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California Judge Grants Injunction to NCLA Clients, Halts Implementation of Law Censoring Doctors

Tracy Høeg, M.D., Ram Duriseti, M.D., Aaron Kheriaty, M.D., Pete Mazolewski, M.D. and Azadeh Khatibi, M.D. v. Gavin Newsom, Governor of California, in his official capacity; Kristina Lawson, Randy Hawkins, Laurie Rose Lubiano, Michelle Anne Bholat, David E. Ryu, Ryan Brooks, James M. Healzer, Asif Mahmood, Nicole A. Jeong, Richard E. Thorp, Veling Tsai, and Eserick Watkins, in their various official capacities as officers and members of the Medical Board of California; and Rob Bonta, Attorney General of California, in his official capacity.

Washington, DC (January 25, 2023) – Senior Judge William B. Shubb of the U.S. District Court for the Eastern District of California today [granted](#) NCLA’s motion for preliminary injunction in *Høeg, et al. v. Newsom, et al.* He held that plaintiffs have standing to bring a legal challenge, and enjoined implementation of [Assembly Bill \(AB\) 2098](#) in California. The controversial state law empowered the Medical Board of California to discipline physicians who “disseminate” information regarding Covid-19 that departs from the “contemporary scientific consensus.” Judge Shubb stated that “the ‘contemporary scientific consensus’ lacks an established meaning within the medical community,” and thus, because the “scientific consensus” is so ill-defined and vague, the physician plaintiffs in the lawsuit are “unable to determine if their intended conduct contradicts the scientific consensus, and accordingly ‘what is prohibited by the law.’”

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, represents five physicians licensed by the Medical Board of California. Drs. Høeg, Duriseti, Kheriaty, Mazolewski, and Khatibi alleged violations of their First Amendment rights to free speech and expression and their Fourteenth Amendment rights to due process of law. At oral argument on Monday, January 23, NCLA argued the term “contemporary scientific consensus” is undefined in the law and undefinable as a matter of logic. No one can know, at any given time, the “consensus” of doctors and scientists on various matters related to the prevention and treatment of Covid-19. Judge Shubb agreed with this analysis, stating, “COVID-19 is such a new and evolving area of scientific study, it may be hard to determine which scientific conclusions are ‘false’ at a given point in time.” Because he ruled in favor of Plaintiffs’ Fourteenth Amendment arguments, he did not reach the First Amendment arguments.

Plaintiffs attested that they could not communicate freely with patients, nor treat them properly, according to their best judgment, when they feared being reported and potentially subject to discipline for giving a patient advice that departs from a supposed “scientific consensus.” The very concept of “scientific consensus” is problematic and represents a misunderstanding of the scientific process. As Judge Shubb recognized, “COVID-19 [is] a disease that scientists have only been studying for a few years, and about which scientific conclusions have been hotly contested. COVID-19 is a quickly evolving area of science that in many aspects eludes consensus.”

NCLA commends Judge Shubb for safeguarding our clients’ rights to free speech by enjoining this vague law. Judge Shubb’s decision also granted a PI in a second case making similar arguments against the law in a later-filed case that was argued before him at the same time this past Monday on behalf of additional plaintiffs.

NCLA released the following statements:

“NCLA is gratified Judge Shubb has recognized that AB 2098, which seeks to punish California doctors for giving patients information that departs from the so-called contemporary scientific consensus about Covid, creates an impossible standard for physicians to follow and would result in silencing physicians who disagree with state orthodoxy. The speed with which he issued his decision no doubt reflects the significance of the constitutional problems the law presents, as well as the negative consequences it would have for doctor-patient relationships.”

— **Jenin Younes, Litigation Counsel, NCLA**

“This Act is a blatant attempt to silence doctors whose views, though based on thorough scientific research, deviate from the government-approved ‘party line.’ At no point has the State of California been able to articulate the line between permissible and impermissible speech, further illustrating how problematic the statute is. NCLA is pleased the Court recognized all the problems with AB2098 and enjoined this unconstitutional law.”

— **Greg Dolin, M.D., Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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