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Media Inquiries: [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

NCLA Asks Supreme Court to Uphold Injunction Against Government Social Media Censorship

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

Washington, DC (February 6, 2024) — The New Civil Liberties Alliance has filed a [brief](#) for the respondents in the U.S. Supreme Court case of *Murthy v. Missouri*, urging the Justices to uphold a historic preliminary injunction granted by the U.S. Court of Appeals for the Fifth Circuit. The injunction 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. Representing individual plaintiffs Drs. Jayanta Bhattacharya, Martin Kulldorff, and Aaron Kheriaty, and Ms. Jill Hines, NCLA eagerly anticipates presenting oral arguments to the Supreme Court on March 18, joining the Attorneys General of Louisiana and Missouri 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, Kulldorff and Kheriaty, as well as those like Ms. Hines who have tried to raise awareness of issues. Though the U.S. Supreme Court has temporarily stayed the Fifth Circuit’s injunction, NCLA believes the Justices are ultimately unlikely to permit the egregious First Amendment abridgements this case has exposed.

The Fifth Circuit recognized that the Plaintiffs did “not challenge the social-media platforms’ content-moderation policies.” Rather, Plaintiffs challenged the government’s unlawful efforts to influence “enforcement of those policies.” The government gravely harmed the ability of NCLA’s clients to convey their views to the public, and it deprived Americans of their right to hear 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.” He was right, and the Supreme Court must not permit it.

NCLA is a leading defender of First Amendment rights against violations by the Administrative State. In December, NCLA launched a [lawsuit](#) against the U.S. State Department for funding the development, testing, and marketing of censorship technology used to suppress First Amendment-protected speech by conservative media outlets including The Daily Wire and The Federalist based on viewpoints expressed in their content. On Wednesday, the Securities and Exchange Commission [denied](#) the NCLA’s long-standing [petition](#) to amend the agency’s “Gag Rule,” under which SEC forbids settling parties from even truthfully criticizing their cases in public. NCLA plans to challenge SEC’s denial of the petition in court.

NCLA released the following statements:

“If the Government could not pass a law blocking this speech it should not be able to browbeat third parties into blocking it. Police officers can’t tell booksellers what to put on their shelves and the government can’t tell social media what to delete.”

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

“Despite having neither the facts nor the law on its side, as two federal courts have found, the Biden Administration continues to defend its viewpoint- based censorship enterprise. NCLA is confident the Supreme Court will agree that the challenged actions violated the First Amendment rights of our clients and thousands of other Americans.”

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

“The government’s job is to police the line between lawful and unlawful speech, not the line between true and false speech. Our Founding Fathers rightly did not trust the government to be the arbiter of truth. In fact, much of the speech the government suppressed in this case—about Covid-19 and Hunter Biden’s laptop—was truthful.”

— **Mark Chenoweth, President and Chief Legal Officer, 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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