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# A Close Look at the Amici Briefs in Murthy v. Missouri

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The convergence of state and corporate power has spawned unexpected bedfellows as Stanford University, the CATO Institute, and Letitia James have joined forces to support the censorship regime in *Murthy v. Missouri*.

The David and Goliath dynamic of the case – which will have oral arguments before the Supreme Court on March 18 – cannot be overstated. One side carries the combined power of the intelligence community and the federal government colluding with the largest information centers in the history of the world on behalf of the country's largest lobbying forces.

Against that hegemon stands a series of independent doctors, news outlets, and state attorneys general.

To this point, four federal judges have found that the Biden Administration, the Department of Homeland Security, the FBI, and the CIA violated the First Amendment in its ongoing collaboration with Big Tech to censor disapproved narratives, including those related to Covid, crime, and mail-in voting.

During the legal process, third parties can present briefs, called *amici curiae*, to the courts that explain their interests and offer support for either side of a case.

Brownstone has reviewed the *amici curiae* in *Murthy v. Missouri* and found that a coalition of libertarians, academics, and blue states all stand together to support society's most powerful groups. Their briefs expose the insidious corruption and perverse financial incentives that underpin the censorship industry. Perhaps more alarmingly, they reveal how once-trusted institutions now stand athwart free expression in their pursuit of mammon, ideology, and power.

**Stanford Warns that Barring Censorship Will "Cast a Chill Across Academia"**

Stanford University, home of the Stanford Internet Observatory and the Virality Project, is host to some of the chief censorship organizations in the United States. Journalists including Andrew

Lowenthal have documented how these groups worked with Big Tech to censor "stories of true vaccine side-effects" and resisted subpoenas from the House of Representatives.

After Judge Terry Doughty issued an injunction barring the federal government from working with social media companies to censor "constitutionally protected speech," Stanford urged the Fifth Circuit to overturn his holding. The injunction "has cast a chill across academia as an example of political targeting of disfavored speech by state government and the federal judiciary," the University wrote.

Of course, Judge Doughty's order did not affect Stanford's First Amendment rights at all; instead, it prevented the university and its subsidiaries from working with the federal government to abridge "constitutionally protected speech," such as political dissent.

So why would the University side with the White House? The federal government is far and away Stanford's largest and most consistent benefactor as it siphons taxpayer funding toward the state-sponsored censorship industry.

Stanford has over $60 billion in assets, including an endowment of $40 billion. Each year, the ostensibly private university receives over $1.35 billion in government grants – nearly 20% more than the university earns from student tuition.

Censorship has become a thriving industry, and Stanford has an ongoing interest in pillaging the national treasury. That explanation would not suit an *amicus* brief, so university lawyers have resorted to Orwellian claims that barring censorship "chills" free expression.

**Blue States Oppose the Injunction Without Addressing What it Does**

New York Attorney General Letitia James led a coalition of twenty Democratic-controlled states, including Arizona, California, Pennsylvania, and Michigan, in opposing the injunction.

They warned that the absence of censorship would amplify the "dangers of social media in promoting extremist violence." As support for the Biden Administration, they invoked a mass shooting in Buffalo, discussed incidents of "cyberbullying," and favorably cited Connecticut's use of taxpayer funds to hire "specialists" to "combat election misinformation."

Notably, however, the *amicus* brief does not make a single reference to the text of the injunction or the opinions from the district court or the Fifth Circuit Court of Appeals. The appeal is entirely emotional, echoing Stanford's dystopian insistence that barring censorship "could chill the ability of state and local governments to productively communicate and share information with social-media companies."

The states that signed onto James' *amicus* brief carry a combined 260 electoral votes. If Biden wins those states, he would only need to win Maryland, which he won by 30 points in 2020, to secure a second term.

Letitia James's brand of "lawfare" is untethered from constitutional concerns. It is blunt force politics, and their primary objective is to control the citizenry. We are now at a crossroads where a group constituting an effective political majority seeks to codify mass censorship into law.

**Libertarians Dither**

The Cato Institute, DC's leading libertarian think tank, submitted a tepid brief "in support of neither party." Like a mother asked to choose sides in a fight between her children, Cato could not bring itself to stand against the parties partnered with the world's largest monopolies. Conveniently, those monopolies happen to also be Cato's donors.

According to Cato, the Court should "make clear" that First Amendment violations only occur when "interactions between the government and digital services regarding displayed content rise to the level of coercion."

But coercion is not the standard for unconstitutional state action. The Supreme Court has previously held that the state "may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish."

As the *Wall Street Journal* explains, the government's current practice involves "laundering its censorship through private platforms." The cycle does not require demands for compliance; it is a far more insidious system of perverse incentives designed to erode First Amendment freedoms. Cato's proposed legal standard would permit the government to continue its censorship through its ongoing clandestine operations and private partnerships.

Provided with the opportunity to stand up for individual rights, Cato and other libertarians dithered to the interests of big business. It should come as no surprise that the same companies involved in the case also fund the nonprofits' lucrative budgets (Cato has an endowment of over $80 million). In 2019, Facebook and Google began donating money to Cato and other libertarian organizations in response to growing concern over social media giants' monopolistic power.

Our institutions have become corrupted, and they offer the veneer of "free markets" to justify the federal government siphoning billions of taxpayer funds to obedient organizations to quash the First Amendment.

**The Brennan Center Defends the National Security State**

The Brennan Center, a Democratic advocacy group housed at NYU Law, justified the abridgments on free expression under the ever-vague justification of national security.

Its brief to the Supreme Court warned that the injunction prevents the government from working together to warn the American public about "Russia and other actors from interfering in American politics," without any hint of irony or recognition of the debunked "Russiagate" hysteria surrounding the 2016 election.

The Brennan Center went further, defending the role of the Cybersecurity and Infrastructure Security Agency (CISA), a branch of the Department of Homeland Security, in curating Americans' newsfeeds. The brief downplays CISA's actions as "minimal governmental involvement in content moderation" that does not amount to a First Amendment violation.

But this ignores CISA's well-documented role at the center of the government's censorship operations. As Brownstone has explained:

*CISA organized monthly "USG-Industry" meetings with the FBI and seven social-media platforms, including Twitter, Microsoft, and Meta, that allowed federal agencies to advance censorship requests and demands. These meetings were the origin of the suppression of the Hunter Biden laptop story in October 2020…*

*In a process known as "switchboarding," the agency flagged content it wanted removed from social media platforms. These determinations were not based on veracity; CISA targeted "malinformation," truthful information that the agency labeled inflammatory.*

*This is not just a theory from the plaintiffs; the defendants admit and often celebrate this process. Brian Scully, the head of CISA's censorship operations, testified that switchboarding would "trigger content moderation." The government boasted that it "leverage[d] DHS CISA's relationship with social media organizations to ensure priority treatment of misinformation reports."*

*They then sought to overturn hundreds of years of free speech protections. Dr. Kate Starbird, a member of CISA's "Misinformation & Disinformation" subcommittee, lamented that many Americans seem to "accept malinformation as 'speech' and within democratic norms." This runs contrary to the Supreme Court's holding that "Some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation." But CISA – led by zealots like Dr. Starbird – appointed themselves the arbiters of truth and colluded with the most powerful information companies in the world to purge dissent.*

The Brennan Center defends the intelligence community's censorship operations by mischaracterizing the facts of the case. Left without facts or case law to reference in support of its political advocacy, the group resorts to familiar fear-mongering in a flailing attempt to justify its position.

**The ACLU's Conspicuous Silence**

Not long ago, the ACLU would have championed the plaintiffs in *Murthy v. Missouri*. The organization was founded in 1920 in response to the Wilson administration criminalization of dissent regarding World War I. After the jailings of journalists, pamphleteers, and presidential candidate Eugene Debs, the ACLU immediately began defending anti-war activists' First Amendment freedoms.

The ACLU famously defended neo-Nazis' right to march through a Jewish suburb, but the organization later became an arm of the Democratic Party, shedding its former principles in the process.

The group has no shortage of *amici* briefs and opinions on their website; they've petitioned courts to support gun control, abortion, Covid vaccine mandates, and race-based university admissions and to oppose bans on men in women's sports and efforts to curb illegal immigration. Despite this flurry of opinions and news releases, the ACLU has not made a single mention of *Murthy v. Missouri* (or *Missouri v. Biden*) on its website.

While the politicization of the ACLU has been well-documented over the last decade, it remains remarkable that the country's most prominent civil liberties organization has decided not to support plaintiffs in what may amount to the most consequential First Amendment case of the last half-century.

**The Rebel Alliance**

There is, however, a coalition resisting the march toward tyranny. Its parties vary in size, power, and ideology but share a commitment to First Amendment freedoms.

The New Civil Liberties Alliance (NCLA), a nonpartisan, nonprofit civil rights group, represents the plaintiffs in the case, leading the fight for constitutional freedoms while peer groups like the ACLU have deliberately abdicated their responsibilities.

While news outlets like the *New York Times* have largely ignored the case and others like CNN have insisted that "it is far from clear that the administration's conduct amounted to censorship," the *Wall Street Journal* has dutifully covered the legal proceedings and taken an editorial stand against the White House's attacks on free expression.

In *amici* briefs, a politically diverse cross-section of nonprofits, journalists, and government officials have united in their support of the plaintiffs.

The Foundation for Individual Rights and Expression (FIRE), joined by the First Amendment Lawyers Coalition and the National Coalition Against Censorship called for the Court to "reinforce principles that will bind all government actors, including the state AGs who brought this case." They explained: "the First Amendment problems addressed in this case are significant regardless of who is attempting to pull the levers behind the scenes. Although much attention has

focused on the power of 'Big Tech,' it is a bad idea for government officials to huddle in back rooms with corporate honchos to decide which social media posts are 'truthful' or 'good' while insisting, Wizard of Oz-style, 'pay no attention to that man behind the curtain.'"

Mike Benz, Executive Director of the Foundation for Freedom Online, submitted a brief to the court elaborating on the roots of the modern censorship industry. "To target American citizens, the government has engaged in a complex online censorship regime coordinated by and with myriad administrative agencies and nominally third-party non-profit and academic groups," he explained. "Government agencies funded these groups, outsourced data collection and analysis tasks necessary to censor individuals to them, coordinated censorship with the platforms, and pressured and coerced the platforms into compliance."

A number of other groups have joined the fight, including the Thomas More Society, Children's Health Defense, Heritage Foundation, and the State of Ohio. While defenders of the regime obfuscate through abstract fear-mongering and deliberate misrepresentations, the plaintiffs' supporters remain focused on legal precedent and the facts of the case.

The brief from Children's Health Defense summarizes their overarching arguments: "As this Court held in *Norwood v. Harrison*, it is 'axiomatic that [the] state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.' For several years now, the federal government's social media censorship campaign has been violating this principle with abandon."

**Conclusion**

The most powerful forces in the country are weaponizing fear – of Russia, of mass shootings, of cyberbullying – to justify the erosion of our constitutional liberties. They flex their political power, their economic strength, and their infiltration of academia in pursuit of a permanent control over the flow of information. In response, the defenders of our Bill of Rights remain committed to the foundations of our legal system: precedent, facts, and the rule of law.

In 1798, President John Adams criminalized dissent as he brought the nation to the brink of war with France and signed the Alien and Sedition Acts into law. Two years later, his Vice President Thomas Jefferson challenged him in the election of 1800 and professed "eternal hostility against every form of tyranny over the mind of man."

Each successive generation has endured its own struggles between entrenched power and individual liberties. Now, Americans must renew their hostility toward aspiring tyrants, for the most powerful groups in our society, augmented by technological advances, have joined forces to quash dissent.

The institutions we once expected to be our allies have revealed themselves to be derelict or submissive. In their place, new groups have emerged to speak truth to power. Now is the time if ever there was one.