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Supreme Court Issues Troubling Decision in NCLA Case Against Censorship Industrial Complex

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

Washington, DC (June 26, 2024) – Today, the U.S. Supreme Court [voted](#) 6-3 to vacate a historic preliminary injunction granted by the U.S. Court of Appeals for the Fifth Circuit in the case of *Murthy v. Missouri*, finding that the Respondents protected by the injunction lacked standing to support injunctive (that is, future) relief. The injunction had barred officials from the White House, CDC, FBI, Cybersecurity and Infrastructure Security Agency (CISA), and the Surgeon General’s office from encouraging social media platforms to censor constitutionally protected speech. Representing Drs. Jayanta Bhattacharya, Martin Kulldorff, and Aaron Kheriaty, and Ms. Jill Hines, the New Civil Liberties Alliance is disappointed by this dramatic shrinking of Americans’ First Amendment rights. The Court today protected the government’s ability to censor truthful speech that opposed the government’s false and manipulative narratives on multiple aspects of the Covid-19 pandemic, including our clients’ true statements challenging government falsehoods about natural immunity, vaccine efficacy, masking, the origins of the Wuhan virus, and many other topics.

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. The Supreme Court’s decision overturns that ruling, leaving NCLA’s clients without redress, even though they have been blacklisted, shadow-banned, de-boosted, throttled, and suspended on social media as part of a government-orchestrated censorship campaign orchestrated by the White House, CDC, FBI, CISA, and Surgeon General in a “whole of government” effort.

The “censorship industrial complex” has successfully suppressed truthful perspectives contradicting other government-approved narratives, too. The vast, coordinated silencing of First Amendment-protected speech has targeted influential, highly qualified voices including doctors and scientists like Drs. Bhattacharya, Kulldorff and Kheriaty, as well as those like Ms. Hines who lobby officials.

“If the lower courts’ assessment of the voluminous record is correct, this is one of the most important free speech cases to reach this Court in years,” Justice Alito wrote in the dissenting opinion, joined by Justices Thomas and Gorsuch. “Freedom of speech serves many valuable purposes, but its most important role is protection of speech that is essential to democratic self-government, and speech that advances humanity’s store of knowledge, thought, and expression in fields such as science, medicine, history, the social sciences, philosophy, and the arts.”

The Supreme Court majority has practically erased the First Amendment and permitted government to co-opt private entities, like social media platforms, to accomplish its censorship aims. The Framers recognized that the cure for problematic speech is more speech. Nothing prevents government from using its own speech to explain why “misinformation” is wrong. The Court’s ruling will make it far easier for the government to censor speech it doesn’t like and far harder for affected interests to oppose that censorship, which is anathema to the Constitution. This decision enabling the censorship industrial complex will have grave consequences for years to come. *Missouri v. Murthy* will now return to the lower courts for further proceedings.

NCLA released the following statements:

“The majority of the Supreme Court has declared open season on Americans’ free speech rights on the internet. They have issued an ukase that the Federal Government, which admittedly had a huge apparatus aimed at getting the social media companies to remove speech like our clients’. The government’s actions caused the social media companies to remove such messages whether they violated the platforms’ policies or not. The Supreme Court, which is not a factfinder in these cases, just determined against all evidence that the Federal Government will not be held accountable for the natural consequences of its speech-squelching actions. The Government can press third parties to silence you, but the Supreme Court will not find you have standing to complain about it absent them referring to you by name apparently. This is a bad day for the First Amendment.”

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

“The Court has green lighted the government’s unprecedented censorship regime, which resulted in the censorship of top scientists like our clients on the areas of their expertise. This decision is a travesty for the First Amendment, for Americans’ rights to free speech, and for the pursuit of scientific and other knowledge. America can no longer claim to safeguard citizens’ free speech rights.”

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

“In the guise of countering misinformation, the Biden Administration used its regulatory power to suppress valid criticism of its COVID response. This led to irrational policies, such as extended school disruptions, the anti-science denial of recovered immunity, counterproductive vaccine mandates, and the sidelining and gaslighting of the vaccine-injured. Free speech is essential to science, to public health, and to good health. In light of the Supreme Court’s reluctance to fully protect free speech today, we will need concrete action by Congress, and a popular movement, to restore free speech rights as a central plank of the American civic religion.”

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

“I am profoundly disappointed that the Supreme Court failed in this decision to uphold American citizens’ First Amendment rights to free speech. The ruling suggests the Justices failed to grasp the nature and operations of the government’s current censorship apparatus, which seeks to control the flow of information online and silence those who challenge the government’s preferred policies. As our case proceeds, we will continue to uncover additional evidence regarding the government’s vast censorship enterprise, and trust that the Court will do the right thing when it comes to a final ruling in the case.”

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

“The court’s decision today fails to acknowledge the government’s significant and unconstitutional role in coercively censoring American speech on social media, betraying me and countless other concerned citizens who refuse to be silenced. I am immensely disappointed in the Justices’ refusal to affirm the lower court’s decision to put the injunction in place as a barrier to prevent further calculated efforts by the government to stifle disfavored speech like mine. After reviewing the shocking and incriminating evidence indicating a massive government censorship scheme, the Justices erroneously determined to allow the government access to social media companies for the purpose of undermining free speech. Congress must act immediately to defund agencies and third parties actively involved in this broadly pervasive and unconstitutional censorship scheme.”

— **Jill Hines, NCLA Client, Co-Director, Health Freedom Louisiana**

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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