related to the Flint water crisis, the Sixth Circuit reaffirmed that it believed the "right to bodily integrity is clearly established under the Due Process Clause of the Fourteenth Amendment."²⁹⁴

Another fundamental right for which health information access is vital is the right of parents to direct the upbringing of their children.²⁹⁵ This right is articulated in a series of Supreme Court cases. In *Meyer v. Nebraska*, for example, the Supreme Court struck down a Nebraska law that prohibited teaching students who have not completed the eighth grade a language other than English.²⁹⁶ The Court determined that the law contravened the constitutional right of parents to rear their children, including by controlling their education.²⁹⁷ In *Troxel v. Granville*, the Supreme Court invalidated a Washington state law that allowed any person to petition a court for an order permitting visitation with a child over a custodial parent's objection on the grounds that the visits would

288. *Id.* at 341.

289. *Winston v. Lee*, 470 U.S. 753, 761 (1985) (explaining that in Fourth Amendment cases, courts must consider "the extent of intrusion upon the individual's dignitary interests in personal privacy and bodily integrity"); *Planned Parenthood v. Casey*, 505 U.S. 833, 896 (1992) (addressing "the very bodily integrity of the pregnant woman").

290. 410 U.S. 113 (1973).

291. *Dobbs v. Jackson Cnty. Women's Health Org.*, 597 U.S. 215, 302 (2022).

292. *Id.* at 257, 302.

293. *Id.* at 231.

294. *Braziel v. Whitmer*, No. 23-1954, 2024 WL 3966238, at *5 (6th Cir. Aug. 28, 2024).

295. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Troxel v. Granville*, 530 U.S. 57 (2000).

296. *Meyer*, 262 U.S. at 400, 403.

297. *Id.* at 401.

be in the child's best interest.²⁹⁸ The Court declared that "the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."²⁹⁹

Finally, the Court has directly addressed the question of information access in the due process context but has not recognized it as a fundamental right. In a case arising from a broadcasting company's attempt to investigate conditions in a jail, the Supreme Court held that under both the First and Fourteenth Amendments, there is no "right of access to government information or sources of information within the government's control."³⁰⁰ Thus, while the First Amendment protects speech that willing speakers address to willing listeners,³⁰¹ the U.S. Constitution does not furnish a fundamental right to receive information from the government when it is an unwilling speaker.³⁰²

Plaintiffs can pursue substantive due process challenges even when no fundamental rights are at issue, but courts analyze such cases under the rational basis standard.³⁰³ Courts are thus empowered to invalidate any government action that is sufficiently irrational or arbitrary, though they generally eschew doing so.³⁰⁴

3. *Applicability to Health Information Abuses*

Prevailing in a substantive due process case arising from health information purges, suppression, or distortion would certainly be an uphill battle for plaintiffs. But it is not beyond the realm of possibility. As detailed above, substantive due process extends to abuses by government officials.³⁰⁵ Such abuses can include data obfuscation

298. *Troxel*, 530 U.S. at 60, 72–73.

299. *Id.* at 65.

300. *Houchins v. KQED, Inc.*, 438 U.S. 2, 15 (1978) ("The news media have no constitutional right of access to the county jail, over and above that of other persons, to interview inmates and make sound recordings, films, and photographs for publication and broadcasting by newspapers, radio, and television." (quoting case syllabus)).

301. See *supra* notes 234–37 and accompanying text.

302. *Houchins*, 438 U.S. at 1–2; *Zemel v. Rusk*, 381 U.S. 1, 17 (1965) ("The right to speak and publish does not carry with it the unrestrained right to gather information." (quoting case syllabus)); René L. Todd, Note, *A Prior Restraint by Any Other Name: The Judicial Response to Media Challenges of Gag Orders Directed at Trial Participants*, 88 MICH. L. REV. 1171, 1172 n.9 (1990) ("The Supreme Court has declined to interpret the first amendment as a right to force speech from an unwilling speaker . . .").

303. See *supra* notes 279–80 and accompanying text; B. Jessie Hill, *Due Process, Delegation, and Private Veto Power*, 108 IOWA L. REV. 1199, 1230–31 (2023).

304. Hill *supra* note 303, at 1230–31; Jackson, *supra* note 280, at 493 (urging that the rational basis test be strengthened).

305. Levinson, *supra* note 260, at 529; *Rochin v. California*, 342 U.S. 165, 172–73 (1952).

that imperils liberty rights without adequate justification.³⁰⁶ If HHS disseminates health-related falsehoods to the public or bars access to scientific research findings, its activities may impede individuals' ability to direct their children's upbringing, reject unwanted medical care, or protect their health (if the courts recognize such a right).³⁰⁷

Defendants may well argue that their conduct did not infringe on a fundamental right,³⁰⁸ as individuals could have obtained health information from other sources, and the government did not stop them from doing so. Health care organizations, such as the Cleveland Clinic and Mayo Clinic, provide a wealth of material.³⁰⁹ Furthermore, individuals can obtain access to removed government information through the Wayback Machine,³¹⁰ other archiving projects,³¹¹ and Freedom of Information Act requests.³¹²

Nevertheless, adults are often susceptible to misinformation,³¹³ especially when it is generated by trusted sources, which they may well consider the government to be.³¹⁴ For example, parents who decline to vaccinate their children against measles may do so solely because of baseless skepticism expressed by government officials, to the great detriment of their children's health.³¹⁵ If they trust the government

306. See Norton, *supra* note 56, at 90, 99.

307. See *supra* Section III.D.

308. See *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

309. See *Health Library*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health> [<https://perma.cc/G5HW-B5JM>] (allowing users to search for answers to their health questions); *Diseases & Conditions*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions> [<https://perma.cc/MS5C-W5JJ>] (enabling users to search for diseases and conditions).

310. *Wayback Machine*, INTERNET ARCHIVE, <https://web.archive.org/> [<https://perma.cc/2PRN-DW3J>] (establishing a digital archive that enables users to view websites as they previously appeared).

311. Scott J. Mulligan, *Inside the Race to Archive the U.S. Government's Websites*, MIT TECH. REV. (Feb 7, 2025), <https://www.technologyreview.com/2025/02/07/1111328/inside-the-race-to-archive-the-us-governments-websites/> [<https://perma.cc/7ZN3-9JCV>].

312. 5 U.S.C. § 552 (2018) (granting the public the right to obtain federal agency records, with some exceptions).

313. Laura D. Scherer & Gordon Pennycook, *Who Is Susceptible to Online Health Misinformation?*, 110 AM. J. PUB. HEALTH S276, S276 (2020) (explaining that vulnerability to misinformation depends on "(1) being confused about what is true versus false, suggesting that knowledge or various literacies are a primary factor; (2) having strong preexisting beliefs or ideological motivations that lead to motivated reasoning and therefore a desire to believe and share misinformation; and (3) neglecting to sufficiently reflect about the truth or accuracy of news content that is encountered on social media").

314. Ward van Zoonen, Vilma Luoma-aho & Matias Lievonon, *Trust but Verify? Examining the Role of Trust in Institutions in the Spread of Unverified Information on Social Media*, 150 COMPUTS. IN HUM. BEHAV. 1, 2 (2024).

315. See *supra* notes 15–16 and accompanying text.

and its well-publicized messaging, they would have no reason to look at alternative sources and may not even know where else to find reliable health information. The same is true for individuals who rely on government misinformation for purposes of their own care and consequently fail to make appropriate decisions about vaccination or disease treatments.³¹⁶

In addition, misinformation can create other barriers to care. Misguided changes to CDC vaccine recommendations may cause private and public insurers to stop covering immunizations such as COVID-19 shots.³¹⁷ Discontinuation of insurance payments could bar health care access for many, if not most, adults and children.³¹⁸

Recall that in substantive due process cases, courts will need to determine whether the conduct at issue constitutes executive action or legislative action.³¹⁹ If it is deemed executive action, plaintiffs must show that the government's activity "shocks the conscience."³²⁰ This is a very demanding but not insurmountable barrier for plaintiffs.³²¹ It is possible that sympathetic courts will find that instances of data sanitation and lies that led to avoidable human suffering meet the constitutional "shock the conscience" standard.

On the other hand, if a court determines that information abuses are more akin to legislative action and that they infringe upon a fundamental right, it will apply the strict scrutiny test.³²² In such instances, the government would need to defend its actions by proving that they are narrowly tailored to serve a compelling government interest.³²³ HHS may well find it difficult to show that ideologically-based information purges, suppression, or distortion promote a "compelling" goal. Moreover, it may not be able to explain why it eliminated hundreds or thousands of pages rather than redacting words or phrases that it deemed inappropriate in a much more targeted way.

If courts were to reject the argument that plaintiffs' fundamental rights were violated, they would apply the rational basis test and most likely rule for the federal government.³²⁴ Plaintiffs would have to show

316. See *supra* Section II.C (discussing government misinformation).

317. See *supra* notes 19–26 and accompanying text; Jennifer Kates, *ACIP, CDC, and Insurance Coverage of Vaccines in the United States*, KFF (June 13, 2025), <https://www.kff.org/other/issue-brief/acip-cdc-and-insurance-coverage-of-vaccines-in-the-united-states/> [https://perma.cc/4P9N-H3Z2].

318. See *supra* notes 27–30 and accompanying text.

319. See *supra* Section III.D.1.

320. See *supra* notes 268–72 and accompanying text.

321. See *supra* notes 269–75 and accompanying text.

322. See *supra* notes 276–78 and accompanying text.

323. *Id.*

324. See *supra* notes 303–04 and accompanying text.

that HHS' health information abuses were so illogical and arbitrary that the government had no rational basis for them, a difficult hurdle to surpass.³²⁵

IV. LITIGATION PATHWAYS

Americans are facing an unprecedented attack on medical truths under the current administration.³²⁶ Litigation may well be the only available tool to combat government health information abuses.³²⁷ Some physicians and professional medical organizations have already begun to use it successfully.³²⁸ These precedents could encourage others to join the battle.

This Part analyzes how aggrieved parties can pursue legal remedies. It concludes that the law bars plaintiffs from obtaining monetary damages.³²⁹ At the same time, there are a variety of means by which individuals may obtain injunctive relief and effectively stop targeted health information abuses.³³⁰

A. *The Improbability of Damages Awards*

Assume that parents fail to vaccinate their children for measles or another disease because of Secretary Kennedy's anti-vaccine rhetoric,³³¹ and the children contract the disease and become disabled or die. Or assume that a state bans fluoride from its water because of federal officials' anti-fluoride campaign and children in disadvantaged communities (with no other fluoride source) develop serious dental problems.³³² Would parents be able to sue for damages under these circumstances? Two potential litigation tools are *Bivens* claims and the FTCA. For the reasons discussed below, however, plaintiffs are very unlikely to obtain damages awards if they sue the federal government for health information abuses.

1. *Bivens Claims*

Bivens claims are lawsuits for damages brought against federal officers who allegedly violate constitutional rights when acting "under

325. *Id.*

326. *Trumping Science*, *supra* note 10, at 1105.

327. *See supra* notes 46–54 and accompanying text.

328. *See supra* notes 51–54 and accompanying text.

329. *See infra* Section IV.A.

330. *See infra* Section IV.B.

331. *See supra* notes 147–54 and accompanying text.

332. *See supra* notes 32–36 and accompanying text.

color of federal authority.”³³³ They stem from a Supreme Court decision, *Bivens v. Six Unknown Named Agents*, that permitted the award of damages in a Fourth Amendment unreasonable search and seizure case.³³⁴

Initially, it appeared that the *Bivens* doctrine could become the federal equivalent of 42 U.S.C. § 1983, which broadly enables plaintiffs to obtain money damages for state and local officials’ violation of their constitutional and federal statutory rights, but in practice, *Bivens* is not a viable litigation tool.³³⁵ The Supreme Court, has recognized a *Bivens* remedy in only three cases:³³⁶ (1) *Bivens* itself; (2) *Davis v. Passman*, a Fifth Amendment equal protection claim concerning a U.S. Congressman who fired the plaintiff because of her sex;³³⁷ and (3) *Carlson v. Green*, alleging that prison authorities failed to provide a deceased inmate with proper medical care for his asthma, in violation of the Eighth Amendment.³³⁸ The Supreme Court has emphasized that further “expanding the *Bivens* remedy is now considered a ‘disfavored’ judicial activity.”³³⁹

Consequently, it is extremely unlikely that future courts will be receptive to *Bivens* claims based on government health data abuses even if these lead to arguable violations of First Amendment or substantive due process rights.³⁴⁰ Consequently, plaintiffs would be ill advised to pursue *Bivens* claims related to health information.³⁴¹

333. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 388 (1971) (quoting case syllabus).

334. *Id.* at 389–90, 397–98.

335. Andrew Kent, *Are Damages Different?: Bivens and National Security*, 87 S. CAL. L. REV. 1123, 1126, 1141–44 (2014).

336. *Ziglar v. Abbasi*, 582 U.S. 120, 131 (2017) (“These three cases—*Bivens*, *Davis*, and *Carlson*—represent the only instances in which the Court has approved of an implied damages remedy under the Constitution itself.”).

337. 442 U.S. 228, 230–31 (1979).

338. 446 U.S. 14, 16–17 (1980).

339. *Ziglar*, 582 U.S. at 125, 155–56 (declining to extend *Bivens* claims to undocumented immigrants’ claims regarding cruel detention policies); *Egbert v. Boule*, 596 U.S. 482, 486–90 (2022) (declining to apply *Bivens* to a case alleging that a Border Patrol agent used excessive force against a bed and breakfast owner in violation of the Fourth Amendment and a related First Amendment retaliation claim); *see also* *Goldey v. Fields*, No. 24-809, slip op. at 1 (U.S. June 30, 2025) (per curiam) (“After 1980, we have declined more than 10 times to extend *Bivens* to cover other constitutional violations.”).

340. *See supra* Sections III.C., III.D.

341. *See Constitutional Remedies—Bivens Actions—Excessive Force—Retaliation—Egbert v. Boule*, 136 HARV. L. REV. 370, 379 (2022) (predicting that *Egbert* “is likely to have . . . [a] large impact on limiting the expansion of *Bivens* to new contexts”); Danielle C. Jefferis, *RIP Bivens*, 103 NEB. L. REV. 1, 11 (2024) (asserting that *Egbert* “has effectively put *Bivens* to rest in the lower courts”).

2. *The Federal Torts Claims Act*

The FTCA³⁴² allows individuals to sue the United States for torts attributable to federal employees acting within the scope of their employment. The law essentially waives the government's sovereign immunity³⁴³ in certain circumstances and makes it liable for its employees' negligence or wrongful acts, as though it were a private entity.³⁴⁴ The FTCA authorizes litigation only against the United States, not against individual public officials.³⁴⁵

The FTCA can be a very effective tool for redressing government misconduct. For example, victims of the Tuskegee syphilis study³⁴⁶ filed an FTCA class action, which settled for \$10 million.³⁴⁷ Plaintiffs have also prevailed in medical malpractice cases brought against the United States.³⁴⁸

Yet, plaintiffs challenging health information abuses under the FTCA would face considerable barriers. First, they would need to establish that the conduct at issue constitutes a tort (e.g., negligence). Furthermore, the FTCA has many exceptions that bar plaintiffs from litigating cases under the statute.³⁴⁹ These include an exemption for intentional torts, such as misrepresentation or deceit.³⁵⁰ Consequently, plaintiffs could not recover under the FTCA for claims that the government intentionally tried to injure them through misinformation.

The most significant hurdle for plaintiffs challenging federal data obfuscation practices would be the FTCA's discretionary function

342. 28 U.S.C. §§ 1346(b), 2671–2680 (2018).

343. *See supra* note 41 and accompanying text.

344. 28 U.S.C. § 1346(b) (providing for liability “under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred”); MICHAEL D. CONTINO & ANDREAS KUERSTEN, CONG. RSCH. SERV., R45732, *THE FEDERAL TORT CLAIMS ACT (FTCA): A LEGAL OVERVIEW* 5 (2023).

345. 28 U.S.C. § 1346(b); CONTINO & KUERSTEN, *supra* note 344, at 7.

346. *See supra* Section I.A.1.

347. *Pollard v. United States*, 384 F. Supp. 304, 309–12 (M.D. Ala. 1974); *About the Untreated Syphilis Study at Tuskegee*, *supra* note 57.

348. *See, e.g.*, *Brown v. United States*, No. 3:17CV551-TSL-LRA, 2019 WL 2146606 (S.D. Miss. May 16, 2019) (involving injuries suffered during a medical procedure and settling for \$12,500,000); *VA & Military Medical Malpractice Case Results*, ARCHULETA L. FIRM, <https://militarymedicalmalpractice.net/case/brown-v-united-states/> [<https://perma.cc/B7TY-UH8U>] (reporting settlement in *Brown*); *Jackson v. United States*, No. 1:18 CV 9 ACL, 2019 WL 7343442 (E.D. Mo. Dec. 30, 2019) (alleging that Department of Veterans Affairs physicians negligently failed to timely diagnose plaintiff's prostate cancer).

349. 28 U.S.C. § 2680; CONTINO & KUERSTEN, *supra* note 344, at 16–17.

350. *Levin v. United States*, 568 U.S. 503, 507 (2013); 28 U.S.C. § 2680(h).

exception.³⁵¹ This provision establishes that the FTCA does not authorize litigation with respect to “[a]ny claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation . . . or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty.”³⁵² To determine the applicability of the discretionary function exception to a given case, courts examine whether the federal employee’s conduct was (1) discretionary and (2) policy driven.³⁵³

In evaluating the discretionary nature of an action, courts focus on whether it involved “an element of judgment or choice.”³⁵⁴ If a federal statute, regulation, or policy precisely dictates the employee’s course of action, the exception does not apply because the individual could not exercise judgment in that instance.³⁵⁵ For example, in *Phillips v. United States*, the Eleventh Circuit rejected the applicability of the discretionary function exception when a contractor fell from scaffolding at a U.S. Air Force base construction site.³⁵⁶ The decision relied on the fact that Army Corps personnel had failed to follow instructions found in the Corps’ own safety manual.³⁵⁷

As to the second prong of the inquiry, courts determine whether the action at issue was “grounded in social, economic, [or] political policy.”³⁵⁸ The key question is not whether the decision was *actually* based on policy considerations, but rather whether it was “susceptible to policy analysis.”³⁵⁹ The discretionary function exception is available even when government officials exercise discretion erroneously and contrary to true policy goals.³⁶⁰ When the wrongdoing is not policy-related, however, the exemption does not apply. To illustrate, in *Whisnant v. United States*, the Ninth Circuit rejected the discretionary function defense when the government was accused of allowing toxic mold to grow on meat in a naval base commissary, which sickened the

351. 28 U.S.C. § 2680(a); *Martin v. United States*, 605 U.S. 395, 401 (2025) (discussing the discretionary function exception).

352. 28 U.S.C. § 2680(a).

353. *See, e.g.*, *Garling v. EPA*, 849 F.3d 1289, 1295 (10th Cir. 2017); *Gordo-González v. United States*, 873 F.3d 32, 36 (1st Cir. 2017).

354. *Berkovitz v. United States*, 486 U.S. 531, 536 (1988).

355. *Id.*

356. 956 F.2d 1071, 1072–73 (11th Cir. 1992).

357. *Id.* at 1076–77.

358. *Berkovitz*, 486 U.S. at 537 (quoting *United States v. Varig Airlines*, 467 U.S. 797, 798 (1984)).

359. *GATX/Airlog Co. v. United States*, 286 F.3d 1168, 1174 (9th Cir. 2002).

360. *United States v. Gaubert*, 499 U.S. 315, 338 (1991) (Scalia, J., concurring in part); 28 U.S.C. § 2680(a) (establishing that the exception applies “whether or not the discretion involved be abused”).

plaintiff.³⁶¹ The court determined that maintaining a safe and healthy environment in a grocery store is not the type of policy choice that the discretionary function exception contemplates.³⁶²

The discretionary function exception is broad and often constitutes a potent defense for the federal government.³⁶³ The United States has employed it successfully in cases involving radiation exposure, asbestos, Agent Orange, and more.³⁶⁴ Courts have held that the government was exercising discretionary functions when it failed to warn of the consequences of exposure to nuclear radiation, field-tested Agent Orange, and stockpiled asbestos, as well as when it failed to issue warnings about asbestos harms or to provide safety equipment and training to those handling the substance.³⁶⁵

There is a vanishingly small chance that plaintiffs challenging health data obfuscation by the federal government would prevail in an FTCA case. Courts would almost surely determine that HHS decisions to bar public access to health-related resource material, censor the content of published documents, or make highly dubious statements about medical matters constitute exercises of discretionary functions no matter how wrong-headed they are.³⁶⁶ The decisions would most likely be viewed as involving “an element of judgment or choice” and “susceptible to policy analysis.”³⁶⁷ The discretionary function exception would thus shield the government from FTCA liability.

B. *The Greater Promise of Injunctive Relief*

With monetary damages out of reach, litigants will be left to pursue injunctive relief, which they are much more likely to obtain. The APA waives sovereign immunity and permits private parties to bring actions for equitable relief (but not for damages) against government agencies or their employees who act in their official capacities.³⁶⁸ This waiver

361. *Whisnant v. United States*, 400 F.3d 1177, 1179 (9th Cir. 2005).

362. *Id.* at 1183.

363. See Richard H. Seamon, *Causation and the Discretionary Function Exception to the Federal Tort Claims Act*, 30 U.C. DAVIS L. REV. 691, 700–01 (1997).

364. *Id.* at 694–95; *Lively v. United States*, 870 F.2d 296, 297–98 (5th Cir. 1989); *In re Consol. U.S. Atmospheric Testing Litig.*, 820 F.2d 982, 983–84, 992–97 (9th Cir. 1987); *In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 194, 199–201 (2d Cir. 1987).

365. See *supra* note 364.

366. See *supra* Part II.

367. See *supra* notes 354, 359 and accompanying text.

368. 5 U.S.C. § 702 (2018) (“An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States . . .”).

applies to all non-monetary claims, not only to those brought under the APA.³⁶⁹

Plaintiffs seeking preliminary injunctions must establish that (1) they are likely to prevail on the merits, (2) they are likely to suffer irreparable harm without preliminary relief, (3) the “balance of equities tips” in their favor, and (4) an injunction will promote the public interest.³⁷⁰ The standard for permanent injunctions is essentially identical, though plaintiffs must actually succeed on the merits.³⁷¹

The threshold question in any injunctive relief case is whether plaintiffs have standing to sue.³⁷² Standing, which requires that plaintiffs have a personal stake in the outcome of the case, is thus the initial component of the likelihood of success on the merits inquiry.³⁷³ To meet the irreparable harm requirement, plaintiffs must show that they will suffer actual harm for which monetary damages could not subsequently compensate.³⁷⁴ Additionally, the harm must be ongoing rather than experienced only in the past.³⁷⁵ An example of harm that justifies judicial intervention is the violation of constitutional rights.³⁷⁶ The balance of equities factor refers to how granting or withholding injunctive relief will affect each party.³⁷⁷ Courts have struggled to

369. *Clark v. Libr. of Cong.*, 750 F.2d 89, 102 (D.C. Cir. 1984) (“With respect to claims for non-monetary relief, the 1976 amendments to § 702 of the Administrative Procedure Act, 5 U.S.C. § 702, eliminated the sovereign immunity defense in virtually all actions for non-monetary relief against a U.S. agency or officer acting in an official capacity.”); Jerome A. Madden, *Look Before You Leap! Suing the United States: A Lawyer’s Guide to Injunctive and Declaratory Relief*, THE FED. LAW., Dec. 2017, at 47.

370. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024).

371. *Winter*, 555 U.S. at 32.

372. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024).

373. *Id.* at 379; *Barton v. Dist. of Columbia*, 131 F. Supp. 2d 236, 243 n.6 (D.D.C. 2001).

374. *Wisconsin Gas. Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (“[T]he injury must be both certain and great; it must be actual and not theoretical” and “economic loss does not, in and of itself, constitute irreparable harm.”).

375. *O’Shea v. Littleton*, 414 U.S. 488, 495–96 (1974) (“Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects”); *Schiff v. U.S. Off. of Pers. Mgmt.*, 784 F. Supp. 3d 380, 397 (D. Mass. 2025).

376. *Schiff*, 784 F. Supp. 3d at 397 (“[T]he plaintiffs’ strong showing that the removal of their commentaries worked a violation of their First Amendment rights eliminates the need for further examination of irreparable harm.”); Anthony DiSarro, *A Farewell to Harms: Against Presuming Irreparable Injury in Constitutional Litigation*, 35 HARV. J.L. & PUB. POL’Y 743, 744 (2013) (“[M]ost federal circuit courts have held that irreparable injury should be presumed in constitutional cases.”).

377. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

conceptualize the public interest factor and generally merge it with the balance of equity element when the government is the defendant.³⁷⁸

1. APA Claims

Aggrieved individuals may sue under the APA, asking courts to review final government actions.³⁷⁹ Reviewing courts can both compel agencies or officials to take particular actions and set aside improper government deeds on grounds that they are arbitrary and capricious, unconstitutional, or unlawful.³⁸⁰ Accordingly, plaintiffs could utilize the APA to seek judicial intervention to address HHS violations of the APA itself, as well as of the PRA, the FRA, the FFSA, the First Amendment, and substantive due process.³⁸¹

Indeed, plaintiffs are already using the APA as a dependable litigation instrument to challenge HHS activities.³⁸² As illustrated below, plaintiffs have succeeded in obtaining injunctive relief in two recent APA cases involving health information abuses.

a. Standing

In *Doctors for America v. U.S. Office of Personnel Management*, a district court found that a physician advocacy organization, Doctors for America (“DFA”), had standing under the APA to challenge HHS’s removal and modification of webpages and datasets in early 2025.³⁸³ At least three DFA members had regularly relied on CDC materials to do their work before the pages and data were expunged.³⁸⁴ The court ruled that the physicians had established “a direct line from action (deprivation of materials) to injury (obstacles to treating their patients)” and that this harm was adequate for standing purposes.³⁸⁵

378. *Nken v. Holder*, 556 U.S. 418, 435 (2009); M Devon Moore, Note, *The Preliminary Injunction Standard: Understanding the Public Interest Factor*, 117 MICH. L. REV. 939, 940, 952–54 (2019).

379. 5 U.S.C. § 702 (2018); *id.* § 704.

380. *Id.* § 706.

381. *See supra* Part III.

382. *See, e.g.*, Complaint for Declaratory & Injunctive Relief, *supra* note 31, at 36–39 (challenging Robert F. Kennedy Jr.’s new vaccination recommendations regarding children and pregnant women).

383. *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 766 F. Supp. 3d 39, 47–49 (D.D.C. 2025); *Doctors for Am. v. U.S. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 135–36 (D.D.C. 2025).

384. *Doctors for Am.*, 793 F. Supp. 3d at 132–33.

385. *Doctors for Am.*, 766 F. Supp. 3d at 49.

b. Irreparable Harm

The *Doctors for America* court addressed the irreparable harm element of the analysis at the temporary restraining order stage. It found that DFA members would suffer irreparable harm if the webpages in question were not restored.³⁸⁶ One physician attested that she could not treat a chlamydia outbreak at a high school as effectively as she would like to in the absence of timely and responsive CDC guidance.³⁸⁷ Another physician reported that in the high-pressure and time-restricted environment of a federally qualified health clinic, she could not treat patients efficiently without the readily available CDC resources to which she was accustomed.³⁸⁸ Consequently, the plaintiffs established that they would suffer irreparable harm absent injunctive relief and obtained a temporary restraining order pursuant to the APA.³⁸⁹

c. Balance of Equities and Public Interest

To complete its analysis at the temporary restraining order stage, the *Doctors for America* court determined that the balance of equities and public interest supported a decision in favor of the plaintiffs.³⁹⁰ The government's only burden would be that of restoring access to materials that it already had and that were previously available.³⁹¹ By contrast, clinicians and researchers would be forced to operate "without up-to-date recommendations on managing infectious diseases, public health threats, essential preventive care and chronic conditions," and ordinary Americans would suffer the consequences.³⁹²

The *Doctors for America* decision may serve as a precedent for future challenges to information purges, suppression, and distortion under the APA. Like the *Doctors for America* plaintiffs, future plaintiffs would need to establish that they have standing to sue, will suffer irreparable harm in the absence of judicial intervention, and meet the

386. *Id.* at 53–55.

387. *Id.* at 54. The court cited *Sai v. Transp. Sec. Admin.*, 54 F. Supp. 3d 5, 10 (D.D.C. 2014) and *Wash. Post v. Dep't of Homeland Sec.*, 459 F. Supp. 2d 61, 75 (D.D.C. 2006) for the proposition that the irreparable harm showing can be met when plaintiffs are deprived of time-sensitive information or data relevant to a current, time-limited event.

388. *Doctors for Am.*, 766 F. Supp. 3d at 55. The court allowed the temporary restraining order to expire but later granted the plaintiffs partial summary judgment and a permanent injunction. *Doctors for Am.*, 793 F. Supp. 3d at 130, 150.

389. *Doctors for Am.*, 766 F. Supp. 3d at 56.

390. *Id.* at 55–56.

391. *Id.* at 56.

392. *Id.*

other injunctive relief requirements.³⁹³ In addition, plaintiffs would have to prevail on the merits or, in the case of preliminary relief, show they are likely to prevail on the merits.³⁹⁴ This would depend on the particular facts of each case. If the government's challenged activities resemble those of HHS early in the Trump Administration, the APA should serve as a promising litigation vehicle.

C. Constitutional Violations

Plaintiffs may seek relief for First Amendment and substantive due process violations under the APA.³⁹⁵ But they can also pursue injunctions to address constitutional violations directly without relying on the APA.³⁹⁶

In *Schiff v. U.S. Office of Personnel Management*, two authors who had papers removed from PSNet sought a preliminary injunction based on a violation of their First Amendment rights.³⁹⁷ The court noted that the violation of First Amendment rights automatically satisfies the irreparable harm requirement for injunctive relief, as do all violations of a constitutional right.³⁹⁸ Likewise, the balance of harms and public interest queries favored the authors. A ruling for the plaintiffs would obligate the government to do no more than re-post articles that it already possessed.³⁹⁹ Conversely, plaintiffs had their constitutional rights at stake, both as speakers and as individuals seeking information from other experts and commentators.⁴⁰⁰ Accordingly, the district court

393. See *supra* notes 370–78 and accompanying text.

394. See *supra* Sections III.A, III.B. (discussing review of agency decisions under the APA).

395. 5 U.S.C. § 706 (2018) (empowering reviewing courts to invalidate government actions that are “contrary to constitutional right, power, privilege, or immunity”).

396. See *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (addressing systemic racial discrimination in school systems); *Hills v. Gautreaux*, 425 U.S. 284 (1976) (addressing segregation in a public housing system); *Brown v. Plata*, 563 U.S. 493 (2011) (addressing unconstitutional conditions in a state prison system); Richard H. Fallon Jr., *Constitutional Remedies: In One Era and Out the Other*, 136 HARV. L. REV. 1300, 1365 (2023) (“[T]he concept of a constitutional right normally implies the availability of at least some judicial remedy to enforce the right and thereby make it meaningful in practice.”); Madden, *supra* note 369, at 50 (discussing the availability of injunctive relief beyond the APA).

397. 784 F. Supp. 3d 380, 384 (D. Mass. 2025); see *supra* notes 249–54 and accompanying text for details about the case.

398. *Schiff*, 784 F. Supp. 3d at 396–97; see *supra* note 376 and accompanying text.

399. *Schiff*, 784 F. Supp. 3d at 397–98.

400. *Id.* at 399; see also *supra* notes 234–38 and accompanying text (discussing the First Amendment right to receive information from willing speakers).

granted plaintiffs' motion for a preliminary injunction as to their First Amendment claims.⁴⁰¹

Future plaintiffs facing comparable instances of government censorship may experience similar success when pursuing injunctive relief for violations of their First Amendment rights as speakers or information seekers. For example, they may claim that their constitutional rights were violated if the government's deletion of articles they authored from limited public forums constituted viewpoint discrimination.⁴⁰² They may also assert First Amendment claims arising from the removal of articles they wished to read that was based solely on the government's disagreement with the authors' viewpoints.⁴⁰³

In *Trump v. CASA*, the Supreme Court ruled that universal injunctions are improper and that courts must limit the scope of injunctions so that they provide relief only to plaintiffs who have standing to sue.⁴⁰⁴ Consequently, courts adjudicating claims by authors who seek to have their articles reposted on a website could not rule that related articles should also be restored. As the Court suggests, plaintiffs seeking broad relief that reaches beyond their individual injuries should pursue class actions.⁴⁰⁵

It is also possible that plaintiffs could obtain injunctive relief based on substantive due process theories if government health information abuses interfere with their rights to reject unwanted medical treatment or to make sound medical decisions for their children or themselves.⁴⁰⁶ To illustrate, parents may fail to vaccinate their children or otherwise provide them with inappropriate medical care because of inaccurate medical information that the government has disseminated.⁴⁰⁷ Furthermore, individuals may be unable to obtain vaccines or other treatments because insurers stop paying for them based on government recommendations.⁴⁰⁸ Courts may order the government to reinstate scrubbed information or modify other information practices in order to enable plaintiffs to exercise their health-related First Amendment and substantive due process rights.

401. *Schiff*, 784 F. Supp. 3d at 400.

402. *See supra* notes 239–54 and accompanying text.

403. *See supra* notes 228–47 and accompanying text.

404. 606 U.S. 831, 861 (2025).

405. *Id.* at 850, 869.

406. *See supra* Section III.D (discussing substantive due process claims).

407. *See supra* note 315 and accompanying text.

408. *See supra* note 317 and accompanying text.

CONCLUSION

We live in an era of widespread health information purges, suppression, and distortion. In the words of one expert, we face “[f]orced ignorance on health data.”⁴⁰⁹ Data obfuscation can lead to the violation of constitutional rights as well as to physical harm, disability, or death because of deficient or improper guidance regarding medical care.⁴¹⁰ This is not the first time in history that the government has engaged in health information misconduct,⁴¹¹ but it is far more extensive and comprehensive than ever before.⁴¹² Unfortunately, this is unlikely to be the last manifestation of this phenomenon. Indeed, contemporary practices may serve as a blueprint for future administrations that are inclined to manipulate and restrict health information.

This Article has argued that the public is not powerless in the face of government health information abuses and truth erosion. While it is doubtful that litigants will be able to obtain damages for physical or mental injuries, several litigation tools facilitate the attainment of injunctive relief. In at least two cases, plaintiffs have already prevailed, forcing the government to reverse course with respect to information purges and suppression activities.⁴¹³ Data integrity is critical in the health arena because both patients and clinicians depend on it.⁴¹⁴ In the absence of government oversight, it may well be up to private citizens to combat HHS misconduct and safeguard information access and veracity.

409. Luke Andrews, *Trump Orders ‘Blackout’ at CDC, FDA, NIH as Agencies Prepare for MAGA*, DAILY MAIL (Jan. 22, 2025), <https://www.dailymail.co.uk/health/article-14313075/trump-pauses-cdc-fda-nih-rfk-jr-health-agencies.html> [<https://perma.cc/8TUT-7NWF>].

410. *See supra* Part II; Amitabha Palmer & Sara Gorman, *Misinformation, Trust, and Health: The Case for Information Environment as a Major Independent Social Determinant of Health*, 381 SOC. SCI. & MED., Sep. 2025, at 9 (“From vaccine hesitancy to cancer misinformation, the empirical evidence demonstrates how inhabiting certain online information environments can lead to the endorsement of medical falsehoods and, tragically, preventable morbidity and death.”).

411. *See supra* Part I.

412. *See supra* Part II.

413. *See supra* Section IV.B.

414. Mohammad Zarour et al., *Ensuring Data Integrity of Healthcare Information in the Era of Digital Health*, 8 HEALTHCARE TECH. LETTER 66, 66 (2021) (“Incorrect data might become significant health threats for patients and a big responsibility for clinicians . . .”).