

1 SHEPPARD MULLIN RICHTER & HAMPTON LLP  
KENT R. RAYGOR, Cal. Bar No. 117224  
2 kraygor@sheppardmullin.com  
VALERIE E. ALTER, Cal. Bar No. 239905  
3 valter@sheppardmullin.com  
ZACHARY J. GOLDA, Cal. Bar No. 327532  
4 zgolda@sheppardmullin.com  
1901 Avenue of the Stars, Suite 1600  
5 Los Angeles, California 90067-6055  
Telephone: (310) 228-3700  
6 Facsimile: (310) 228-3701

7 Attorneys for Defendants  
COUNTY OF LOS ANGELES DEPARTMENT  
8 OF PUBLIC HEALTH, MUNTU DAVIS, M.D.,  
and BARBARA FERRER, Ph.D., MPH, M.Ed.  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT  
12

13 ALLIANCE OF LOS ANGELES COUNTY  
PARENTS, an unincorporated association,

14 Petitioner and Plaintiff,  
15

16 v.

17 COUNTY OF LOS ANGELES  
DEPARTMENT OF PUBLIC HEALTH;  
MUNTU DAVIS, in his official capacity as  
18 Health Officer for the County of Los Angeles;  
BARBARA FERRER, in her  
19 official capacity as Director of the County of  
Los Angeles Department of Public Health; and  
20 DOES 1 through 25, inclusive,

21 Respondents and Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. 22STCP02772

Assigned for All Purposes to:  
Hon. William F. Fahey, Dept. 69

**NOTICE OF TENTATIVE STATEMENT  
OF DECISION**

Petition Filed: July 26, 2022  
Verified FAP filed: January 13, 2023  
FSC Dates: October 4 and 12, 2023  
Trial Dates: October 16-19, 2023

1 TO PLAINTIFF ALLIANCE OF LOS ANGELES COUNTY PARENTS AND ITS COUNSEL OF  
2 RECORD:

3 PLEASE TAKE NOTICE that the Court served on the parties the attached Tentative  
4 Statement Of Decision and ordered Defendants to give notice thereof. A true and correct copy of  
5 the Court's Tentative Statement Of Decision is attached hereto as **Exhibit A**.

6  
7 Dated: December 7, 2023

SHEPPARD MULLIN RICHTER & HAMPTON LLP

8  
9 Bv   
10 KENT R. RAYGOR  
11 Attorneys for Defendants  
12 COUNTY OF LOS ANGELES DEPARTMENT OF  
13 PUBLIC HEALTH, MUNTU DAVIS, M.D., and  
14 BARBARA FERRER, Ph.D., MPH, M.Ed.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEC -5 2023**

David W. Stayton, Executive Officer/Clerk of Court

By: N. DiGiambattista, Deputy

ALLIANCE OF LOS ANGELES COUNTY PARENTS V. COUNTY OF LOS ANGELES, et al.  
22STCP02772  
December 5, 2023

**TENTATIVE STATEMENT OF DECISION**

On July 26, 2022, the Alliance of Los Angeles County Parents (“Alliance”) filed a Petition challenging certain actions taken by defendants during the Covid pandemic, including imposing so-called “mask mandates.” The operative First Amended Petition (“FAP”) was filed on January 13, 2023. The parties have stipulated that their dispute now involves only the third cause of action, alleging a violation of the right to free speech, and the fifth cause of action for declaratory judgment.

A bench trial commenced on October 16, 2023. Each side called several witnesses and introduced multiple exhibits into evidence. The parties filed post-trial briefs and closing argument was heard on December 1, 2023. The Court now renders its Tentative Statement of Decision.

**1. FINDINGS OF FACT<sup>1</sup>**

Barbara Ferrer testified that she has been the Director of the Los Angeles County Department of Public Health (“DPH”) for six years. She has a Ph.D. “in a program for health policy.” She is not a medical doctor. DPH has responsibility for the health and well-being of over 10 million people and has a budget of over \$2 billion. DPH is in contact with the approximately 75 hospitals which treat the residents of Los Angeles County.

The Covid outbreak occurred in early 2020. Ferrer testified that the virus was new, highly contagious and deadly. DPH endeavored to gather as much information as possible from the experts on which it relied. DPH also attempted to provide this information to the residents of Los Angeles County, along with guidance as to masks, testing and vaccines. Deaths from the virus sometimes were as high as 300 per day. Ferrer testified that over 37,000 residents of the County have died from Covid.

---

<sup>1</sup> The facts herein are those that the Court has found were established by the testimony of the witnesses and the exhibits received in evidence. If this recitation differs from any party’s position, that is the result of a determination as to credibility and relevance, burden of proof considerations and the weighing of evidence.

DPH relies on a variety of methods to communicate with Los Angeles County residents. These include social media, town hall meetings, press briefings and a call center. DPH Chief Communications Director Brett Morrow reports to Ferrer.

At various times during the pandemic, Ferrer was the recipient of numerous harassing and vulgar emails and voice mail messages. *E.g.*, Ex. 261, 262, 266, 269, 270, 273, 315. She asked her staff to “block” the senders. Ex. 262. Ferrer testified that “block” meant that these emails could still be sent but they would be put in a separate folder so she did not have to see them. Additionally, Ferrer testified that demonstrators came to her home. She had to rely on security from the Los Angeles County Sheriff’s Department and from a private company.

In or around July 2022, Morrow reported to Ferrer that there had been a substantial increase in harassing and vitriolic comments on DPH social media sites. Some of those comments included veiled threats against Los Angeles County residents. Ferrer was also concerned that these comments were undermining her ability and that of her team to provide the public with accurate information about the pandemic. Ferrer considered many of these comments to be “misinformation,” which she defined in her deposition as “information [which] is not aligned with what we’ve determined is accurate information.”

Ferrer was vague in her trial testimony about whether she has had any training in First Amendment issues. But she told Morrow to consult with Los Angeles County Counsel. Thereafter, Ferrer made the decision to close public comments on DPH social media sites. Ferrer denied that her decision was directed to any particular person or group with whom she disagreed. Ferrer has not considered reopening public comments on the social media sites. However, the public remains able to ask questions and send messages to DPH and Ferrer via email and voicemail as well as through the DPH call center.

Morrow testified that he has been in the communications field for nearly 20 years. In addition to media relations, Morrow has experience in reputation management and handling crises. He has previously worked for Congressmen, including Adam Schiff. He knows Schiff’s Chief of Staff, Patrick Boland. Morrow’s job duties at DPH include developing content for DPH social media sites with an outside consulting group, Fraser Communications. Morrow noted that the DPH Twitter (now X Corp.) account has more than 100,000 followers. Morrow supervises a staff of about 12 persons, including Erica Lespron who monitors social media accounts for DPH. Morrow has received no training in First Amendment issues.

In July 2022, several significant events occurred. First, there was discussion at DPH about a new universal indoor mask mandate to begin at the end of the month. Ex. 22, 49, 51, 62.

Second, information had come out that DPH had been relying on a research study published by Ferrer's daughter. Ex. 36.

Third, a video was released in which doctors from Los Angeles County - USC Hospital questioned DPH statistics on hospitalizations due to Covid. Ex. 35. Morrow testified that many people had become very upset by all of this information. The level of vitriol, "bullying" and "hurtful" content on DPH social media sites dramatically increased. Ex. 61-63, 65 and 67. Morrow described some of the comments as coming from "anti maskers" and from the "right wing echo chamber." Ex. 27. Lespron testified that Los Angeles County residents were complaining and that DPH staff were "just exhausted."

Morrow testified about his efforts to control the information that the public would receive about Covid. First, he implemented Ferrer's order to close public comment on DPH social media sites. Ex. 37, 45, 49. Lespron manually turned off settings on Twitter, Instagram and Facebook. Morrow conceded that the implementation of this policy was "haphazard." Lespron testified that a few comments "got through." Essentially, however, the vast majority of public comments have been shut down on DPH's 2500 postings up to the time of trial.

Next, Morrow tried to shut down comments on other Twitter accounts which he found to be offensive and misleading. Morrow turned to Boland to obtain a contact point at Twitter. Ex. 26. Beginning on July 20, 2022, Morrow sent a series of emails asking Twitter to intercede because "anti-maskers" were targeting DPH and his own Twitter account. Ex. 59. Morrow's emails referred to his connection to Schiff and Boland and claimed that "urgent action" was required because "misinformation" was being spread. The alleged "misinformation" included a comment that Ferrer was a "fake doctor." Morrow believed that such a comment would "undermine [Ferrer's] credibility as a Ph.D."

When Morrow learned that a new Twitter account had been created he tried to get it shut down as well. The new account was referred to at trial as the Alliance "Alt account." Morrow testified that he was concerned that this account, which he thought was similar to the DPH Twitter account, could cause confusion with the public. Morrow exchanged a series of emails with Twitter. Ex. 59. The Alt account was shut down on August 23, 2022. Ex. 21.

Morrow admitted that on one occasion he tried to influence the print media's reporting. Morrow contacted the editor of the Southern California News Group regarding an opinion piece that Morrow alleged contained misinformation regarding the doctors' video. Ex. 25. The opinion piece was somewhat changed as a result.

In any event, the universal indoor mask mandate was not reinstated by DPH. Ferrer testified that she announced that decision in July 2022.

Despite the closing of public comments on DPH social media accounts, Morrow and Lespron testified that the public was allowed to comment during DPH virtual town hall meetings, via direct messages (“DM’s”), by email and through the call center. Morrow also testified that DPH social media accounts allow “non-verbal reactions.”

Cynthia Rojas is an Alliance member who created the Alt account in August 2022 because DPH had shut down comments on its social media accounts. Rojas thought it important for people to be able to discuss other viewpoints. She modeled the Alt account after a similar account dealing with the CDC. However, the Alt account was quickly shut down by Twitter.

The parties stipulated that Rojas and other Alliance members have their own social media accounts on which they could communicate, including by referencing information on DPH social media accounts. Ex. 242, 318, 323.

Margaret Orenstein is another Alliance member. She was upset when DPH closed public comments on its social media sites. Orenstein had used the comments feature to meet others who shared her views. Her individual social media accounts were not as effective in meeting with and sharing information.

Sarah Burwick was a third Alliance witness. She testified that the closing of DPH social media comments and the closure of the Alt account affected her ability to communicate with others who shared her views. However, she admitted that she has some 67,000 followers on her Twitter account.

Roxanne Hoge, another Alliance witness, testified that she was very frustrated when DPH closed public comments on its social media accounts. She likened this to closing the “public square.” She was especially concerned because DPH was contemplating a new mask mandate. Hogue has 14,500 followers on her personal Twitter account. But she claimed that her account does not allow for the kind of “back and forth” engagement with others as did the comments feature on the DPH twitter account.

///  
///  
///

## 2. CONCLUSIONS OF LAW

Alliance's Closing Brief advances two primary arguments in support of its claim that DPH engaged in a "censorship campaign." First, DPH engaged in viewpoint discrimination when it disabled public comments on its social media sites. Second, DPH encouraged or coerced Twitter to shut down the Alt Account. The Closing Brief does not request or provide any argument in support of a specific remedy or form of judgment. But during closing argument, counsel for Alliance urged the Court to declare that the First Amendment rights of Alliance members were violated and to issue a mandatory injunction requiring DPH to reopen comments on its social media sites.

With its Closing Brief Alliance filed a Request for Judicial Notice ("RJN") seeking to augment the evidence with Rules Adopted by the Committees of the House of Representatives, 117<sup>th</sup> Congress. The RJN also included additional pages of legal argument in support of Alliance's above-stated coercion argument.

Defendants filed objections to the RJN which are well-taken and sustained. Alliance's attempt to offer new evidence is untimely. The evidence was closed on October 19, 2023 and Alliance did not properly seek, nor did it receive, permission to reopen. Further, it would be fundamentally unfair to permit Alliance to add new evidence at this late date without giving defendants the opportunity to test that evidence and offer responsive evidence of their own. Trials have a beginning and must have an end. Additionally, the parties agreed to a 10 page limit on their post-trial briefs. Alliance used their 10 pages and did not get permission to get extra pages by filing the RJN with further legal arguments. Further, the arguments in Alliance's Opening Brief at pages 7 and 8 which are based on the RJN must be disregarded.

Defendants' Post-Trial Brief argues that DPH was constitutionally permitted to close its social media sites "whenever it wants" and, in any event, the sites were not closed because of impermissible viewpoint discrimination. Defendants also argue that the few public comments which did get through were simply the result of human error. Defendants further contend that they did not coerce any action on the part of Twitter. Finally, defendants argue that, to the extent plaintiff is seeking injunctive relief, that remedy is unavailable as a matter of law.

Despite the highly contested nature of this dispute, the parties agree on two important legal issues. First, until they were closed for public comment in July 2022, DPH social media pages and posts served as a designated public forum. *See* Joint Statement of Stipulated Facts for Trial, No. 28. Second, the case of *State of Missouri v. Biden*, 83 F. 4<sup>th</sup> 350 (5<sup>th</sup> Cir. 2023) (cert. granted), controls in determining whether DPH acted properly when it had contacts with Twitter,

especially regarding the Alt Account.<sup>2</sup>

Defendants cite several cases for the proposition that a government agency is not required indefinitely to keep open a designated public forum. *E.g.*, *Cornelius v. NAACP Legal Def & Educ. Fund*, 473 U.S. 788, 802 (1985); *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46 (1983); *Currier v. Potter*, 379 F. 3d 716, 728 (9<sup>th</sup> Cir. 2004) (the government may close a designated forum whenever it wants); *United States v. Bjerke*, 796 F. 2d 643, 647 (3d Cir. 1986). Moreover, the motive for closing the designated forum is irrelevant. *Sons of Confederate Veterans v. Lexington*, 722 F. 3d 224, 231-32 (4<sup>th</sup> Cir. 2013) (no constitutional violation when the public forum is closed to *all* private speakers).

In advancing its first argument, Alliance's Closing Brief agrees that *Perry Ed. Assn.*, *supra*, provides guidance. The only other case cited is by way of a parenthetical reference to *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). But Alliance does not show how this flag-salute case applies here and this Court declines to do Alliance's work in this regard. *See People v. Stanley*, 10 Cal. 4<sup>th</sup> 764, 793 (1995) (points are waived when a party makes a general assertion, unsupported by specific argument); *Lockett v. Keylee*, 147 Cal. App. 4<sup>th</sup> 919, 927, n. 11 (2007) (issues are waived when a party fails to make an intelligible argument).

During closing argument, Alliance counsel cited two additional cases. The first is *U.S. v. Griefen*, 200 F. 3d 1256 (9<sup>th</sup> Cir. 2000). But this case had nothing to do with the closure of a designated public forum. Instead, this was a criminal case which dealt with protestors violating a temporary closure order put in place to allow for road construction in a National Forest. The Ninth Circuit equated the National Forest to a traditional public forum such as a street or a park.

Also inapposite is *Crosby v. South-Orangé County Community College District*, 172 Cal. App. 4<sup>th</sup> 433 (2009), which held that the community college library internet access was neither a traditional nor designated public forum.

Alliance has failed to distinguish the cases cited by defendants and has failed to cite any persuasive contrary authority regarding a public entity's ability to close a designated public forum to all parties at any time. As a result, the Court concludes that DPH was permitted to do what it did here, consult with its attorneys and then close its social media accounts on Twitter, Instagram and Facebook to all private speakers. The fact that a handful of comments got through is immaterial.

---

<sup>2</sup> However, Alliance makes it difficult to follow its arguments because it fails to cite to the official reporter. *E.g.* Closing Brief at 7, citing "*Biden* at pp. 33, 34."

Defendants' Post-Trial Brief argues that the evidences showed that nine out of approximately 2500 posts (.0036%) allowed public comment. No different number was provided by Alliance in its Closing Brief or by its attorney in closing argument. Further, Lespron was credible when she testified that the few comments which got through were the result of human error. In other words, to the extent that anything done by humans can be perfect, the evidence here shows that these social media accounts were essentially closed to all private speakers. The Court rejects Alliance's argument that defendants "did not exercise clear and consistent control" over the DPH social media accounts.

Alliance did not carry its burden of showing that the very few comments which got through were because they expressed a particular (and favored) viewpoint. In fact, Alliance did not provide persuasive evidence in support of its theory that DPH closed off comments on its social media accounts because of viewpoint discrimination. Instead, the Court found Ferrer, Morrow and Lespron credible when they testified that comments were closed because of the extreme, profane, threatening and vitriolic nature of many of them.<sup>3</sup>

The Court also concludes that Alliance members and other members of the public were not prevented from communicating their disagreements to DPH regarding its statements and policies by other means, including during town halls, direct messaging, email and through the call center. Nor were Alliance members deprived of their ability to communicate with other like-minded individuals regarding the statements and actions of DPH. *See Sons of Confederate Veterans, supra* at 231 ("all private groups and individuals remain free to express their [ ] messages in other ways").

In sum, Alliance's first censorship argument fails.

The second censorship argument fares no better. The handful of emails from Morrow to Twitter regarding the Alt Account fall far short of the coercive conduct condemned by the Fifth Circuit in *State of Missouri v. Biden*. The word choice and tone of these emails was polite, non-threatening, professional (as Alliance concedes) and deferential. Next, there is nothing in Twitter's responsive emails to suggest that it felt threatened or coerced. Instead, Twitter's responses showed that it was dealing with routine and standard requests.

While Morrow's first email referenced Schiff and Boland, and later emails had Boland in

---

<sup>3</sup> Morrow's passing comments about "anti-maskers" and a "right wing echo chamber" are insufficient to prove viewpoint discrimination. Nor do they outweigh the much more substantial evidence of extreme and uncivil comments posted on the social media sites.

their headers, this is insufficient to show a threat of retaliation. There nothing in the emails that references adverse consequences by DPH or by anyone else. There is nothing in the record to support the Alliance argument that there was a “perceived and actual ability from Congressman Schiff - at Morrow’s request - to commence an investigation, issue a subpoena, or propose regulatory changes that could negatively impact Twitter.” Nor is there any evidence to support the assertion that DPH somehow “overwhelmed” Twitter’s “choice.” It is telling that Alliance failed to call any witness to testify that Twitter felt threatened or coerced by the DPH emails. It is also telling that Alliance failed to call Boland to support Alliance’s interpretation of Ex. 26.

### 3. CONCLUSION

The Court intends to enter judgment in favor of defendants as set forth above. If any party objects to this Tentative Statement of Decision, they shall file their objections by December 22, 2023. Said objections shall not exceed 10 pages and shall not consist of a re-argument of the merits of the case. *Heaps v. Heaps*, 124 Cal. App. 4<sup>th</sup> 286, 292 (2004).

IT IS SO ORDERED.

Notice by defendants.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

**Alliance of Los Angeles County Parents v. County of Los Angeles, et al.  
Case No. 22STCP02772**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067-6055.

On November 7, 2023, I served true copies of the following document(s) described as: **NOTICE OF TENTATIVE STATEMENT OF DECISION** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address lchu@sheppardmullin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 7, 2023, at Los Angeles, California.

---

Lily Young Chu

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SERVICE LIST**

Julie A. Hamill  
Hamill Law & Consulting  
904 Silver Spur Road, #287  
Rolling Hills Estates, California, 90274  
Telephone: (424) 265-0529  
Email: julie@juliehamill-law.com

Attorneys for Petitioner/Plaintiff  
ALLIANCE OF LOS ANGELES COUNTY  
PARENTS