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U.S. Supreme Court to Hear Landmark NCLA Case Against Government Social Media Censorship

Vivek H. Murthy, U.S. Surgeon General, et al. v. State of Missouri, et al.

Washington, DC (October 20, 2023) — For the second time in eight days, the U.S. Supreme Court has granted *certiorari* in one of NCLA’s cases. This afternoon the Court [agreed](#) to hear arguments over the Fifth Circuit’s grant of a preliminary injunction in *Missouri v. Biden*, a case brought on behalf of NCLA clients Drs. Jayanta Bhattacharya, Martin Kulldorff, and Aaron Kheriaty, and Ms. Jill Hines, alongside the Attorneys General of Louisiana and Missouri. The injunction would bar officials¹ from the White House, CDC, FBI, Cybersecurity and Infrastructure Security Agency (CISA), and Surgeon General’s office from coercing or significantly encouraging social media platforms to censor constitutionally protected speech. The New Civil Liberties Alliance welcomes this opportunity to defend the First Amendment rights of our clients in the U.S. Supreme Court.

A Fifth Circuit panel last month [upheld](#) the key components of U.S. District Judge Terry Doughty’s July 4 preliminary injunction order, prohibiting named federal officials from coercing or significantly encouraging social media companies to suppress legal speech. That decision vindicated NCLA’s clients, who have been blacklisted, shadow-banned, de-boosted, throttled, and suspended on social media as part of the government’s years-long censorship campaign orchestrated by the White House, CDC, FBI, CISA, and Surgeon General—among others.

The Biden Administration’s censorship regime has successfully suppressed perspectives contradicting government-approved views on hotly disputed topics such as whether natural immunity to Covid-19 exists, the safety and efficacy of Covid-19 vaccines, the virus’s origins, and mask mandate efficacy. The vast, coordinated, and well-documented effort has silenced influential, highly qualified voices including doctors and scientists like Drs. Bhattacharya, Kulldorff and Kheriaty, as well as those like Ms. Hines who have tried to raise awareness of issues. Though the U.S. Supreme Court temporarily stayed the Fifth Circuit’s injunction today, NCLA believes the Justices are ultimately unlikely to permit the egregious First Amendment abridgements this case has exposed.

The Fifth Circuit recognized that the Plaintiffs did “not challenge the social-media platforms’ content-moderation policies.” Rather, Plaintiffs challenged the *government’s* unlawful efforts to influence “enforcement of those policies.” The government gravely harmed the ability of NCLA’s clients to convey their views to the public, and it deprived Americans of their right to hear opinions that differ from the government’s. Judge Doughty strikingly described the Administration’s conduct as “arguably the most massive attack against free speech in United States history” and “akin to an Orwellian Ministry of Truth.” He was right, and the U.S. Supreme Court must not permit it.

NCLA released the following statements:

“We are disappointed Americans’ First Amendment rights will be vulnerable to government infringement until this case is decided. But we are confident this Court, as strong as it is on First Amendment issues, will rule against the government and uphold our clients’ rights and liberties.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

“NCLA is thrilled to have the opportunity to vindicate the First Amendment rights of our clients, and all Americans, in the nation’s highest court. We are confident that after a thorough review of the disturbing facts in this important case—which involves unprecedented government-imposed, viewpoint-based censorship—the Court will recognize the grievous, unconstitutional nature of the government’s conduct and enjoin it.”

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

“If anything, the Fifth Circuit’s decision did not go far enough in enjoining the reprehensible conduct exposed in this case. The facts of this case show government agencies censored speech in a deliberate effort to control the narrative on several controversial topics ahead of the last election. The First Amendment forbids such censorship, and the Supreme Court must never allow such mischief again, if we are to keep our democracy.”

— **Mark Chenoweth, President, NCLA**

For more information visit the case page [here](#) or watch the case video [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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ⁱ The following members Executive Office of the President of the United States: White House Press Secretary, Karine Jean-Pierre; Counsel to the President, Stuart F. Delery; White House Partnerships Manager, Aisha Shah; Special Assistant to the President, Sarah Beran; Administrator of the United States Digital Service within the Office of Management and Budget, Mina Hsiang; White House National Climate Advisor, Ali Zaidi; White House Senior COVID-19 Advisor, formerly Andrew Slavitt; Deputy Assistant to the President and Director of Digital Strategy, formerly Rob Flaherty; White House COVID-19 Director of Strategic Communications and Engagement, Dori Salcido; White House Digital Director for the COVID-19 Response Team, formerly Clarke Humphrey; Deputy Director of Strategic Communications and Engagement of the White House COVID-19 Response Team, formerly Benjamin Wakana; Deputy Director for Strategic Communications and External Engagement for the White House COVID-19 Response Team, formerly Subhan Cheema; White House COVID-19 Supply Coordinator, formerly Timothy W. Manning; and Chief Medical Advisor to the President, Dr. Hugh Auchincloss, along with their directors, administrators and employees. Surgeon General Vivek H. Murthy; and Chief Engagement Officer for the Surgeon General, Katharine Dealy, along with their directors, administrators and employees. The Centers for Disease Control and Prevention (“CDC”), and specifically the following employees: Carol Y. Crawford, Chief of the Digital Media Branch of the CDC Division of Public Affairs; Jay Dempsey, Social-media Team Leader, Digital Media Branch, CDC Division of Public Affairs; and Kate Galatas, CDC Deputy Communications Director. The Federal Bureau of Investigation (“FBI”), and specifically the following employees: Laura Dehmlow, Section Chief, FBI Foreign Influence Task Force; and Elvis M. Chan, Supervisory Special Agent of Squad CY-1 in the FBI San Francisco Division. And the Cybersecurity and Infrastructure Security Agency (“CISA”), and specifically the following employees: Jen Easterly, Director of CISA; Kim Wyman, Senior Cybersecurity Advisor and Senior Election Security Leader; and Lauren Protentis, Geoffrey Hale, Allison Snell, and Brian Scully.