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Noah C. Chauvin

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Conspiracy Theories and the Perils of Government Error Correction

Noah C. Chauvin*

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INTRODUCTION

At the broadest level of abstraction, conspiracy theories are based around the belief that powerful groups or individuals are shaping events for their own benefit, often to the detriment of ordinary people.¹ Conspiracy theories range from the mundane, such as the belief that professional wrestling is fake,² to the bizarre, such as the belief that the government is controlled by lizards disguised as humans,³ to the hateful and harmful, such as the belief that Roma kidnap women and children to

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* J.D., William & Mary Law School; B.A., S.U.N.Y. Geneseo. I am grateful to the editors of the *LSU Law Journal for Social Justice & Policy* for allowing me to present this paper as part of their symposium on “Conspiracy Theories, Misinformation, and Civil Rights,” as well as to Matt Strauser for his comments on an earlier draft. All views, and all errors, are strictly my own.

1. See David S. Han, *Conspiracy Theories and the Marketplace of Facts*, 16 *FIRST AMEND. L. REV.* 178, 190 & n.1 (2017); Samantha Hay, Note, “*Alternative Facts*” and Hate: *Regulating Conspiracy Theories that Take the Form of Hateful Falsity*, 29 *S. CAL. INTERDISC. L.J.* 659, 663 (2020).

2. See Comedy Central Stand-Up, *The Meltdown with Jonah and Kumail - Ron Funches - Wrestling Is Fake – Uncensored*, YOUTUBE (Aug. 3, 2015), <https://www.youtube.com/watch?v=GjEf7vo-viE> [<https://perma.cc/7M69-93BG>].

3. Philip Bump, *How to Spot the Reptilians Running the U.S. Government*, *ATLANTIC* (Oct. 31, 2013), <https://www.theatlantic.com/national/archive/2013/10/how-spot-reptilians-runing-us-government/354496/> [<https://perma.cc/A9LH-LQRR>].

prostitute them or sell their organs.⁴ While it is true that “[j]ust because you’re paranoid doesn’t mean they aren’t after you,”⁵ most conspiracy theories “are easily and objectively provable as false under whatever practical standard a reasonable person could demand.”⁶

That is one of the most frustrating aspects of dealing with a person who believes in conspiracy theories: knowing that the person’s belief is based on factual errors.⁷ Indeed, many people’s knee-jerk response to conspiracy theorists is to attempt to correct their errors⁸: “Actually, Lee Harvey Oswald assassinated President Kennedy on his own.” “In fact, Neil Armstrong and Buzz Aldrin did land on the moon.” “No, vaccines don’t cause autism.” And it is not just private citizens who try to correct conspiracy theorists’ errors; governments do it as well.⁹

The government using its speech power to correct conspiracy theorists’ factual errors is among the most constitutionally acceptable government responses to conspiracy theories. There are, of course, more direct responses that governments could employ: they could fine conspiracy theorists for uttering falsehoods, or force them to take classes

4. Lara Marlowe, *Roma Attacked in Paris after Fake Videos Circulate on Social Media*, IRISH TIMES (Mar. 27, 2019, 6:34 PM), <https://www.irishtimes.com/news/world/europe/roma-attacked-in-paris-after-fake-videos-circulate-on-social-media-1.3840665> [<https://perma.cc/8WQC-JM9C>]. For a fuller listing of conspiracy theories, see Han, *supra* note 1, at 180–81.

5. CATCH-22 (Paramount Pictures 1970); see also Karen M. Douglas, Robbie M. Sutton & Aleksandra Cichocka, *The Psychology of Conspiracy Theories*, 26 CURRENT DIRECTIONS PSYCH. SCI. 538, 541 (2017) (“[H]istory has repeatedly shown that corporate and political elites do conspire against public interests. Conspiracy theories play an important role in bringing their misdeeds into the light.”); Lyriisa Barnett Lidsky, *Where’s the Harm?: Free Speech and the Regulation of Lies*, 65 WASH. & LEE L. REV. 1091, 1097–98 (2008). Hence the wrestling example.

6. Han, *supra* note 1, at 182.

7. See Charles R. Corbett, *Chemtrails and Solar Geoengineers: Governing Online Conspiracy Theory Information*, 85 MO. L. REV. 633, 640 (2020); Jonathan Jarry, *Zen and the Art of Talking to Conspiracy Theorists*, MCGILL (Feb. 25, 2021), <https://www.mcgill.ca/oss/article/critical-thinking-pseudoscience/zen-and-art-talking-conspiracy-theorists> [<https://perma.cc/8L72-M8VB>]; Marianna Spring, *How Should You Talk to Friends and Relatives Who Believe Conspiracy Theories?*, BBC (Dec. 21, 2020), <https://www.bbc.com/news/blogs-trending-55350794> [<https://perma.cc/U865-224H>].

8. E.g., Jarry, *supra* note 7.

9. See, e.g., *Thimerosal and Vaccines*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 25, 2020), <https://www.cdc.gov/vaccinesafety/Concerns/thimerosal/index.html> [<https://perma.cc/NR36-Y5U8>].

in which they would be taught the truth, or throw them in jail until they recant. But each of these responses (in addition to being needlessly cruel) runs afoul of the First Amendment, which protects people's freedoms of speech and belief—even false speech or erroneous belief.¹⁰ Thus, only in rare circumstances, in which a person uses a conspiracy theory to incite violence or perpetrates some violent act based on a belief in a conspiracy theory, or in which the false statements on which a conspiracy theory is based cause significant harm to an individual they describe, can conspiracy theorists be punished for their beliefs.¹¹ And even then, the *belief* cannot serve as the basis for the punishment; the punishment must be based on the antisocial conduct the belief inspires.¹²

In this context, the government's speech power—its ability to craft a message and regulate its own speech to ensure that that message is conveyed¹³—is one of the most powerful tools available to governments looking to combat conspiracy theories. Through their speech, governments can fight conspiracy theories by correcting the errors on which those theories are founded. Such government conduct is entirely permissible under the First Amendment.

I argue in this essay, however, that there are serious pitfalls that must be accounted for by governments using their speech powers to combat conspiracy theories. In Part I, I identify three such pitfalls. First, given the vast number of conspiracy theories, it is difficult to identify which ones governments should concern themselves with, particularly because directly responding to a conspiracy theory risks bringing greater attention to it or of legitimizing it. Second, governments cannot, as a matter of epistemology or of democratic self-governance, be allowed the final say on what is or is not true. Third, given the risk that governments may sometimes be wrong and the temptation for government officials to use their authority to act against their ideological enemies, it is crucial that the government speech power be used with humility.

10. U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech . . .”); *see also* *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”).

11. *See* Han *supra* note 1, at 186–88; Lidsky, *supra* note 5, at 1091–92 & n.2, 1094–95.

12. *See, e.g., Wisconsin v. Mitchell*, 508 U.S. 476, 487 (1993); *Texas v. Johnson*, 491 U.S. 397, 403 (1989).

13. *See* Noah C. Chauvin, *Governments “Erasing History” and the Importance of Free Speech*, 41 N. ILL. U. L. REV. 1, 5–6 (2020).

Nevertheless, there will be times when governments reasonably decide that they must use their speech power to combat conspiracy theories. In Part II, I discuss the “strong” and “weak” uses of this power. The strong response is when governments use their speech power to combat conspiracy theories directly or aggressively. In contrast, the weak response involves empowering third parties to combat conspiracy theories by making available the information and resources necessary to do so. I argue that the weak response is preferable because it is both more likely to be effective and less likely to lend itself to abuse by government officials.

Finally, in the Conclusion, I briefly respond to the counterargument that governments should be allowed to use their speech power—as well as other, more coercive tools—to respond to conspiracy theories in a robust or aggressive manner. I explain how this response to conspiracy theories is particularly concerning from a social justice perspective, because it is disadvantaged and disenfranchised people who are most likely to believe in conspiracy theories.

I. THE PITFALLS OF GOVERNMENT SPEECH

Typically, when we think about the relationship between governments and speech, it is in the context of the government as censor.¹⁴ However, governments also have their own speech powers.¹⁵ Under what is known as the government speech doctrine, governments have the power to craft what messages they wish to convey and to regulate their own speech to ensure that they are conveying those messages.¹⁶ The government speech power takes many forms, including what is said in social media posts by government officials,¹⁷ the contents of banners advertising sponsors for public school athletic programs,¹⁸ and even the designs of specialty license plates.¹⁹

What makes government speech such a powerful tool—in addition to the power that comes from holding the bully pulpit—is that things deemed

14. See, e.g., Noah C. Chauvin, *The Need to Protect Free Speech Protections for Student Affairs Professionals*, 32 REGENT U. L. REV. 229, 232 (2020).

15. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 210–12 (2015); *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009).

16. Chauvin, *supra* note 13, at 5–6.

17. *Knight First Amend. Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 239 (2d Cir. 2019).

18. *Mech v. Sch. Bd. of Palm Beach Cnty., Fla.*, 806 F.3d 1070, 1075 (11th Cir. 2015).

19. *Walker*, 576 U.S. at 210–13.

government speech are wholly unprotected by the First Amendment.²⁰ To a degree, this makes sense. If government bureaucrats could undermine the priorities of elected officials using speech at their jobs, and that speech was protected, the work of government could be brought to a grinding halt.²¹ Likewise, private citizens should not be able to compel a duly elected government to use speech in a manner with which it disagrees.²² Allowing governments to control what they say and how they say it thus serves democratic (or, depending on which government we are referring to, republican) ends—government speech will reflect the will of the majority, and the way to get the government to say what you want it to is to convince your fellow citizens that your ideas are good ones.²³

Despite the power of the government speech doctrine, there are reasons to be skeptical of it as a tool to fight conspiracy theories.²⁴ The first is identifying which conspiracy theories the government should trouble itself with responding to. As indicated above, there are a great many conspiracy theories.²⁵ Should the government respond to the ones with the most followers? The ones that seem likely to cause the greatest amount of harm? Should it matter who the target of the conspiracy theory is? Can the ideological bent of the conspiracy theory play a role in deciding whether and how to respond? These are difficult questions about which reasonable people can easily disagree. The great variety of conspiracy theories means that it is virtually impossible to develop a fair and neutral rubric for which ones the government ought to confront.

Another difficulty in knowing how to respond to conspiracy theories lies in figuring out how salient they really are. Many who engage with conspiracy theories are not true believers; they merely consume

20. *Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017); *Pleasant Grove City*, 555 U.S. at 467–68; see also Caroline Mala Corbin, *Government Speech and First Amendment Capture*, 107 VA. L. REV. ONLINE 224, 227 (2021).

21. See Corbin, *supra* note 20, at 227–28; Caroline Mala Corbin, *The Unconstitutionality of Government Propaganda*, 81 OHIO ST. L.J. 815, 821–22 (2019).

22. Corbin, *supra* note 20, at 227–28; Corbin, *supra* note 21, at 821–22.

23. See *Pleasant Grove City*, 555 U.S. at 468 (“If the citizenry objects, newly elected officials could later espouse some different or contrary position.” (quoting *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 235 (2000))).

24. There are other reasons to be skeptical of it. For instance, if too much speech is classified as governmental, then the government speech doctrine can be the exception that swallows the rule by making otherwise-protected speech unprotected. See Corbin, *supra* note 20, at 232.

25. See *supra* notes 2–4 and accompanying text; see also Han, *supra* note 1, at 180–81.

“conspiracy theory content as an entertainment activity.”²⁶ It can be challenging to disaggregate the true believers from those who follow the conspiracy theory as a diversion, meaning that conspiracy theories may appear to have a much larger following—and thus more greatly merit a government response—than they actually do. Moreover, even to the extent that people really do believe in a conspiracy theory, these might be “‘quasi-beliefs’—beliefs that are not costly and possibly even fun to hold, like a belief in UFOs, and that do not form a premise for action.”²⁷

Beyond the difficulty of choosing which conspiracy theories to respond to, there is the additional issue that choosing to respond to a conspiracy theory may help legitimize and spread it.²⁸ For instance, during the 2020 presidential campaign, a conspiracy theory spread online that a Twitter account run by a Nigerian fan of Pete Buttigieg was actually run by one of Buttigieg’s campaign staffers.²⁹ The theory might not have gained much purchase outside of a small group of Bernie Sanders supporters who disliked Buttigieg but for the fact that it was widely spread by people joking about it.³⁰ Similar issues apply to governments responding to conspiracy theories through their speech. As Professor Tim Wu has observed, “[t]he government is, effectively, a kind of celebrity,”

26. Corbett, *supra* note 7, at 647. This is another reason to avoid censoring conspiracy theories: doing so interferes with the rights not just of the speaker, but also of the listener. *See, e.g., Va. St. Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 756–57 (1976) (“Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both.” (footnote omitted)); Corbin, *supra* note 20, at 238.

27. Cass R. Sunstein & Adrian Vermeule, *Conspiracy Theories: Causes and Cures*, 17 J. POL. PHIL. 202, 220 (2009).

28. *See id.* at 221–22.

29. *See* Ellen Cranley, *A Senior Advisor for Pete Buttigieg Was Accused of Running a Fake Nigerian Supporter Account, but the Man Who Created It Says It’s a Big Misunderstanding*, INSIDER (Feb. 16, 2020, 3:50 PM), <https://www.businessinsider.com/lis-smith-buttigieg-adviser-accused-of-running-fake-nigerian-account-2020-2> [<https://perma.cc/4782-E4AM>]; John Gage, *‘Digital Blackface’: Top Buttigieg Advisor Accused of Running Fake Nigerian Twitter Account*, WASH. EXAM’R (Feb. 16, 2020, 3:44 PM), <https://www.washingtonexaminer.com/news/digital-blackface-top-buttigieg-adviser-accused-of-running-fake-nigerian-twitter-account> [<https://perma.cc/Z7E5-CHWB>]; Whitney Phillips, *Please, Please, Please Don’t Mock Conspiracy Theories*, WIRED (Feb. 27, 2020, 12:58 PM), <https://www.wired.com/story/please-please-please-dont-mock-conspiracy-theories/> [<https://perma.cc/L4VN-YMNM>].

30. *See* Cranley, *supra* note 29; Phillips, *supra* note 29.

and attention from the government “may help overcome the greatest barrier facing a disfavored speaker: that of getting heard at all.”³¹

These difficulties are compounded by the fact that questions regarding what the truth “really” is are often hotly contested.³² Indeed, the goal of many conspiracy theorists is to expand or alter non-adherents’ notions of what is “true.” Because conspiracy theories are founded on factual error, it is easy to see a role for the government speech power to play in responding to them: government speech could be dedicated to correcting that error; to providing a definitive account of what is true. However, as a matter of epistemology, governments should not get the final say on what is and is not true because *nobody* should have that final say.³³ Knowledge is formed through iteration; if the processes of experimentation and contestation through which knowledge is generated are halted, then—even if governments are correct—we risk our truths becoming no more than “dead dogma”: beliefs we hold because we were directed to, not because we know them to be right.³⁴

This is not to say that governments do not or should not ever serve as arbiters of truth. We rely on them to regulate truth in several different contexts, including policing commercial speech and fraud.³⁵ It is only to say that governments, like all of us, should never be allowed the *final* say as to what is true. Allowing this would risk the ossification of knowledge, not to mention the deleterious effects it could have on private citizens who were denied the opportunity and the responsibility to determine for themselves what is true.

Moreover, governmental decisions and pronouncements require robust and informed participation from the governed in order to maintain their legitimacy.³⁶ As Justice Brennan put it in *Garrison v. Louisiana*, “speech concerning public affairs is more than self-expression; it is the

31. Tim Wu, *Is the First Amendment Obsolete?*, 117 MICH. L. REV. 547, 559 (2018). One way to mitigate this concern is to respond to many or most conspiracy theories; the more conspiracy theories a government responds to, the less the legitimating effect seen from contrasting un rebutted conspiracy theories with rebutted ones. See Sunstein & Vermeule, *supra* note 27, at 219.

32. See Corbett, *supra* note 7, at 653; Han, *supra* note 1, at 191.

33. See JONATHAN RAUCH, *KINDLY INQUISITORS: THE NEW ATTACKS ON FREE THOUGHT* 48–49 (expanded ed. 2013).

34. See John Stuart Mill, *On Liberty*, in JOHN STUART MILL: ON LIBERTY, UTILITARIANISM, AND OTHER ESSAYS 5, 35 (Mark Philp & Frederick Rosen eds., 2015).

35. See Han, *supra* note 1, at 186–87.

36. See Corbett, *supra* note 7, at 638.

essence of self-government.”³⁷ Too much government speech on these topics could risk drowning out the voices of ordinary people.³⁸ (Indeed, when governments are responding to conspiracy theories, this may even be the goal.) Allowing governments to have the final say on what is true would deprive the citizenry of our fundamentally important role in governing ourselves.³⁹

Finally, as I have argued elsewhere, the government speech power ought to be used with humility out of a recognition of “the power that government speech has and the negative consequences it can have on people.”⁴⁰ This humility is particularly important when governments are using their speech to respond to conspiracy theories, for two reasons. First, there is a chance, however slim, that governments are wrong. Second, there is a risk that governments may abuse their powers to target conspiracy theories—or, as the case may be, beliefs the government *refers to* as conspiracy theories—as a guise for going after their ideological opponents or other disfavored groups.

As noted above, not all conspiracy theories are wrong; sometimes the elites really are conspiring against regular people.⁴¹ As scholar Charles Corbett has noted, when we talk about conspiracy theories, what we really mean are “*epistemically suspect* conspiracy theories: ideas that ‘conflict with common naturalistic conceptions of the world.’”⁴² But epistemic suspicion is often a matter of perception, and beliefs that seem plainly wrong today may grow to be widely accepted tomorrow. Governments need to be careful when speaking to conspiracy theories out of a risk—though generally relatively small—that the government’s conception of truth may prove to be wrong.

Take, for example, the belief that the COVID-19 virus escaped from a research lab in China. The so-called “lab leak” theory was lambasted as

37. *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964).

38. See Edward H. Ziegler, Jr., *Government Speech and the Constitution: The Limits of Official Partisanship*, 21 B.C. L. REV. 578, 585–86 (1980); see also Corbin, *supra* note 21, at 838–53.

39. See *United States v. Alvarez*, 567 U.S. 709, 728 (2012) (“Society has the right and civic duty to engage in open, dynamic, rational discourse.”); CASS R. SUNSTEIN, *WHY SOCIETIES NEED DISSENT* 97–99, 149 (2005); Corbin, *supra* note 20, at 232–41.

40. Chauvin, *supra* note 13, at 8–9.

41. See Douglas et al., *supra* note 5, at 541; Lidsky, *supra* note 5, at 1097–98.

42. Corbett, *supra* note 7, at 654 (quoting Gordon Pennycook, James Allan Cheyne, Nathaniel Barr, Derek J. Koehler & Jonathan A. Fugelsang, *On the Reception and Detection of Pseudo-Profound Bullshit*, 10 JUDGMENT & DECISION MAKING 549, 551 (2015)).

a conspiracy theory when it was first proposed.⁴³ Government officials, such as Dr. Anthony Fauci, were quick to discredit the theory, asserting that the weight of the evidence supported transmission of COVID-19 from animals to humans.⁴⁴ As it happens, Dr. Fauci and others who discredited the lab leak theory are probably correct; most scientists continue to believe that the pandemic began when COVID-19 jumped to people from animals, and the evidence we have so far appears to support that conclusion.⁴⁵ However, scientists have thus far not been able to find conclusive evidence tending to show that COVID-19 came from animals or disproving the lab leak theory.⁴⁶ When governments are quick to comment on conspiracy theories, they may end up doing so before there is conclusive evidence refuting the theories, and they may even ultimately be wrong. They must always be aware of these possibilities and govern themselves accordingly.

The second reason for humbly using the government speech power is to avoid the temptation to abuse that power to target the government's ideological opponents or other disfavored groups. Indeed, the risk of governments abusing their powers in fighting conspiracy theories is particularly high because "vulnerable and disadvantaged groups are most

43. See Richard A. Friedman, *Why Humans Are Vulnerable to Conspiracy Theories*, 72 *PSYCHIATRIC SERVS.* 3, 3 (2021); Ethan Siegal, *The Wuhan Lab Leak Theory is a Conspiracy Theory, Not Science*, *FORBES* (June 3, 2021, 12:02 PM), <https://www.forbes.com/sites/startwithabang/2021/06/03/the-wuhan-lab-leak-hypothesis-is-a-conspiracy-theory-not-science/?sh=2967bb79dd8c> [https://perma.cc/4KUT-475H].

44. See Nsikan Akpan & Victoria Jaggard, *Fauci: No Scientific Evidence the Coronavirus was Made in a Chinese Lab*, *NAT'L GEOGRAPHIC* (May 4, 2020), https://www.nationalgeographic.com/science/article/anthony-fauci-no-scientific-evidence-the-coronavirus-was-made-in-a-chinese-lab-cvd_ [https://perma.cc/JBH2-XWHS].

45. See Amy Maxmen & Smriti Mallapaty, *The COVID Lab-Leak Hypothesis: What Scientists Do and Don't Know*, *NATURE* (June 8, 2021), <https://www.nature.com/articles/d41586-021-01529-3> [https://perma.cc/663A-26F7]; Siegal, *supra* note 43.

46. Jacques van Helden, Colin D. Butler, Guillaume Achauz, Bruno Canard, Didier Casane, Jean-Michel Claverie, Fabien Colombo, Virginie Courtier, Richard H. Ebright, François Graner, Milton Leitenberg, Serge Morand, Nikolai Petrovsky, Rossana Segreto, Etienne Decroly & José Halloy, *An Appeal for an Objective, Open, and Transparent Scientific Debate about the Origin of SARS-CoV-2*, *LANCET* (Sept. 17, 2021), <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2821%2902019-5> [https://perma.cc/A9LH-SP7F]; Maxmen & Mallapaty, *supra* note 45.

likely to benefit from” believing in conspiracy theories.⁴⁷ So, not only is there a risk that governments will have few qualms about using their powers to target conspiracy theorists because of their fringe beliefs,⁴⁸ but conspiracy theorists often come from disenfranchised populations and are for that reason more likely to be subject to government censorship.⁴⁹

Moreover, the risk of governments abusing their powers to target conspiracy theorists whose politics differ from their own remains high regardless of who holds power. This is so because while many prominent conspiracy theories have a political orientation, *i.e.*, they are identifiably left- or right-wing, belief in conspiracy theories in the abstract does not appear to be a particularly left- or right-wing phenomenon.⁵⁰ So, no matter who holds political power, there will be conspiracy theorists of the opposing ideology to target—particularly given that conspiracy theorizing

47. Douglas, et al., *supra* note 5, at 540–41; *see also* Jan-Willem van Prooijen & Karen M. Douglas, *Belief in Conspiracy Theories: Basic Principles of an Emerging Research Domain*, 48 EUR. J. SOC. PSYCH. 897, 898 (2018) (“[F]eelings of powerlessness predict conspiracy beliefs and . . . conspiracy beliefs are high particularly among members of stigmatized minority groups.”).

48. *See* Mahanoy Area Sch. Dist. v. B. L. *ex rel.* Levy, 141 S. Ct. 2038, 2046 (2021); Chauvin, *supra* note 13, at 10–11.

49. *See* NADINE STROSSEN, HATE: WHY WE SHOULD RESIST IT WITH FREE SPEECH, NOT CENSORSHIP 41–42, 86–88 (2018); *cf.* Catherine L. Fisk, *A Progressive Labor Vision of the First Amendment: Past as Prologue*, 118 COLUM. L. REV. 2057, 2065–68 (2018) (discussing the ways in which censorship was used to target the labor movement in the United States).

50. *See* Colin Klein, Peter Clutton & Adam G. Dunn, *Pathways to Conspiracy: The Social and Linguistic Precursors of Involvement in Reddit’s Conspiracy Theory Forum*, 14 PLOS ONE 1, 13 (2019). While both liberals and conservatives do believe in conspiracy theories, there is some evidence that conservatives are more likely to believe in them, though researchers do not consider that evidence to be conclusive. *See* Karen M. Douglas, Joseph E. Uscinski, Robbie M. Sutton, Aleksandra Cichocka, Turkay Nefes, Chee Siang Ang & Farzin Deravi, *Understanding Conspiracy Theories*, 40 ADVANCES POL. PSYCH. 1, 11–12 (2019). And, of course, there are many conspiracy theories that do not have a particular political bent, or which can appeal to people of different political leanings at different times. *See* Corbett, *supra* note 7, at 648 (discussing how political affiliation is not a good predictor of belief in chemtrail conspiracy theories); David Klepper, *From Election to COVID, 9/11 Conspiracy Theories Cast a Long Shadow*, AP NEWS (Sept. 8, 2021), https://apnews.com/article/911-conspiracy-qanon-7d288d0678f5cc7425412931b0212009_[\[https://perma.cc/XA-C2-XTAB\]](https://perma.cc/XA-C2-XTAB) (discussing how 9/11 conspiracy theories were initially identified with liberals, but became increasingly popular with conservatives over time).

appears to be one response to being out of power.⁵¹ This means that governments will always have an incentive to make use of their “powerful tool[s] to shape the ideological balance of public discourse to [their] own ends.”⁵²

The government speech power is a potent tool in the fight against conspiracy theories. However, there are reasons to be hesitant about using it. First, it is difficult to know precisely which conspiracy theories a government should respond to, and which it should ignore. Second, governments should not be allowed the final say on what is true. Finally, the government speech power must always be used with humility.

II. THE STRONG RESPONSE VERSUS THE WEAK RESPONSE

Although I believe there are serious perils that must be considered when governments are deciding whether to use their speech powers to respond to conspiracy theories, I nonetheless recognize that there will be times when governments must still respond to the theories. For instance, if a plurality of citizens believe that a presidential election was stolen, this belief could undermine the legitimacy of a duly elected chief executive and weaken faith in the rule of law.⁵³ Likewise, if a substantial number of citizens believe that the police murder with impunity thousands of people they have been sworn to protect, this belief can diminish trust in police and make it more difficult to identify legitimate abuses of authority by law enforcement.⁵⁴ The government has a legitimate need to respond to these

51. See e.g., Douglas et al., *supra* note 50, at 10–12; Anni Sternisko, Aleksandra Cichocka & Jay J. Van Bavel, *The Dark Side of Social Movements: Social Identity, Non-Conformity, and the Lure of Conspiracy Theories*, 35 CURRENT OP. PSYCH. 1, 2–3 (2020).

52. Han, *supra* note 1, at 189.

53. See, e.g., United States v. DeGrave, 539 F. Supp. 3d 184, 190–196 (D.D.C. 2021); United States v. Padilla, 538 F. Supp. 3d 32, at 35–38 (D.D.C. 2021); United States v. Sabol, 534 F. Supp. 3d 58, 62 (D.D.C. 2021); United States v. Chrestman, 525 F. Supp. 3d 14, 18–21 (D.D.C. 2021); see also Jonathan Easley, *Majority of Republicans Say 2020 Election was Invalid: Poll*, HILL (Feb. 25, 2021, 12:08 PM), <https://thehill.com/homenews/campaign/540508-majority-of-republicans-say-2020-election-was-invalid-poll> [<https://perma.cc/EG9D-WCKR>].

54. See KEVIN MCCAFFREE & ANONDAH SAIDE, SKEPTIC, CUPES-007, HOW INFORMED ARE AMERICANS ABOUT RACE AND POLICING? 2–3 (2021), <https://www.skeptic.com/research-center/reports/Research-Report-CUPES-007.pdf> [<https://perma.cc/KL34-NZ8V>]; see also Roland G. Fryer Jr., *An Empirical Analysis of Racial Differences in Police Use of Force*, 127 J. POL. ECON. 1210,

and similar conspiracy theories in order to protect its own legitimacy and to maintain its ability to efficiently and effectively protect the public welfare, particularly because those who believe in conspiracy theories may become motivated to engage in “unlawful anti-democratic political behavior.”⁵⁵

Too, there are times when ignoring a conspiracy theory only adds fuel to the fire. For instance, in the early days of the QAnon conspiracy theory, its adherents made much of the fact that the few reporters who covered them (none of whom were members of the White House press corps) “refused” to ask President Trump whether Q was real.⁵⁶ There is value in denying conspiracy theories oxygen by ignoring them, but conspiracy theorists are inherently flexible, and they can turn even a refusal to acknowledge them into proof that they are right.⁵⁷ In situations in which ignoring a conspiracy theory only helps it to grow, governments may need to respond to it.

That governments must sometimes respond to conspiracy theories, however, tells us little about *how* they ought to do so.⁵⁸ When it comes to using the government speech power, there are two categories of response: the “strong” response and the “weak” response. A “strong” response is one in which a government uses its speech powers to directly combat a conspiracy theory.⁵⁹ In contrast, a “weak” response is one in which the government uses its speech power to empower others to respond to conspiracy theories. Of the two, the weak response is preferable, because

1231–32, 1241, 1244, 1248 (2019). *See generally* BEN CRUMP, OPEN SEASON: LEGALIZED GENOCIDE OF COLORED PEOPLE (2019).

55. Sternisko et al., *supra* note 51, at 1; *see also, e.g., DeGrave*, 539 F. Supp. 3d at 190–192; Sunstein & Vermeule, *supra* note 27, at 220.

56. *See Why Won't the Media Ask Trump About QAnon?*, MIKE ROTHSCHILD (Mar. 4, 2019), <https://themikerothschild.com/2019/03/04/why-wont-the-media-ask-trump-about-qanon/> [<https://perma.cc/BJN9-EP6M>].

57. *See* Lidsky, *supra* note 5, at 1100.

58. Indeed, this is a point on which reasonable people can easily disagree. *See* Han, *supra* note 1, at 192 (“[T]his . . . comes down to a judgment as to what represents the lesser evil: a public discourse infected by patent falsehoods that create substantial social harm, or a public discourse policed and ‘sanitized’ by a likely self-interested government actor.”).

59. There is admittedly some irony in referring to this strategy as a “strong” response when it is compared to calls for direct government censorship of conspiracy theorists. *See, e.g., Hay*, *supra* note 1, at 677.

it is less likely to be abused by government officials and it is more likely to be effective.⁶⁰

Governments taking the strong approach to using their speech powers to combat conspiracy theories will respond directly to those theories. These responses could take many forms, including speeches, press conferences, media interviews, or other such public statements. They could be posters, billboards, or advertisements that respond directly to conspiracy theories. They could also take the form of direct outreach to conspiracy theory believers.

The weak approach, in contrast, is more subtle. It too could take many forms, including making data from government research publicly available, funding private research and requiring that the data from that be made publicly available, and open records laws or policies which allow citizens to inquire into the workings of government and require governments to respond to citizen requests for information. Governments may also wish to offer training or resources to citizens on how to spot conspiracy theories, as a means of “inoculation” or “prebunking.”⁶¹ Particular attention could be focused on teaching civic education and media and digital literacy in schools—proposals that have bipartisan support.⁶²

Too, the weak response could include strategies that are not directly related to conspiracy theories but that help combat conspiracy theories in addition to some other, primary goal. For instance, documenting and

60. Importantly, it is easier to support the weak response to conspiracy theories if adherents really believe the theories. As a social matter, at least, conspiracy theorists who purvey their theories for other reasons are easier to respond to more robustly.

61. See STEPHAN LEWANDOWSKY & JOHN COOK, *THE CONSPIRACY THEORY HANDBOOK* 8 (2020), <https://www.climatechangecommunication.org/wp-content/uploads/2020/03/ConspiracyTheoryHandbook.pdf> [https://perma.cc/9EFG-VP RP]; see also Daniel Jolley & Karen M. Douglas, *Prevention is Better than Cure: Addressing Anti-Vaccine Conspiracy Theories*, 47 J. APPLIED SOC. PSYCH. 459, 462–65 (2017); See generally Josephine B. Schmitt, Diana Rieger, Julian Ernst & Hans-Joachim Roth, *Critical Media Literacy and Islamist Online Propaganda: The Feasibility, Applicability and Impact of Three Learning Arrangements*, 12 INT’L J. CONFLICT & VIOLENCE 1 (2018).

62. REBECCA WINTRHOP, BROOKINGS, *THE NEED FOR CIVIC EDUCATION IN 21ST-CENTURY SCHOOLS* 3–5 (2020), https://www.brookings.edu/wp-content/uploads/2020/04/BrookingsPolicy2020_BigIdeas_Winthrop_CivicEducation.pdf [https://perma.cc/P8VY-JQYA]; Press Release, Peter Meijer, Meijer, Scanlon Introduce Bill to Promote, Expand Civic Education (Sept. 17, 2021), <https://meijer.house.gov/media/press-releases/meijer-scanlon-introduce-bill-promote-expand-civic-education> [https://perma.cc/X825-5KRK].

preserving artifacts from important events provides a source of reliable information about those events to those seeking to rebut conspiracy theories related to them. That may not be the main reason to go and see John Glenn's spacesuit or the moon lander at the National Air and Space Museum, but it is a helpful secondary effect. Similarly, broader access to mental health treatment may play an important role in helping reduce the number and salience of conspiracy theories, even if that is not the primary goal of making such treatment more widely available.⁶³ Although the weak approach can take many forms, the hallmark of the approach is its passivity. Rather than actively respond to conspiracy theories themselves, governments instead give others the tools that they need to combat the theories—if they choose to do so.

In that vein, it is important not to confuse governments pressuring third parties to engage in censorship with governments employing the weak response. Take, for example, the recent incident in which the White House put public pressure on social media companies to do more about accounts that the federal government had identified as spreading misinformation regarding COVID-19.⁶⁴ The government's active engagement with the conspiracy theories at issue and encouragement of others to do something about those theories went far beyond the relative passivity that is the hallmark of the weak response. It would have been more appropriate for the government to make reliable information about COVID widely available, and to leave it entirely in the hands of the social media companies to decide how to identify conspiracy theories and misinformation on their platforms and how best to respond—as, indeed, the social media companies have been doing for much of the pandemic.⁶⁵

63. See Jacob Ware, *Fighting Back: The Atomwaffen Division, Countering Violent Extremism, and the Evolving Crackdown on Far-Right Extremism in America*, 25 J. FOR DERADICALIZATION 74, 94 (2020).

64. *White House Slams Facebook as Conduit for COVID-19 Misinformation*, REUTERS (July 15, 2021, 7:49 PM), <https://www.reuters.com/world/us/us-surgeon-general-warns-over-covid-19-misinformation-2021-07-15/> [<https://perma.cc/GE9M-3N2J>]; Caroline Downey, *Psaki: White House 'Flagging' COVID 'Disinformation' for Social Media Censors*, NAT'L REV. (July 15, 2021, 2:56 PM), <https://www.nationalreview.com/news/psaki-white-house-flagging-covid-disinformation-for-social-media-companies/> [<https://perma.cc/2BKJ-UTKP>].

65. See *White House Slams Facebook as Conduit for COVID-19 Misinformation*, *supra* note 64; Naomi Nix, *Facebook Removed 18 Million Misleading Posts on Covid-19*, BLOOMBERG (May 19, 2021, 1:00 PM), <https://www.bloomberg.com/news/articles/2021-05-19/facebook-removed-18-million-misleading-posts-on-covid-19> [<https://perma.cc/MV5S-C9NN>]; Abby Ohlheiser, *Facebook Will Remove Misinformation About Covid-19 Vaccines*, MIT TECH.

The first reason that the weak approach is preferable to the strong is that, as noted above and as discussed in greater detail in the Conclusion, there is a real risk of governments abusing their powers when responding to conspiracy theories.⁶⁶ This risk is particularly salient as regards the strong response, which entails active government engagement with conspiracy theories. The risk is much lesser when governments use the weak response. Although it is possible that governments will choose which conspiracy theories they empower private citizens to respond to for questionable reasons, the impact of any misconduct is lessened by the passivity of the methods employed and the intervening influence of non-governmental third parties. Fear of government overreach is the reason that the First Amendment presumes that it is the role of “rational and committed citizens, rather than the State, to protect public discourse from being polluted by . . . lies.”⁶⁷ The weak approach comports with this presumption.

The second reason that the weak approach is the preferable one is that it is likely to be more effective than the strong approach. It is predictable that governments using their speech powers to correct conspiracy theorists’ factual errors will have little impact on the theorists themselves. To “adherents, patent falsity is, in fact, the central *allure* of these theories: the fact that the theories so directly reject what is obviously true to society at large fits an underlying ideological belief that society must wake up and challenge all of our trusted authorities—including any ‘truths’ pronounced from such authorities.”⁶⁸ If factual error is the point, then merely pointing out that error will have little corrective impact, particularly if the correction comes from the very entities believed to be manipulating and subjugating the masses.⁶⁹ Just as direct censorship is unlikely to stamp out conspiracy theories,⁷⁰ so too is government speech.

Indeed, research into deradicalization and getting people to stop believing in conspiracy theories appears to bear this prediction out. While it is sometimes possible to get people to stop believing in conspiracy theories by showing them the factual errors or logical holes in their

REV. (Dec. 3, 2020), <https://www.technologyreview.com/2020/12/03/1013041/facebook-covid-vaccine-misinformation-ban/> [<https://perma.cc/BZ94-NVNN>].

66. See *supra* notes 47–52 and accompanying text.

67. Lidsky, *supra* note 5, at 1095; see also Han, *supra* note 1, at 185–86; Sunstein & Vermeule, *supra* note 27, at 218–19.

68. Han, *supra* note 1, at 191.

69. See Sunstein & Vermeule, *supra* note 27, at 223.

70. See Corbett, *supra* note 7, at 655.

beliefs,⁷¹ the people in the best position to get through to conspiracy theorists are non-adherents whom the conspiracists trust.⁷² Friends and loved ones are in a strong position to reach conspiracy theorists, and former adherents who no longer share the theorists' beliefs can also be very effective in breaking people away from conspiracy theories.⁷³ Conspiracy theorists are more likely to trust both groups than they are to trust governments. Another key is showing empathy for the conspiracy theorists; demonstrating a willingness to understand the theorists' beliefs can make them more likely to consider other points of view.⁷⁴

Establishing both trust and empathy is difficult, and will often require one-to-one interactions. Government speech is a powerful tool, but conspiracy theorists are too numerous—and government officials' attention is too precious⁷⁵—for government agents to spend significant time working with theorists individually. As such, the reality is that government speech directly addressing conspiracy theories is talking *at* adherents of those theories, rather than talking *with* them. In these circumstances, it will be virtually impossible to establish trust and empathy between governments and conspiracy theorists, particularly given that so many conspiracy theories feature governments and government agents as the enemy. The weak approach is therefore preferable because it provides individual citizens with the tools they need to speak with the conspiracy theorists in their lives—tools they will be able to wield more effectively than can the government.

71. See Mark Tushnet, "Telling Me Lies": *The Constitutionality of Regulating False Statements of Fact* 18–20 (Harvard L. Sch. Pub. L. & Legal Theory, Working Paper No. 11-02, 2011); Daniel Jolley, Silvia Mari & Karen M. Douglas, *Consequences of Conspiracy Theories* 17 (available at https://researchportal.northumbria.ac.uk/ws/portalfiles/portal/27078540/2.7_Jolley_et_al_Consequences_of_CTs_FINAL.pdf) [<https://perma.cc/4WXJ-R6Q2>]; Jan-Willem van Prooijen, *Empowerment as a Tool to Reduce Belief in Conspiracy Theories* 4 (unpublished manuscript) available at https://www.researchgate.net/profile/Jan-Willem-Van-Prooijen/publication/329825465_Empowerment_as_a_Tool_to_Reduce_Belief_in_Conspiracy_Theories/links/5ce05e4a299bf14d95a676b2/Empowerment-as-a-Tool-to-Reduce-Belief-in-Conspiracy-Theories.pdf [<https://perma.cc/PWH8-RXJL>]).

72. See LEWANDOWSKY & COOK, *supra* note 61, at 10; Anne-Sophie Ponsot, Cateline Autixier & Pablo Madriaza, *Factors Facilitating the Successful Implementation of a Prevention of Violent Radicalization Intervention as Identified by Front-Line Practitioners*, 16 J. FOR DERADICALIZATION 1, 6–7 (2018); Ware, *supra* note 63, at 96.

73. See Ponsot et al., *supra* note 72, at 17; Ware, *supra* note 63, at 96–97.

74. Ponsot et al., *supra* note 72, at 16–17.

75. At least, so claims the government employee.

Another factor to consider in evaluating the relative effectiveness of the weak and strong responses is that conspiracy theorists are not the only audience for government speech regarding conspiracy theories. As Professors Cass Sunstein and Adrian Vermeule have observed, fights over conspiracy theories “involve[e] four players: government officials, conspiracy theorists, mass audiences, and independent experts.”⁷⁶ While independent experts are not of particular concern, mass audiences are, and governments will want to ensure that their responses to conspiracy theories do not alienate the general public or cause them to give the conspiracy theory credence. While there is some evidence that directly responding to (or even mocking) conspiracy theories is an effective means of inoculating the general public against them,⁷⁷ governments have to take particular care to ensure that they do not accidentally legitimate a theory by responding to it.⁷⁸ The weak response helps avoid these concerns, because governments employing it are not directly responding to conspiracy theories.

It is not easy for governments to employ the weak response when speaking about conspiracy theories. It requires regular self-evaluation and humility from government officials. More, it requires them to refrain from doing things that it is fully within their lawful power to do. But this restraint, while difficult, will pay dividends when it comes to convincing conspiracy theorists of their errors and avoiding abuses of government power. For these reasons, it should be the preferred approach to using the government speech power to combat conspiracy theories.

CONCLUSION

I have argued that governments should carefully use their speech power to combat conspiracy theories, both out of a concern that they will abuse their authority and out of a belief that certain ways of this power will prove counterproductive. There will be those, however, who will be skeptical of my basic premise. “Okay, Noah,” they might say. “Granted that hectoring conspiracy theorists may not get them to change their beliefs. But why shouldn’t the government use its speech power to come down hard on conspiracy theories? As we have seen, those theories can be

76. Sunstein & Vermeule, *supra* note 27, at 221; *see also id.* at 222 (“Should governmental responses be addressed to the suppliers, with a view to persuading or silencing them, or rather addressed to the mass audience, with a view to inoculating them from pernicious theories?”); van Prooijen, *supra* note 71, at 4.

77. *See* LEWANDOWSKY & COOK, *supra* note 61, at 9–10.

78. *See* Sunstein & Vermeule, *supra* note 27, at 221–22; Wu, *supra* note 31, at 559.

incredibly harmful. This response might not convince the theorists, but at least it would make it harder for them to recruit others to their ranks.

“What’s more, why shouldn’t we use the power of the government to create a better, less dangerous world? You say we should worry about what would happen if people with whom we disagree had the opportunities to use government power against us and our beliefs, but don’t you see that if we use all the tools available to us, we can show ordinary people that we are in the right and prevent those who oppose us from gaining power? You’re concerned about the dangers of using the government’s speech power (or for that matter, its censorship power) to combat conspiracy theories, but don’t you see that your fealty to freedom of speech and *laissez-faire* government prevents you from endorsing policies and practices that would improve people’s lives; that your focus on doing things as they have been done in the past leaves you hostage to the kooks and the crazies?!”⁷⁹

And indeed, there is something to this argument. As we have seen, conspiracy theories can do serious harm. They can undermine faith in government, tear at the bonds that tie us to one another, and inspire violent action. In the face of such problems, the desire to use all the tools at our disposal to combat conspiracy theories is understandable, and even admirable. However, as I have indicated, I am deeply skeptical of this strategy. I do not believe that it would be particularly effective, and I do not trust the wisdom of government officials to decide which conspiracy theories merit a particularly robust response, especially given the temptation to treat one’s political opponents as conspiracy theorists.⁸⁰

Additionally, I worry about who it is that a robust response to conspiracy theories would be brought to bear against. As discussed above, the people most likely to believe in conspiracy theories are the marginalized and disenfranchised.⁸¹ A more robust governmental response to conspiracy theories, then, would mean disproportionately bringing government power to bear on those least likely to impact government officials’ decisions and least capable of defending themselves from government overreach. And, it would be done in the name of quashing false beliefs that are typically specifically about elites.

For this reason, a robust governmental response to conspiracy theories is troubling from a social justice perspective. Social justice demands that

79. For a substantially more artful exposition of the argument that the focus on precedent and the deification of that which has already been done hamstrings law and legal scholarship, see Richard Delgado, *Groundhog Law*, 21 J.L. SOC’Y 1, 14–17 (2021).

80. See *supra* Part II; *supra* notes 47–52 and accompanying text.

81. See *supra* notes 47–49, 51 and accompanying text.

social, political, and economic rights and opportunities be evenly distributed, with a particular focus on combatting power imbalances which artificially skew that distribution.⁸² Bringing governments' expansive powers to bear upon groups of people disproportionately comprised of the marginalized merely because they hold views thought odious by the powerful is anathema to the social justice project.

Of course, the marginalized can also be the *subject* of conspiracy theories, leading to a stronger argument in favor of robust governmental response. For instance, Jews are frequent victims of hate crimes in the United States,⁸³ and conspiracy theories appear to play a significant role in motivating those crimes.⁸⁴ Given the horrors that have been wrought in the name of antisemitic conspiracy theories, there is a compelling argument that governments should come down especially hard on these theories. Yet, there is evidence that minority populations hold antisemitic views and perpetrate hate crimes against Jews.⁸⁵ Even responding to conspiracy theories that target vulnerable populations, then, could end up bringing government power to bear against minority or marginalized populations or pitting the needs and interests of such populations against one another.

Moreover, advocates for a robust government response to conspiracy theories need to be able to answer a foundational question: Who gets to decide? Governments would have to choose which beliefs qualified as conspiracy theories and which of those conspiracy theories merited a response. But it is not obvious what frameworks they could employ to

82. See Claire P. Donohue, *Client, Self, Systems: A Framework for Integrated Skills-Justice Education*, 29 GEO. J. LEGAL ETHICS 439, 447 (2016). Other definitions of social justice, with greater or lesser focus on the rights of the individual, the structure of social institutions, or the distribution of resources, are also sometimes used. See generally Martha Albertson Fineman, *Vulnerability and Social Justice*, 53 VAL. U. L. REV. 341 (2019).

83. See, e.g., *2019 Hate Crime Statistics: Incidents, Offenses, Victims, and Known Offenders*, FBI, <https://ucr.fbi.gov/hate-crime/2019/tables/table-1.xls> [<https://perma.cc/F7GN-PMXA>] (last accessed Sept. 16, 2021).

84. See Hay, *supra* note 1, at 665; Mya Jaradat, *New Surge in Attacks on Jews Raises Old Question: How Do We Fight Antisemitism?*, DESERT NEWS (June 2, 2021, 10:00 PM), <https://www.deseret.com/faith/2021/6/2/22458452/attacks-on-jews-surge-anti-semitism-israel-hamas-definition-hate-crimes-trump-populism-nationalism> [<https://perma.cc/P3ZS-BUHH>].

85. See Jessica T. Simes, *Does Anti-Semitism Among African Americans Simply Reflect Anti-White Sentiment?*, 46 SOC. SCI. J. 384, 388 (2009); Armin Rosen, *Everybody Knows*, TABLET (July 15, 2019), <https://www.tabletmag.com/sections/news/articles/orthodox-jews-attacked-brooklyn-hate-crime> [<https://perma.cc/5CYE-WPWN>].

make these decisions fairly, especially because power is self-reinforcing—it is concerned first with protecting itself. The best way to ensure that power is exercised fairly is to limit the circumstances under which it may be wielded at all.⁸⁶

It is a mistake, and indeed a moral abomination, to hand the government a loaded weapon knowing full well that it is primed to fire and aimed directly at the least among us, even if they be kooks and crazies. Instead, governments, like private citizens, should follow the wisdom of civil rights activist Pauli Murray, who wrote: “When my brothers try to draw a circle to exclude me, I shall draw a larger circle to include them.”⁸⁷ Rather than using their powers to target conspiracy theorists, governments should use the most effective means of reaching them, even if that sometimes means not using every possible tool in their arsenal. We will all be better—and better off—for following Murray’s example.

86. Cf. RAUCH, *supra* note 33, at 143 (“Obviously, an equal-speech regime inherently requires a strong regulatory authority which can have no agreed-upon mission. So we are back, again, to the political regulation of inquiry on behalf of the most politically powerful.”).

87. Nadine Strossen, *Resisting Hate with Free Speech*, 37 DEL. LAW. 16, 18 (2019).