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Supreme Court Hears Oral Argument in Pivotal NCLA Case Against Gov't Social Media Censorship

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

Washington, DC (March 18, 2024) – Today, the Supreme Court heard oral argument in the New Civil Liberties Alliance's *Murthy v. Missouri* case, considering whether to uphold a historic preliminary injunction granted by the U.S. Court of Appeals for the Fifth Circuit. The injunction, temporarily stayed by the Court, would bar officials 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 injuries to NCLA's clients—Drs. Jayanta Bhattacharya, Aaron Kheriaty, and Martin Kulldorff, and Ms. Jill Hines—supplied standing for many of the arguments made in the courtroom today, urging the Court to uphold the injunction in defense of Americans' First Amendment rights.

In September, a Fifth Circuit panel 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 a years-long censorship campaign orchestrated by the White House, CDC, FBI, CISA, and Surgeon General in a "whole of government" effort.

This 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 silencing of First Amendment-protected speech has targeted influential, highly qualified voices including doctors and scientists like Drs. Bhattacharya, Kheriaty, and Kulldorff, as well as those like Ms. Hines who have tried to raise awareness of issues.

NCLA has emphasized throughout this case that the First Amendment's text forbids "abridging" (diminishing) the freedom of speech, meaning the government's scheme violates the Constitution even when it encourages social media platforms to suppress legal speech without coercing them. Though the Fifth Circuit's injunction only forbids coercing or significantly encouraging the suppression of legal speech, the Supreme Court could and should expand it to bar the government from getting the social media platforms to abridge speech to any degree whatsoever.

By unlawfully influencing the enforcement of the social-media platforms' content-moderation policies, the government gravely harmed the ability of NCLA's clients to convey their views to the public. Officials also deprived NCLA's clients and other Americans of their right to hear and respond to 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."

NCLA released the following statements:

“Our clients, who include top doctors and scientists, were censored for social media posts that turned out to be factually accurate, depriving the public of valuable perspectives during a public health crisis. We’re optimistic that the majority will look at the record and recognize that this was a sprawling government censorship enterprise without precedent in this country, and that this cannot be permitted to continue if the First Amendment is to survive.”

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

“I stand here representing the hundreds of millions of Americans who are not medical professionals, academics, or journalists but who simply knew that what was happening in America was not right. We went to social media to voice our opinions and were silenced by government employees who bullied social media snowflakes into silencing our voices. The government has no authority to police our opinions; they are protected speech. I would argue the government is the source of misinformation, and it is our responsibility as Americans to make every effort to correct that.”

— **Jill Hines, NCLA Client**

“Just down the street, the Constitution of the United States sits in the Archives. If Americans don’t stand up and defend our constitutional rights, it is just a piece of paper. I am honored to be here with NCLA and my co-plaintiffs to defend the constitutional right of free speech, which has been systematically suppressed by the federal government. I trust that the Supreme Court will do the right thing and uphold the injunction against government censorship of constitutionally protected speech.”

— **Dr. Aaron Kheriaty, NCLA Client, Fellow and Director, Bioethics and American Democracy Program, Ethics and Public Policy Center**

“During the Covid era, the government promulgated misinformation on lockdowns, school closures, immunity, risk stratification, Covid vaccine efficacy against infection, and Covid vaccine harm. The First Amendment should have protected the American people by permitting the public to loudly correct the government on these matters. Instead, the government censored Americans who were telling the truth. In the *Murthy v. Missouri* case, the Supreme Court has the opportunity to restore the First Amendment in this country. I hope it does so.”

— **Dr. Jayanta Bhattacharya, NCLA Client, Professor at the Stanford University School of Medicine in the Department of Health Policy**

“The First Amendment does not allow the government to abridge speech based on whether the speech is true or false. That is what the government did here, and if that is allowed then the First Amendment is a dead letter.”

— **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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