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In NCLA Amicus Win, Supreme Court Revives NRA's First Amendment Lawsuit Against NY Official

National Rifle Association of America v. Vullo (former Superintendent of the NY Dept. of Financial Services)

Washington, DC (May 30, 2024) – Today, the U.S. Supreme Court unanimously ruled in *NRA v. Vullo* that the National Rifle Association plausibly accused New York Department of Financial Services Superintendent Maria Vullo of violating its rights to free speech and association. In so doing, it reversed a panel of the U.S. Court of Appeals for the Second Circuit, which had held Vullo's alleged actions amounted to permissible government speech and enforcement of state law. Vullo issued statements effectively threatening to punish banks and insurers via regulatory action if they kept doing business with NRA, targeting the organization's pro-Second Amendment viewpoint. The New Civil Liberties Alliance filed an *amicus* brief, urging the Justices to decide NRA's complaint stated a claim upon which relief against Vullo's unconstitutional conduct, if proven, could be granted. NCLA commends the Court for holding that the egregious allegations against Vullo do state a First Amendment claim.

The Second Circuit had held that Vullo did not "coerce" the banks and insurance companies to end their relationships with NRA, reaching this conclusion by employing a four-factor test to decide if her actions amounted to "coercion" under the First Amendment. The Supreme Court reversed that decision, holding that Vullo could not threaten enforcement actions against companies her agency regulates to crack down on gun advocacy, even if the regulated insurance policies NRA was associated with were allegedly illegal under New York state law.

"A government official can share her views freely and criticize particular beliefs, and she can do so forcefully in the hopes of persuading others to follow her lead," Associate Justice Sonia Sotomayor wrote for a unanimous Court. "What she cannot do, however, is use the power of the State to punish or suppress disfavored expression."

Thanks to today's decision, NRA can continue to engage in First Amendment protected activity without fear of being dropped by insurance companies and banks due to coercive government pressure. The ruling does not prevent government officials from conveying the messages they wish to convey. It merely stops state officials from violating First Amendment rights by outsourcing constitutional violations to third parties.

The Court's unanimous ruling strongly reaffirms its 1963 *Bantam Books v. Sullivan* decision, a precedent heavily relied upon in NCLA's *Murthy v. Missouri* case against government-directed social media censorship. As NCLA stresses in *Murthy*—a case still pending before the high court—the coercion standard is insufficient to determine First Amendment violations. That amendment forbids "abridging" speech, which means diminishing or reducing the amount of speech. NCLA looks forward to a *Murthy* decision affirming that plain textual truth.

NCLA released the following statements:
"The Supreme Court's unanimous decision today reaffirmed fundamental First Amendment principles: that the government cannot coerce private parties in order to suppress disfavored viewpoints. NCLA hopes that the Court also remembers that the First Amendment prohibits government from abridging freedom of speech—through coercion, collusion, or any other means—when it issues its decision in *Murthy v. Missouri* within a month."
— Jenin Younes, Litigation Counsel, NCLA

"Today, the Supreme Court unanimously reminded government officials that they cannot 'use the power of the State to punish or suppress disfavored expression.' As the 9-0 decision stressed, such 'viewpoint discrimination is uniquely harmful to a free and democratic society,' and the First Amendment prohibits it. The *Vullo* decision should put an end to government efforts to pressure private actors to silence disfavored speech—under the Orwellian moniker of fighting disinformation."
— Margot Cleveland, Of Counsel, NCLA

"The Supreme Court recognized that the NRA plausibly alleged enough facts to prove its First Amendment rights were trampled. It put the State of New York in its place for trying to do indirectly what it cannot do directly."
— Kaitlyn Schiraldi, Staff Attorney, NCLA

"In a footnote, the Supreme Court instructed the Second Circuit on remand that it is 'free to reconsider whether Vullo is entitled to qualified immunity.' The First Amendment will never be safe so long as state officials can hide unconstitutional sins behind the skirt of qualified immunity. This dastardly doctrine's demise is overdue—at least for officials like Vullo who had plenty of time to consult counsel before violating the NRA's rights."
— Mark Chenoweth, President, 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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