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## **NCLA Asks Supreme Court to Resolve Circuit Split over Standing in Social Media Censorship Cases**

*Mark Changizi, Michael Senger, and Daniel Kotzin v. Department of Health and Human Services, et al.*

**Washington, DC (March 27, 2024)** – The New Civil Liberties Alliance has [petitioned](#) the U.S. Supreme Court for a *writ of certiorari* in *Changizi, et al. v. HHS*, a lawsuit combating the government’s unconstitutional assault on freedom of speech. NCLA’s petition asks the Court to resolve a circuit split between the Fifth and Sixth Circuits on what plaintiffs must show to satisfy Article III standing in censorship cases against the government. Officials in the Department of Health and Human Services (HHS) have violated the First Amendment by directing social media companies to censor viewpoints that conflict with HHS’s Covid-19 messaging. The petition urges the Court to overturn the U.S. Court of Appeals for the Sixth Circuit ruling that NCLA clients Mark Changizi, Michael Senger, and Daniel Kotzin lacked standing to challenge the censorship regime that silenced them.

Changizi, Senger, and Kotzin were active Twitter users suspended after building large followings due to their reasoned criticism of Covid-19 restrictions. Federal officials in HHS, the White House, and elsewhere told social media companies what and whom to censor, making the government responsible for suspensions and de-platforming of Petitioners’ accounts. Discovery in NCLA’s [Murthy v. Missouri](#) case heard by the Supreme Court last week shows the government browbeat social media companies into censoring Covid-19 views of which the government did not approve. The *Changizi* district court did not allow any discovery before dismissing the case.

The Sixth Circuit wrongly affirmed the district court’s motion to dismiss the *Changizi* suit, determining NCLA’s clients lacked standing to bring their claims in court. This dismissal rests on erroneous interpretations of the governing legal standards. The Sixth Circuit’s opinion sets a standard conflicting with clearly established, governing precedent, and it would prevent many litigants with legitimate legal claims against surreptitious federal censorship from obtaining relief. The Sixth Circuit also ignored discovery material brought to light in *Murthy v. Missouri* that corroborates the plausibility of NCLA’s claims against the government in the *Changizi* case.

The Supreme Court will soon decide whether to uphold the Fifth Circuit’s preliminary injunction in *Murthy v. Missouri* that would block officials at the White House and several federal agencies from abridging, significantly encouraging, or coercing social media platforms to censor constitutionally protected speech. In *Murthy*, the Fifth Circuit determined that social media users facing similar censorship to that suffered by the *Changizi* plaintiffs have standing to pursue the same First Amendment claims against many of the same officials.

The Sixth Circuit partially based its decision to deny standing in *Changizi* on a glaring factual error. It claimed that the constitutional violations in *Murthy* occurred “on a more comprehensive scale” rather than “with respect to discrete individual plaintiffs.” In fact, the Fifth Circuit *did* address censorship against five discrete individual plaintiffs in *Murthy*, finding they each had standing to sue. The Supreme Court should resolve the resulting circuit split on this standing issue in the First Amendment context, at least holding NCLA’s *Changizi* cert petition until it issues a decision in *Murthy*. Assuming the Court upholds standing for even one individual plaintiff in *Murthy*, it should grant this cert petition, vacate the Sixth Circuit’s decision, and remand the case for further proceedings.

**NCLA released the following statements:**

“The *Changizi* allegations regarding government-induced social media censorship are nearly identical to those made in *Murthy v. Missouri*. If the individual plaintiffs in *Murthy* have standing to sue, then so do Changizi, Senger, and Kotzin. And they are entitled to discovery on government officials’ non-public communications encouraging Twitter to censor them.”

—**Sheng Li, Litigation Counsel, NCLA**

“This case was filed prior to *Murthy* and the allegations clearly demonstrated standing if the proper inferences are provided to the Plaintiffs as the law requires. Plaintiffs should not be shut out of court simply because they don’t yet have the full story of when and how the Government is censoring their speech.”

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

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