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NCLA Petitions en Banc Sixth Circuit to Halt Government-Directed Social Media Censorship

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

Washington, DC (October 31, 2023) – The New Civil Liberties Alliance has filed a [petition](#) in *Changizi, et al. v. HHS, et al.* asking an *en banc* U.S. Court of Appeals for the Sixth Circuit, or the three-judge panel, to rehear the case and halt the government’s unconstitutional assault on free speech. Biden Administration officials, including some within the Department of Health and Human Services, have violated the First Amendment by directing social media companies to censor viewpoints that conflict with the government’s Covid-19 messaging.

Mark Changizi, Michael P. Senger, and Daniel Kotzin were active Twitter users suspended after building large followings due to their reasoned criticism of Covid-19 restrictions. Statements by President Biden, then-White House Press Secretary Jen Psaki, and other federal officials unequivocally prove they told social media companies what and whom to censor, making the government responsible for suspensions and de-platforming of Plaintiffs’ accounts. Discovery in similar cases—including emails and text exchanges revealed by NCLA’s [Missouri v. Biden](#) case now set for hearing at the U.S. Supreme Court—shows that the government browbeat social media companies into censoring non-government-approved Covid-19 views.

But on September 14, a Sixth Circuit panel wrongly affirmed the district court’s motion to dismiss Changizi, Senger and Katzin’s suit, determining they lacked standing to bring their claims in court because the Complaint did not sufficiently trace their harms to the government’s conduct. NCLA believes the dismissal rests on erroneous interpretations of the governing legal standards. Like the district court, the panel ignored facts that substantiated the Plaintiffs’ claims and failed to draw all inferences in Plaintiffs’ favor as it must at the motion-to-dismiss stage.

The panel, as well as the district court judge, refused to consider evidence, which surfaced after the initial complaint’s filing, that substantially corroborated the Plaintiffs’ claims. The standard the *Changizi* opinion sets—which conflicts with clearly established, governing precedent—would prevent many litigants with legitimate legal claims against surreptitious federal censorship from obtaining the relief they deserve. The courts also erred by ignoring Plaintiffs’ arguments about their First Amendment right to receive information. The panel failed to address these allegations, although they do not suffer from the same purported ‘timeline’ problem that the panel deemed to have derailed Plaintiffs’ arguments about their own social media posts being censored.

On September 8, the U.S. Court of Appeals for the Fifth Circuit granted a preliminary injunction in *Missouri v. Biden* that would block officials at the White House and several federal agencies from coercing or significantly encouraging social media platforms to censor constitutionally protected speech. The Sixth Circuit panel partially based its decision to deny standing in *Changizi* on a factual error, claiming that the constitutional violations in *Missouri v. Biden* occurred “on a more comprehensive scale” rather than “with respect to discrete individual plaintiffs.” But, of course, the Fifth Circuit judges who granted the *Missouri v. Biden* injunction *did* address censorship against the five individual plaintiffs in that case, finding they each had proper standing. The *en banc* Sixth Circuit should correct the panel’s error and allow the *Changizi* plaintiffs to continue their lawsuit seeking to put a stop to the government’s extensive social media censorship activities.

NCLA released the following statement:

“At every turn, the district court deprived Plaintiffs of their day in court, failing to make inferences in their favor and holding them to impossible standards. Now, the Sixth Circuit has done the same. In doing so, it has created an untenable legal standard that conflicts with clearly established Supreme Court precedent. We urge the Sixth Circuit, sitting *en banc*, or the panel itself, to rehear the case and correct this error.”

— **Jenin Younes, 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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