The Phyllis Schlafly Report

SCOTUS Went 0-for-4 on Monday

By John and Andy Schlafly

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The Supreme Court went 0-for-4 on Monday, which in spring training for baseball would justify sending the batter to the minor rather than the big leagues. In four cases the Court should have stood strongly against wrongdoing by Biden, the Department of Justice, and the State of New York, but instead acted to appease those liberal regimes.

First up was the case that Sen. Rand Paul (R-KY) calls "the most consequential free speech case in U.S. history," *Murthy v. Missouri*. The U.S. Court of Appeals for the Fifth Circuit had properly enjoined the Biden Administration from telling social media, such as Facebook and YouTube, to take down postings that Democrats do not like.

Such interference with free speech is an affront to the First Amendment, and yet most of the Supreme Court justices seemed just fine with it. The Justices should have taken the White House to the woodshed for its interference with Americans' exercise of freedom of speech as guaranteed by the First Amendment.

It was a dismaying barrage of pro-censorship comments by justices that condoned infringements on free speech by the Biden Administration. Liberal Justice Elena Kagan declared that manipulation of the media "happens literally thousands of times a day in the federal government."

Five Republican Justices raised no objection to the censorship of free speech by the Biden Administration. Only Justice Alito demanded to know why "There is constant pestering of Facebook and some of the other platforms," and government officials "want to have regular meetings, and they suggest … rules that should be applied and why don't you tell us everything that you're going to do so we can help you and we can look it over."

"And I thought: Wow, I cannot imagine federal officials taking that approach to the print media." Justice Alito explained that the federal government has leverage over social media because of its special legal immunity from lawsuits, and the government has been "treating Facebook and these other platforms like they're subordinates."

Next up was the lawsuit by the National Rifle Association (NRA) against New York State officials for telling insurers and bankers not to do business with the pro-Second Amendment

group. This case concerns such an egregious infringement on the First Amendment that the Biden Administration even participated in oral argument mostly on the side of the NRA.

But again a terrific opportunity to educate the public about the importance of a robust First Amendment was kicked away. At times it appeared that the attorney arguing for the Biden Administration was a bigger defender of the NRA's right to free speech than some of the Republican-appointed justices were.

The *New York Times*' analysis suggests that the NRA will win its case, but it should win with a broad ruling rather than a narrow one that the justices seemed to prefer. New York State officials actually met with the insurer Lloyd's to tell it not to provide insurance to the NRA, and the Court's decision may be limited to the misconduct of that meeting.

The third case was the application by Trump's senior advisor Peter Navarro, Ph.D. from Harvard, to remain free from prison pending his appeal of his conviction in the anti-Trump D.C. venue for declining to testify before the Trump-hating congressional January 6th committee. Navarro invoked executive privilege, as other high-level Trump officials have, and he is likely to be pardoned by a re-elected Trump on the next January 20.

Chief Justice John Roberts withheld Navarro's application from the full Court, and Roberts then denied it in a one-page ruling Monday afternoon that failed to address any of Navarro's compelling defenses. Roberts' superficial ruling relied entirely on procedural technicalities, failing to recognize that most defendants in Navarro's circumstances are allowed to remain free pending appeal.

Navarro reported to prison on Tuesday as required, and will be free again in about three months. "There is much at stake here and it is worth the fight," Navarro declared about continuing his appeal in the courts.

Finally, the Court's fourth strike-out at the plate on Monday was to extend again an injunction against the good new Texas law, SB 4, which authorizes Texas officials to arrest illegal aliens and remove them to the border for deportation by federal officials. Fortunately, on Tuesday the Court voted 6-3 to allow this law to go into effect, but two Justices (Barrett and Kavanaugh) weakly did so for procedural reasons conditioned on the Fifth Circuit deciding Biden's lawsuit against it soon.

In all four of these cases the Supreme Court could have acted in a way to strengthen our Constitution and our rights under it, including freedom of speech. Instead, the Court makes it painfully clear that it cannot be relied upon to save our country.

John and Andy Schlafly are sons of Phyllis Schlafly (1924-2016) and lead the continuing Phyllis Schlafly Eagles organizations with writing and policy work.