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NCLA Amicus Brief Asks Supreme Court to Apply Proper First Amendment Standard in NRA Case

National Rifle Association of America v. Maria T. Vullo

Washington, DC (January 16, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *NRA v. Vullo*, asking the U.S. Supreme Court to determine that New York Department of Financial Services Superintendent Maria Vullo abridged the National Rifle Association’s rights to free speech and association. Vullo issued statements effectively threatening to punish banks and insurers via regulatory action if they kept doing business with NRA. She targeted NRA’s pro-Second Amendment viewpoint, a blatant First Amendment violation.

The U.S. Court of Appeals for the Second Circuit held that Vullo did not “coerce” the banks and insurance companies to end their relationships with NRA. The Second Circuit reached its conclusion by employing a four-factor test to decide if Vullo’s actions amounted to “coercion” under the First Amendment. However, the proper approach would determine whether Vullo “abridged” NRA’s free speech and association rights—as she certainly did—not just whether coercion occurred. The First Amendment forbids “abridging” these foundational freedoms, which means diminishing or reducing the amount of speech.

Even if the Supreme Court uses the “coercion” test rather than the constitutionally proper “abridgement” standard, NRA has effectively demonstrated that Vullo “coerced” third parties to cut ties with the organization based on its Second Amendment advocacy. Her press releases threatened reputational risks of doing business with the NRA, and she held meetings with industry heads where she turned up the pressure. While Vullo did not explicitly state that companies must drop NRA or face State scrutiny and an investigation—serious, adverse consequences—NRA’s factual allegations created a reasonable inference that such consequences would result should the companies refuse to stop conducting business with NRA.

NCLA is a national leader in the ongoing battle against the First Amendment violations by the Administrative State. This spring, the U.S. Supreme Court will hear oral arguments over the Fifth Circuit’s grant of a preliminary injunction in NCLA’s [Missouri v. Biden](#) case that would bar officials from various federal agencies from coercing or significantly encouraging social media platforms to censor constitutionally protected speech.

NCLA released the following statements:

“New York’s unconstitutional targeting of the NRA could not be clearer. But the Justices must do more than reverse the Second Circuit’s erroneous dismissal of NRA’s First Amendment claims: The Supreme Court should make clear that the First Amendment’s ‘abridging’ standard governs and not the anti-textual ‘coercion’ standard lower courts are using—a standard that allows bureaucrats to game away our fundamental freedoms.”

— **Margot Cleveland, Of Counsel, NCLA**

“The Second Circuit refused to look at the First Amendment’s text, which expressly states that there shall be no abridging of the freedom of speech. Nowhere in the Constitution is the standard lowered to coercion. Courts must not continue to chisel away at the right to speak by instituting atextual, judge-made tests.”

— **Kaitlyn Schiraldi, Staff Attorney, NCLA**

For more information visit the *amicus* 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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