

Ketanji Brown Jackson Said *What About the First Amendment?*

Supreme Court Justice Ketanji Brown Jackson (KBJ) raised eyebrows last week for remarks she made about the First Amendment during oral arguments for *Murthy v. Missouri*, a landmark case scrutinizing the federal government's say over social media content.

Justice Jackson is the most recent appointee to the U.S. Supreme Court, having been nominated by President Joe Biden to succeed retiring Justice Stephen Breyer. She was confirmed by the Senate and officially took her seat on the Court in 2022.

During oral arguments last week, Justice Jackson expressed skepticism about limits being placed on the government's freedom to censor Americans during times of emergency such as a "once-in-a-lifetime pandemic."

Addressing Benjamin Aguiñaga, Louisiana's Solicitor General, KBJ remarked, "My biggest concern is that your view has the First Amendment hamstringing the government in significant ways in the most important time periods."

"You seem to be suggesting that that duty cannot manifest itself in the government encouraging or even pressuring platforms to take down harmful information," she added.

"So, can you help me? Because I'm really worried about that because you've got the First Amendment operating in an environment of threatening circumstances, from the government's perspective, and you're saying that the government can't interact with the source of those problems."

During today's Supreme Court hearing on social media content

moderation, Justice Ketanji Brown Jackson expressed concerns about "The First Amendment hamstringing the Government."
pic.twitter.com/qNGRrbUcpp

– *Pirate Wires (@PirateWires)* [March 18, 2024](#)

In reply, Aguiñaga argued that while the government has the ability to intervene in certain situations, it must do so within the bounds of the First Amendment.

KBJ countered by asserting that it is “a compelling interest of the government to ensure, for example, that the public has accurate information in the context of a once-in-a-lifetime pandemic.”

It is true that case law has established a limited number of carveouts to the [First Amendment](#) since its adoption in 1791. Obscenity, “fighting words,” defamation, perjury, blackmail, violent threats, and commercial speech are among some of the better-known examples.

Speech advocating “imminent lawless action” or action that presents a “clear and present danger”—especially in the context of national security, terrorism, or in times of war—can also be fair game for federal censorship.

However, categorizing COVID-19 in such terms is to draw a long bow indeed.

Despite initial [claims](#) by the World Health Organization (WHO) that 3.4 percent of people who contracted COVID-19 had died, it was soon apparent that WHO’s estimate was vastly overstated, and that age and comorbidities were significant risk factors for severe disease and death from COVID-19. An [analysis](#) of over 60 studies released in January 2021 showed that across 51 locations, the median COVID-19 Infection Fatality Rate was in fact 0.27 percent.

More recent, age-stratified studies have affirmed that the vast majority of the world's population was almost certain to survive COVID-19. In October 2022, an [analysis](#) was published that covered 38 countries, revealing an IFR of just 0.095 percent for people aged 0–69, before any vaccines were administered. In other words, 94 percent of the global population had a 99.965 percent chance of surviving COVID-19, even before any health interventions.

The concern is not merely that Justice Ketanji Brown Jackson lacked technical proficiency regarding the COVID pandemic, however. It was the spirit of her remarks that should have Americans on edge.

KBJ expressed concern over whether the government should be restrained from censoring Americans. Yet that is the entire purpose of the First Amendment, which reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment's speech protections are paramount.

To speak is to think out loud. The more limits a government places on what its citizens are allowed to say, the less people will be free to think, test their ideas, be challenged by other viewpoints, and partake in the noble quest for truth.

Freedom of speech is the fundamental prerequisite of a healthy functioning republic. It serves a check against corruption and abuse by government officials. The United States has been a beacon of freedom to the world only to the extent that its people have been allowed to speak against injustice and call for fair laws and good governance.

The ability to speak freely means people can “blow off steam” and bring about change in healthy ways. Consider those parts of the world where speech is heavily censored—are those places less violent or more stable than America? Americans have been spared major political turmoil for most of the republic’s history *because* they have been free to air their grievances and speak openly about the things that matter to them.

Moreover, freedom of speech is the safeguard for all other freedoms, including those listed in the First Amendment: freedom of religion, freedom of the press, freedom of assembly, and freedom to petition the government. The more that limits are placed on what Americans are allowed to say, the less they are able to speak up and defend the other freedoms that preserve human dignity and self-government.

Americans should be deeply concerned when one of the nation’s most powerful magistrates shows more commitment to the right of the government to censor its people than the people’s right to be protected from government censorship.

At the end of the day, the best way to respond to unwanted speech isn’t to use censorship or force, but to counter that speech with more persuasive speech of your own.

And given that the government has the biggest megaphone in the nation, that shouldn’t be a hard ask.

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