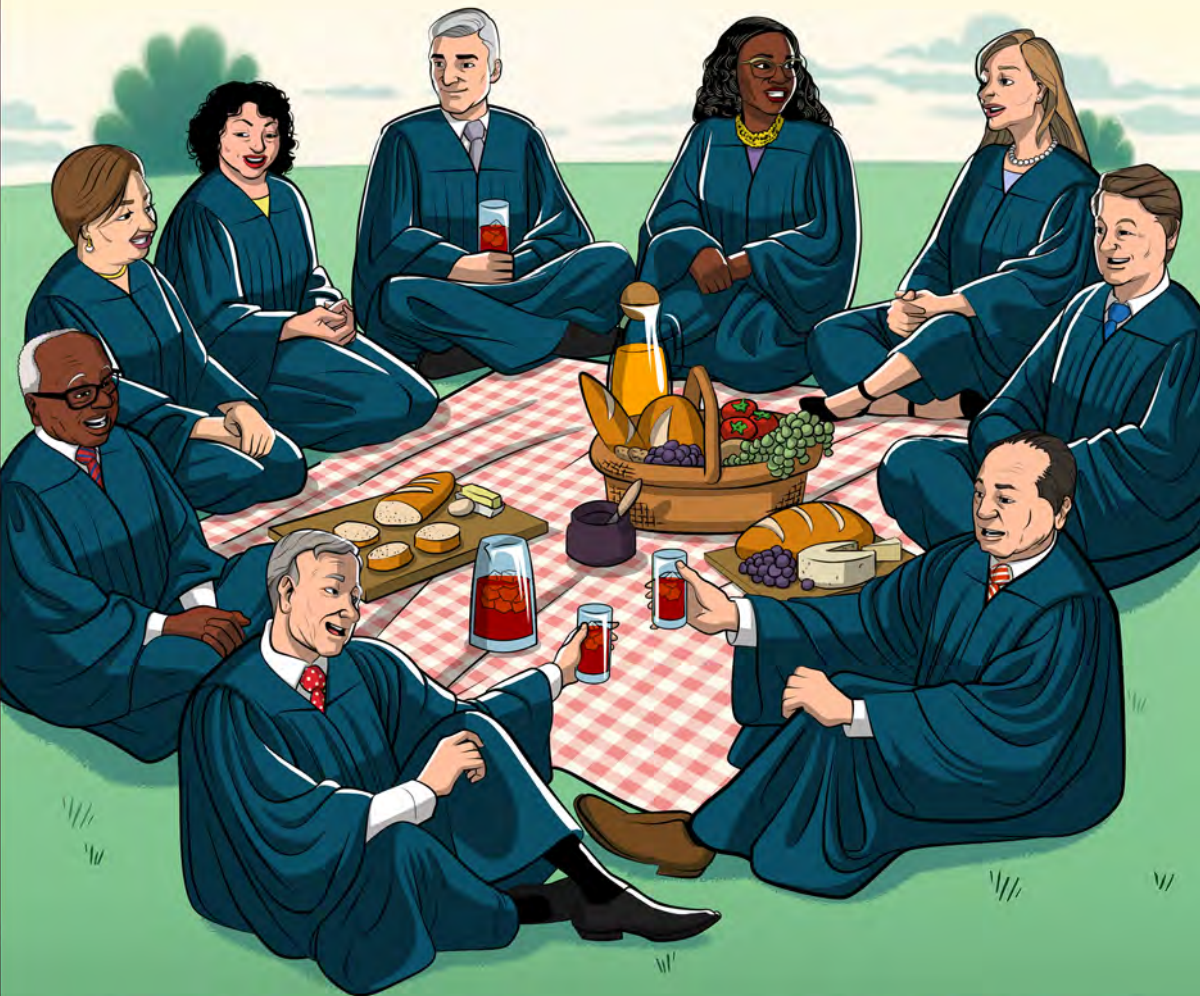


THE  
*Illustrated*  
SUPREME COURT REVIEW



JAMES CRAVEN

MARK PATE

---

THE  
*Illustrated*  
SUPREME COURT REVIEW  
2023 — 2024

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THANK YOU FOR READING THE FIRST VOLUME OF  
THE ILLUSTRATED SUPREME COURT REVIEW.

THE PURPOSE OF THIS BOOK IS TO HIGHLIGHT SOME  
OF THE MAJOR SUPREME COURT CASES FROM THE  
2023-2024 TERM AND TEACH YOU MORE ABOUT  
THEIR SIGNIFICANCE.

THIS BOOK IS NOT ALL-INCLUSIVE, AND IT DOES NOT  
COVER EVERY NOTEWORTHY CASE FROM THE PAST  
TERM. WHILE SELECTIVE, IT FEATURES EIGHT  
DECISIONS THAT OUR TEAM FELT SIGNIFICANTLY  
AFFECTED THE LAW.

IN THE FOLLOWING PAGES, YOU'LL SEE HOW THE COURT  
RESOLVED CRITICAL ISSUES—CHANGING THE LANDSCAPE  
OF AGENCY POWER, ONLINE SPEECH, AND MORE.

AS PROJECT DIRECTOR, I'M DEEPLY GRATEFUL TO  
EVERYONE WHO MADE THIS BOOK POSSIBLE. AND  
ESPECIALLY TO YOU, READER, FOR GIVING OUR  
EFFORTS YOUR TIME AND ATTENTION.

THE WORKS OF OUR SCHOLARS ARE ALWAYS  
AVAILABLE AT [CATO.ORG](https://www.cato.org).

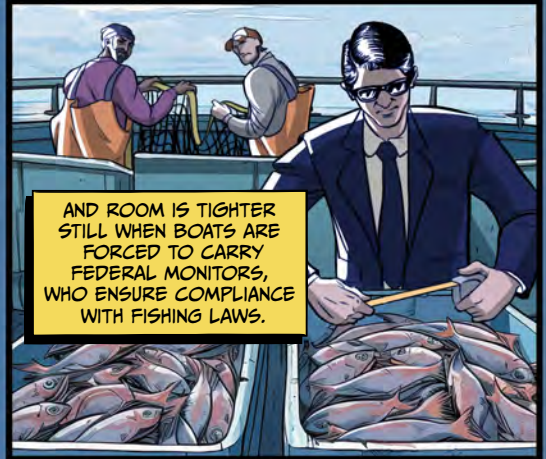
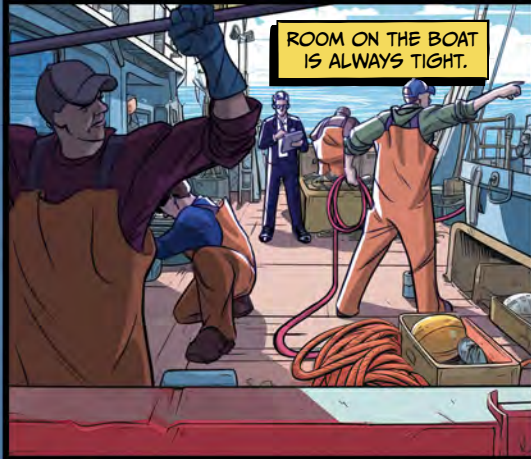
WARM REGARDS,

JAMES CRAVEN





COMMERCIAL  
FISHING IS  
HARD WORK.



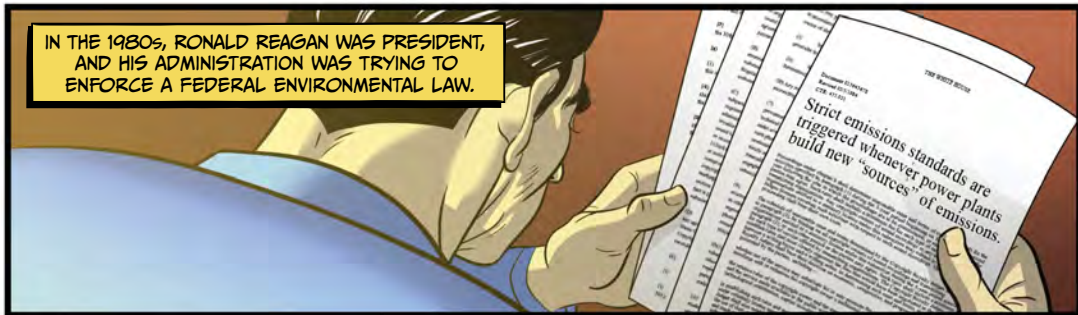
THESE FISHERS ARGUED THAT THE  
GOVERNMENT CAN'T FORCE THEM  
TO PAY THEIR MONITORS' SALARIES.

A FEDERAL APPEALS  
COURT DISAGREED.





THE STORY OF CHEVRON DEFERENCE IS THE STORY OF THE SEPARATION OF POWERS.



IN THE 1980s, RONALD REAGAN WAS PRESIDENT, AND HIS ADMINISTRATION WAS TRYING TO ENFORCE A FEDERAL ENVIRONMENTAL LAW.

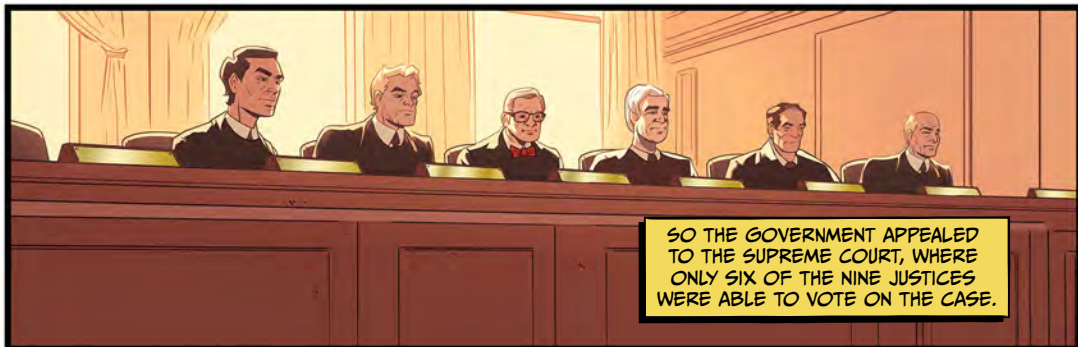
Strict emissions standards are triggered whenever power plants build new "sources" of emissions.

THE REAGAN ADMINISTRATION ARGUED THAT COURTS SHOULD IMAGINE EACH POWER PLANT INSIDE A GIANT IMAGINARY "BUBBLE."

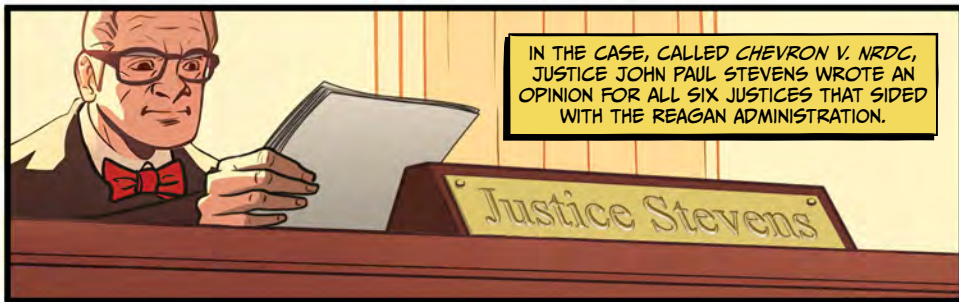
IF A NEW SMOKESTACK DIDN'T INCREASE THE TOTAL EMISSIONS COMING OUT OF THE BUBBLE, THE NEW SMOKESTACK DIDN'T TRIGGER THE LAW.



BUT THE APPEALS COURT HAD REJECTED THE BUBBLE THEORY, RULING THAT EVERY NEW SMOKESTACK IS A NEW "SOURCE," NO MATTER WHAT.



SO THE GOVERNMENT APPEALED TO THE SUPREME COURT, WHERE ONLY SIX OF THE NINE JUSTICES WERE ABLE TO VOTE ON THE CASE.



IN THE CASE, CALLED *CHEVRON V. NRDC*, JUSTICE JOHN PAUL STEVENS WROTE AN OPINION FOR ALL SIX JUSTICES THAT SIDED WITH THE REAGAN ADMINISTRATION.

**CHEVRON CHANGED THE COURSE OF LEGAL HISTORY, NOT BECAUSE THE REAGAN ADMINISTRATION WON, BUT BECAUSE OF HOW IT WON.**

**JUSTICE STEVENS CREATED A NEW RULE FOR DECIDING LEGAL DISPUTES WITH THE EXECUTIVE BRANCH.**

THE **CHEVRON TWO-STEP!**

AT STEP ONE, WE JUDGES TAKE THE LEAD. IF THE STATUTE AT ISSUE IS CLEAR, THE CASE IS CLOSED AND THE DANCE IS OVER.

BUT IF THE STATUTE IS AMBIGUOUS, OUR DANCE PARTNERS TAKE THE LEAD.

AT STEP TWO, WE JUDGES TAKE A BACK SEAT TO THE EXECUTIVE.

AS LONG AS THE EXECUTIVE'S INTERPRETATION OF THE LAW IS REASONABLE, WE MUST ACCEPT THAT VIEW.

EVEN IF WE WOULD HAVE RULED OTHERWISE.



THE MEANING OF "SOURCE" IS AMBIGUOUS, SO THIS DANCE IS GOING TO STEP NUMBER TWO!

OUR "BUBBLE" THEORY IS REASONABLE ENOUGH, SO THE EXECUTIVE BRANCH WINS THE DAY!



AT FIRST, CONSERVATIVE JURISTS WERE BIG FANS OF CHEVRON.

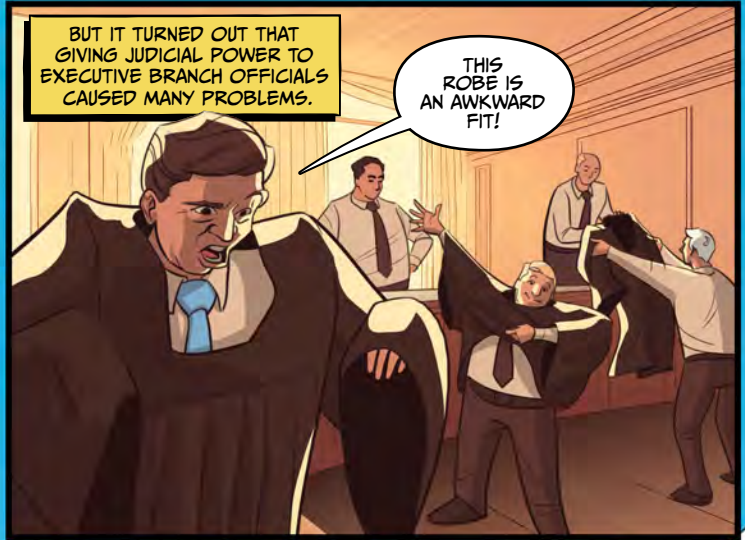
CHEVRON TAKES POWER FROM UNELECTED JUDGES AND GIVES IT TO POLITICALLY ACCOUNTABLE AGENCIES.

WHAT'S NOT TO LOVE?!



BUT IT TURNED OUT THAT GIVING JUDICIAL POWER TO EXECUTIVE BRANCH OFFICIALS CAUSED MANY PROBLEMS.

THIS ROBE IS AN AWKWARD FIT!



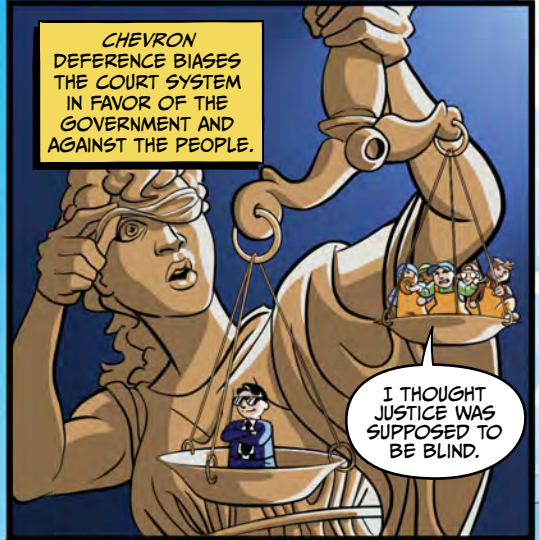
GOVERNMENT OFFICIALS HAVE A STRONG INCENTIVE TO INTERPRET THE LAW IN THEIR OWN INTEREST.

IN A REMARKABLE COINCIDENCE, WE'VE DECIDED FOR THE 400<sup>TH</sup> CONSECUTIVE TIME THAT THE MEANING OF THIS STATUTE ALIGNS PRECISELY WITH OUR POLICY VIEWS.



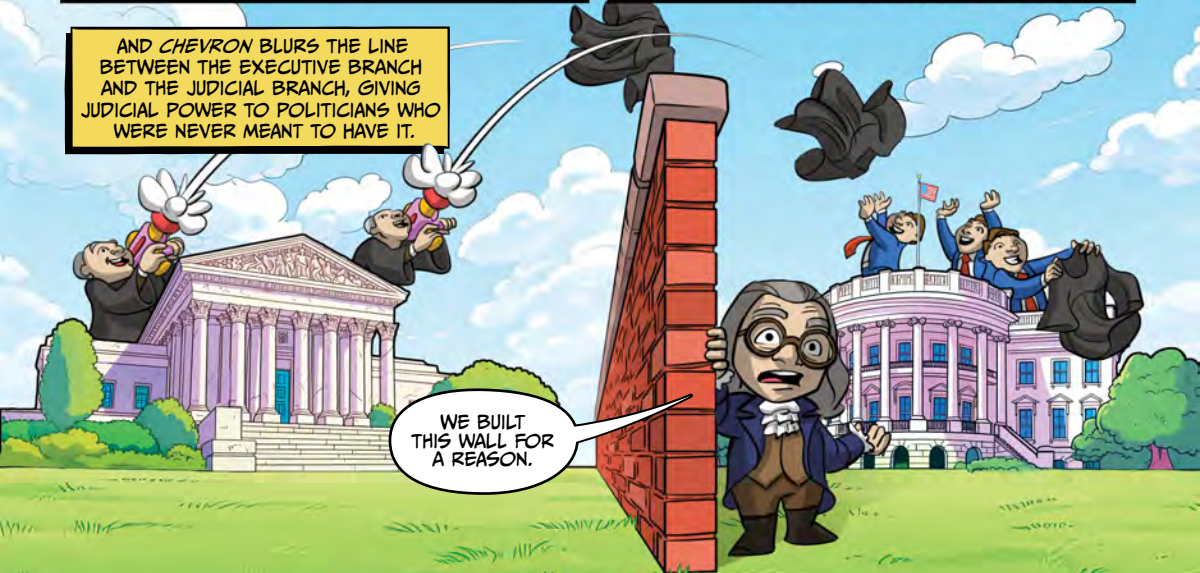
CHEVRON DEFERENCE BIASES THE COURT SYSTEM IN FAVOR OF THE GOVERNMENT AND AGAINST THE PEOPLE.

I THOUGHT JUSTICE WAS SUPPOSED TO BE BLIND.



AND CHEVRON BLURS THE LINE BETWEEN THE EXECUTIVE BRANCH AND THE JUDICIAL BRANCH, GIVING JUDICIAL POWER TO POLITICIANS WHO WERE NEVER MEANT TO HAVE IT.

WE BUILT THIS WALL FOR A REASON.

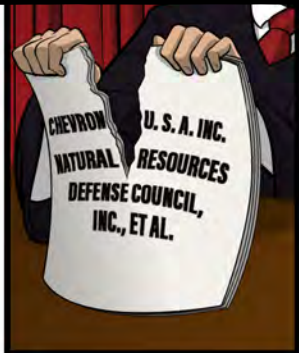


CHEVRON DEFERENCE IS WHY THE FISHERS OF LOPER BRIGHT ENTERPRISES LOST BEFORE AN APPELLATE COURT.

THE STATUTE DOESN'T SAY ANYTHING ABOUT WHO PAYS THE SALARY FOR FISHING MONITORS, SO THE LAW IS AMBIGUOUS AND THE GOVERNMENT WINS.

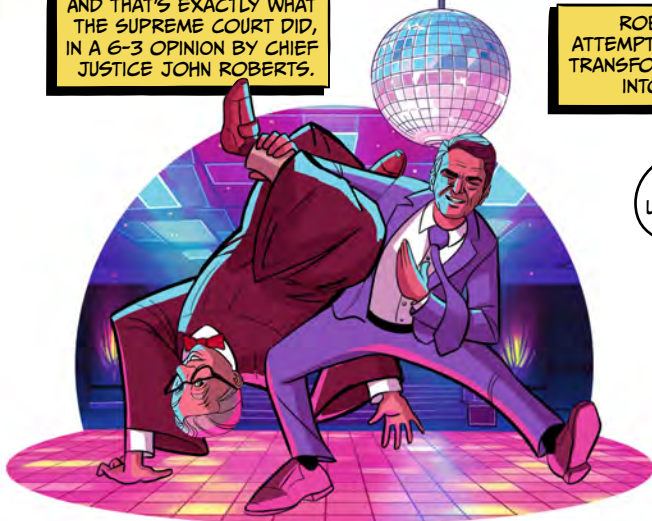
THAT'S THE CHEVRON TWO-STEP!

WHEN THE FISHERS APPEALED TO THE SUPREME COURT, THEY COULD HAVE PLAYED IT SAFE AND MADE A NARROW ARGUMENT. BUT INSTEAD THEY BOLDLY ASKED THE COURT TO OVERRULE CHEVRON ONCE AND FOR ALL.



AND THAT'S EXACTLY WHAT THE SUPREME COURT DID, IN A 6-3 OPINION BY CHIEF JUSTICE JOHN ROBERTS.

ROBERTS EXPLAINED THAT THE ATTEMPTS TO FIX CHEVRON HAD INSTEAD TRANSFORMED "THE ORIGINAL TWO-STEP INTO A DIZZYING BREAKDANCE."



IT'S TIME TO UNTANGLE THESE TWO.



THE COURT HELD THAT CHEVRON IS INCOMPATIBLE WITH THE ADMINISTRATIVE PROCEDURE ACT, A FEDERAL STATUTE THAT REQUIRES COURTS TO "DECIDE ALL RELEVANT QUESTIONS OF LAW" IN AGENCY CASES. THAT MEANS COURTS MUST WEIGH ARGUMENTS WITHOUT BIAS OR DEFERENCE.

THE CASE WILL NOW GO BACK TO THE LOWER COURTS, WHERE THE FISHERS WILL FINALLY GET A FAIR CHANCE TO WIN THEIR CASE ON AN EQUAL PLAYING FIELD.

WORKS JUST AS WELL AS NEWSPAPER!



YOU MEAN NOW WE HAVE TO ACTUALLY MAKE THE BETTER ARGUMENT?



Gonzalez

vs

Trevino

★ ★ ★ ★ ★ ★ ★ ★

James Craven

72-YEAR-OLD  
SYLVIA GONZALEZ—

THE FIRST HISPANIC  
COUNCILWOMAN TO  
SERVE CASTLE HILLS

—IS HARD  
AT WORK.

THE YEAR  
IS 2019.

CASTLE HILLS  
RESIDENTS ARE CONCERNED  
THAT THEIR CITY MANAGER,  
RYAN RAPELYE, HASN'T  
DONE WHAT HE PROMISED:

FIX THEIR STREETS.

GONZALEZ'S  
"FIX OUR STREETS"  
PETITION CALLS FOR  
HIS REMOVAL.

IT NETS  
OVER 300  
SIGNATURES.

THAT'S NO SMALL FEAT IN CASTLE HILLS, TEXAS: A QUIET SUBURB  
ENSCONCED IN SAN ANTONIO WITH JUST 4,500 RESIDENTS.

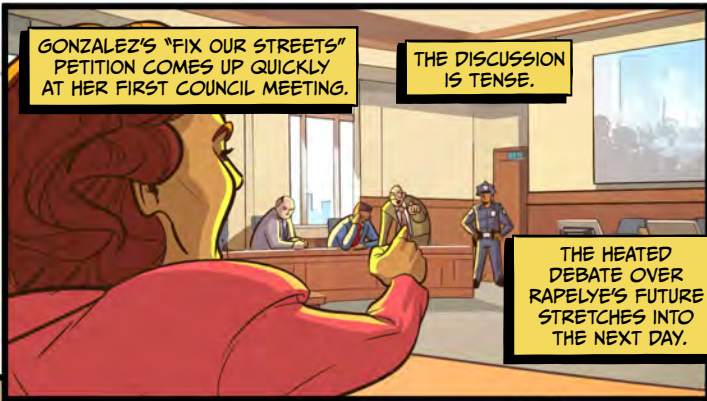
BUT THE CASTLE HILLS GOVERNMENT  
IS A TIGHT-KNIGHT CABAL. THE MAYOR  
AND HIS INNER CIRCLE RESPOND QUICKLY  
WITH A PETITION TO KEEP RAPELYE.

MAYOR  
"J.R." TREVINO

CITY MANAGER  
RYAN RAPELYE

COUNCILMAN  
"SKIP" MCCORMICK

THOUGH THEIR PETITION GETS  
HALF AS MANY SIGNATURES  
AS GONZALEZ'S, IT LAYS THE  
GROUNDWORK FOR A BIGGER PLAN.



GONZALEZ'S "FIX OUR STREETS" PETITION COMES UP QUICKLY AT HER FIRST COUNCIL MEETING.

THE DISCUSSION IS TENSE.

THE HEATED DEBATE OVER RAPELYE'S FUTURE STRETCHES INTO THE NEXT DAY.



AND AT ONE POINT, GONZALEZ PICKS HER PETITION BACK UP.

LATER, THE WOMAN GONZALEZ DEFEATED IN HER ELECTION COMES TO THE DOOR, DEMANDING THE NOTES GONZALEZ TOOK DURING THE MEETING.



WHEN GONZALEZ SAYS SHE DOESN'T HAVE THE NOTES, COUNCILMAN MCCORMICK BURSTS IN AND THREATENS TO HAVE GONZALEZ ARRESTED.

WHILE GONZALEZ IS DISTRACTED, MAYOR TREVINO SIFTS THROUGH HER BINDER.

CAPTAIN—  
—TAKE A LOOK AT THIS.



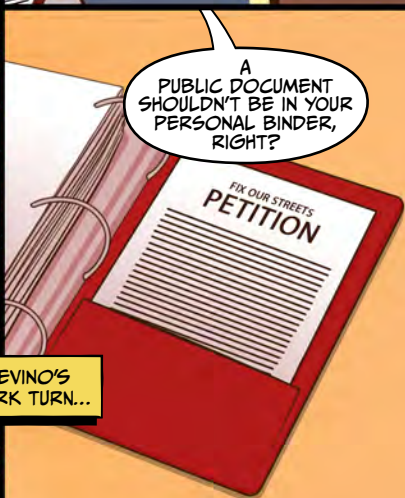
WHERE'S THE PETITION?

DON'T YOU HAVE IT?

IT WAS TURNED IN TO YOU YESTERDAY.



NOW MAYOR TREVINO'S PLAN TAKES A DARK TURN...



A PUBLIC DOCUMENT SHOULDN'T BE IN YOUR PERSONAL BINDER, RIGHT?

JOHN SIEMENS, THE CHIEF OF POLICE, IS TASKED WITH INVESTIGATING GONZALEZ FOR VIOLATING A STATUTE IMPOSING POTENTIAL JAIL TIME ON ANYONE WHO "INTENTIONALLY DESTROYS, CONCEALS, REMOVES, OR OTHERWISE IMPAIRS THE VERITY, LEGIBILITY, OR AVAILABILITY OF A GOVERNMENTAL RECORD."

SERIOUS STATUTE TO VIOLATE.

IT COULD MEAN UP TO A YEAR IN THE CAN...

WHEN THE OFFICER APPOINTED TO INVESTIGATE THE CASE CAN'T FIND ANY EVIDENCE OF WRONGDOING—

YOINKS!

—CHIEF SIEMENS DEPUTIZES FRIEND AND LOCAL ATTORNEY ALEX WRIGHT TO SERVE AS A "SPECIAL DETECTIVE."

YOU CAN WEAR THIS FOR NOW.

BYPASSING THE DISTRICT ATTORNEY—

HEY!

—WRIGHT GOES DIRECTLY TO THE MAGISTRATE TO REQUEST AN ARREST WARRANT.

HELLO, I AM KIND-OF SORT-OF A POLICE OFFICER.

PLEASE ISSUE AN ARREST WARRANT FOR THIS 72-YEAR-OLD WOMAN BEFORE SHE TRIES TO PUT HER PETITION IN A BINDER AGAIN.

WELL, I GUESS IT IS AGAINST THE LAW...

5'0"

4'6"

4'0"

3'6"

AND TRIVINO'S PLAN COMES TOGETHER.

99-8541

P201

SYLVIA GONZALEZ

UPON REVIEWING THE CHARGES, THE BEXAR COUNTY DISTRICT ATTORNEY DISMISSES THEM.



FREE BUT DISPIRITED, GONZALEZ RESIGNS FROM THE CITY COUNCIL AND FILES A CIVIL RIGHTS LAWSUIT AGAINST MAYOR TREVINO, CHIEF SIEMENS, AND "SPECIAL DETECTIVE" WRIGHT FOR RETALIATORY ARREST.



IN OTHER WORDS, SHE CLAIMS THEY ARRESTED HER FOR EXERCISING HER CONSTITUTIONAL RIGHTS.

IN DECIDING WHETHER THE GROUP COMMITTED A RETALIATORY ARREST, THE FIFTH CIRCUIT COURT OF APPEALS APPLIES THE LEGAL STANDARD FROM NIEVES V. BARTLETT.

THE NIEVES STANDARD HAS TWO PARTS.

FIRST, IT REQUIRES THE PLAINTIFFS TO SHOW THAT THERE WAS NO PROBABLE CAUSE TO MAKE THE ARREST.

AND IF YOU CANNOT DO SO, YOU MUST PRESENT "OBJECTIVE EVIDENCE" THAT YOU WERE ARRESTED WHEN SIMILARLY SITUATED PEOPLE DOING SIMILAR THINGS WERE NOT.



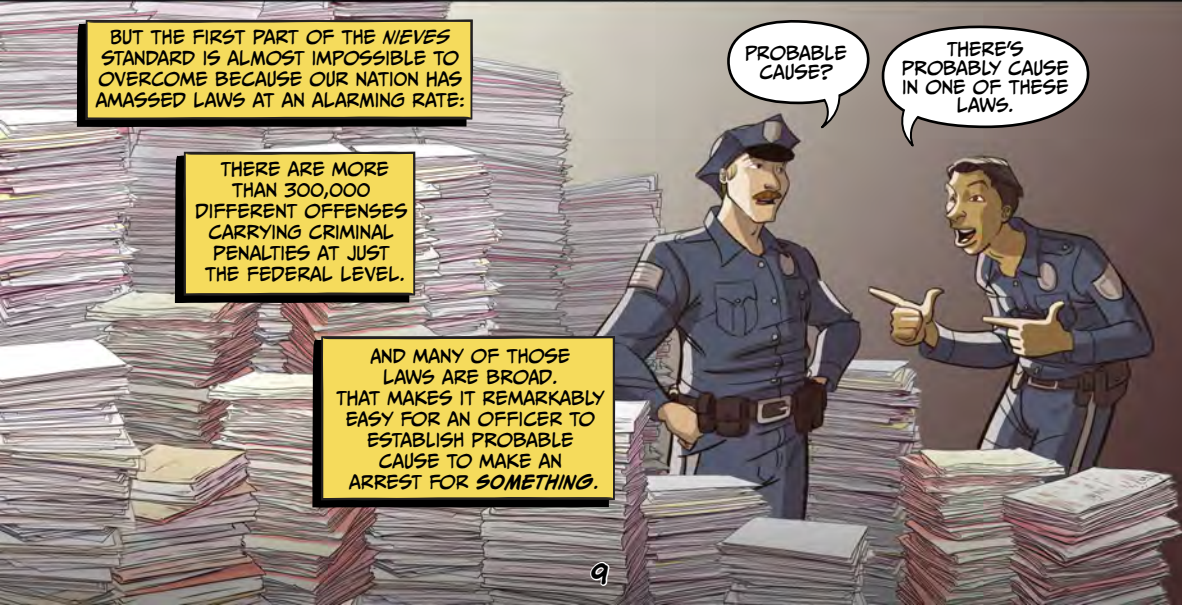
BUT THE FIRST PART OF THE NIEVES STANDARD IS ALMOST IMPOSSIBLE TO OVERCOME BECAUSE OUR NATION HAS AMASSED LAWS AT AN ALARMING RATE:

THERE ARE MORE THAN 300,000 DIFFERENT OFFENSES CARRYING CRIMINAL PENALTIES AT JUST THE FEDERAL LEVEL.

AND MANY OF THOSE LAWS ARE BROAD. THAT MAKES IT REMARKABLY EASY FOR AN OFFICER TO ESTABLISH PROBABLE CAUSE TO MAKE AN ARREST FOR SOMETHING.

PROBABLE CAUSE?

THERE'S PROBABLY CAUSE IN ONE OF THESE LAWS.



THE FOUNDING FATHERS LIKELY DIDN'T ANTICIPATE THAT OUR REPRESENTATIVES WOULD PRODUCE SO MANY CRIMINAL LAWS. IN THEIR TIME, WHAT CONSTITUTED A CRIME WAS DETERMINED MOSTLY BY THE COURTS.

SO TO PROTECT CITIZENS FROM ARBITRARY PUNISHMENT, THE FOUNDERS ENACTED A CONSTITUTIONAL GUARANTEE THAT ONLY A JURY COMPOSED OF THE DEFENDANT'S FELLOW CITIZENS COULD CONVICT HIM OF A CRIME.

IT IS TRULY A LIBEL TO WRITE ANYTHING MEAN ABOUT THE ROYAL GOVERNOR, EVER.

IF A LIBEL IS UNDERSTOOD IN THE LARGE AND UNLIMITED SENSE URGED BY MR. ATTORNEY, THERE IS SCARCE A WRITING I KNOW THAT MAY NOT BE CALLED A LIBEL...

THE QUESTION BEFORE YOU, GENTLEMEN OF THE JURY, IS NOT OF SMALL NOR PRIVATE CONCERN... IT MAY IN ITS CONSEQUENCE AFFECT EVERY FREE MAN THAT LIVES UNDER A BRITISH GOVERNMENT ON THE MAIN OF AMERICA.

IT IS THE BEST CAUSE. IT IS THE CAUSE OF LIBERTY!

HEY, THAT GUY IS RIGHT!

WE SHOULD BE ABLE TO WRITE MEAN STUFF ABOUT THE ROYAL GOVERNOR!

CONSISTENT WITH THIS VISION, WHEN THE FIRST CONGRESS ENACTED ITS LAWS, IT DIDN'T PASS MUCH IN THE WAY OF CRIMINAL LAWS.

MAYBE 30 CRIMES?

YES, I'M SURE COURTS CAN HANDLE THE REST.

BUT AS IT TURNED OUT, FUTURE LEGISLATURES WOULD HAVE MANY REASONS TO PASS NEW CRIMINAL LAWS AND FEW REASONS TO OPPOSE THEM.

CONGRESSMAN, DO YOU SUPPORT OMNIBUS CRIME BILL NUMBER 4,632, OR DO YOU LITERALLY SUPPORT CRIME?

I DON'T JUST SUPPORT OMNIBUS CRIME BILL NUMBER 4,632. I NAMED MY SON AFTER IT.

UNFORTUNATELY, THIS REALITY LEAVES THE "PROBABLE CAUSE" PRONG OF THE NIEVES TEST TOOTHLESS.

THE "OBJECTIVE EVIDENCE" PRONG PROVES LITTLE BETTER.

ALTHOUGH GONZALEZ COULD SHOW THE ANTI-TAMPERING LAW HAD RARELY BEEN EMPLOYED AGAINST OTHERS, SHE NEEDED TO SHOW EXAMPLES OF PEOPLE DOING THE SAME THING SHE WAS AND EVADING PROSECUTION.

OF COURSE, FINDING EVIDENCE OF SOMETHING THAT DIDN'T OCCUR, AND WITH SUCH PARTICULARITY, IS ALL BUT IMPOSSIBLE.

WHERE IS YOUR OBJECTIVE EVIDENCE THAT SOMEONE ELSE WASN'T ARRESTED FOR DOING THIS?

THIS LAW HASN'T EVEN BEEN APPLIED FOR OVER A DECADE!

THAT'S NOT WHAT I ASKED.



AFTER BEING REBUFFED BY THE FIFTH CIRCUIT, GONZALEZ BROUGHT HER CASE TO THE U.S. SUPREME COURT.



THE COURT CONSIDERED ITS STANDARD FOR RETALIATORY-ARREST LAWSUITS AGAINST GOVERNMENT OFFICIALS WHO HAD PROBABLE CAUSE TO MAKE AN ARREST—BUT MAY NEVERTHELESS HAVE ABUSED THEIR POWER IN DOING SO.



DID THE STANDARD REQUIRE DIRECT, COMPARATIVE EVIDENCE OF A TIME WHEN POLICE DIDN'T ARREST SOMEONE FOR IDENTICAL CONDUCT?



TWO JAYWALKERS, PARTNER... BUT AIN'T THE LEFT ONE A CUTIE?

LET'S NAIL THAT GUY IN THE FUNNY SHIRT, THOUGH.

NO.

IN AN UNSIGNED OPINION, EIGHT OF THE NINE JUSTICES AGREED THAT EVIDENCE PRESENTED BY GONZALEZ, WHICH SHOWED "THAT NO ONE HAS EVER BEEN ARRESTED FOR ENGAGING IN A CERTAIN KIND OF CONDUCT," SATISFIED THE STANDARD...

THE CONCURRENCES HIGHLIGHTED SOME DIFFERENCES IN THE JUSTICES' THINKING.

ALITO, FOR INSTANCE, STRESSED THAT THE STANDARD WAS STILL A NARROW ONE...

...WHILE JACKSON, BY CONTRAST, SUGGESTED IT MIGHT BE BROADER.



THE ANOMALOUS PROCEDURES USED FOR HER ARREST AND STATEMENTS IN THE ARRESTING OFFICER'S WARRANT AFFIDAVIT CAN SUPPORT THE CONCLUSION THAT GONZALEZ WAS ARRESTED WHEN OTHERWISE SIMILARLY SITUATED INDIVIDUALS NOT ENGAGED IN THE SAME SORT OF PROTECTED SPEECH HAD NOT BEEN.



...BECAUSE IT "MAKES IT MORE LIKELY THAT AN OFFICER HAS DECLINED TO ARREST SOMEONE FOR ENGAGING IN SUCH CONDUCT IN THE PAST." IN OTHER WORDS, IT WAS "OBJECTIVE EVIDENCE" UNDER THE NIEVES TEST.

THOUGH THE EXACT CONTOURS OF THE NIEVES STANDARD ARE STILL UNCLEAR, THE JUSTICES' DECISION UNMISTAKABLY INCREASED ACCESS TO COURT FOR PEOPLE WITH PLAUSIBLE CLAIMS OF RETALIATORY ARREST.

THAT WILL HELP PROTECT PEOPLE'S RIGHT TO CRITICIZE GOVERNMENT OFFICIALS—AND THEIR OPPORTUNITY TO PROMOTE REFORM BY PARTICIPATING IN THE POLITICAL PROCESS.



Moody



NetChoice, LLC



Thomas Berry

FLORIDA, 1972

PAT  
TORNILLO

"PAT TORNILLO, BOSS OF THE CLASSROOM TEACHERS ASSOCIATION (CTA) AND CANDIDATE FOR THE STATE LEGISLATURE IN THE OCT. 3 RUNOFF ELECTION, HAS DENOUNCED HIS OPPONENT AS LACKING THE KNOWLEDGE TO BE A LEGISLATOR."

"THIS IS THE SAME PAT TORNILLO WHO LED THE CTA STRIKE AGAINST THE SCHOOLCHILDREN AND TAXPAYERS OF DADE COUNTY."

"CALL IT WHATEVER YOU WILL, IT WAS AN ILLEGAL ACT AGAINST THE PUBLIC INTEREST AND CLEARLY PROHIBITED BY THE STATUTES."

"WE CANNOT SAY IT WOULD BE ILLEGAL, BUT CERTAINLY IT WOULD BE INEXCUSABLE IF THE VOTERS SENT PAT TORNILLO TO TALLAHASSEE TO OCCUPY THE SEAT FOR DISTRICT 103 IN THE HOUSE OF REPRESENTATIVES."

THE HERALD MAY THINK THEY CAN TANK MY CAMPAIGN, BUT I'VE GOT THE LAW ON MY SIDE! HERE IN FLORIDA, IF A NEWSPAPER WANTS TO CRITICIZE ME, THEY'VE GOT TO GIVE ME EQUAL SPACE.

I'M GOING TO SET THE RECORD STRAIGHT, AND THE HERALD WILL HAVE NO CHOICE BUT TO PRINT IT.

MIAMI HERALD OFFICES

PAT TORNILLO JUST SENT IN AN OP-ED THAT'S COMPLETELY OPPOSED TO OUR EDITORIAL POSITION. I'D REJECT IT, BUT HE SAYS THERE'S A STATE LAW FROM 1913 THAT FORCES US TO RUN IT?

WHO CARES WHAT THE STATE LAW SAYS? I KNOW AN EVEN OLDER LAW THAT SAYS WE'VE GOT THE FREEDOM TO CHOOSE WHAT WE RUN.

IT'S CALLED THE FIRST AMENDMENT.

HISTORY HAS A WAY OF REPEATING ITSELF.



FIFTY YEARS AGO, THE U.S. SUPREME COURT REVIEWED A FLORIDA LAW FORCING NEWSPAPERS TO PRINT EDITORIALS THEY DID NOT WANT TO PRINT.



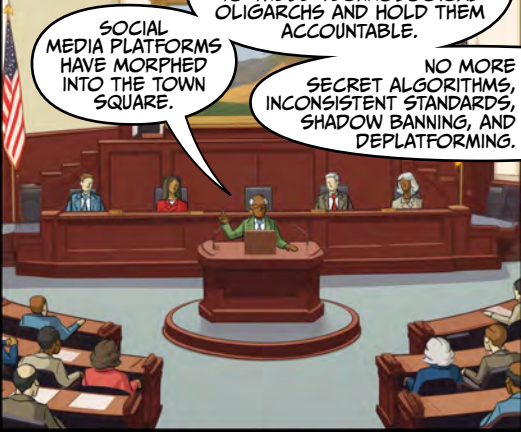
THIS YEAR, THE SUPREME COURT REVIEWED A SIMILAR FLORIDA LAW FOR THE DIGITAL AGE.

FLORIDA, 2021

IF OUR DEMOCRACY IS GOING TO SURVIVE, WE MUST STAND UP TO THESE TECHNOLOGICAL OLIGARCHS AND HOLD THEM ACCOUNTABLE.

SOCIAL MEDIA PLATFORMS HAVE MORPHED INTO THE TOWN SQUARE.

NO MORE SECRET ALGORITHMS, INCONSISTENT STANDARDS, SHADOW BANNING, AND DEPLATFORMING.



GOOD.

BIG TECH CENSORS ENFORCE THEIR RULES INCONSISTENTLY. NOW THEY'LL BE HELD ACCOUNTABLE FOR FAVORING SILICON VALLEY IDEOLOGY.



POLITICIANS WILL ALWAYS COMPLAIN THAT THE MEDIA IS BIASED AGAINST THEM.



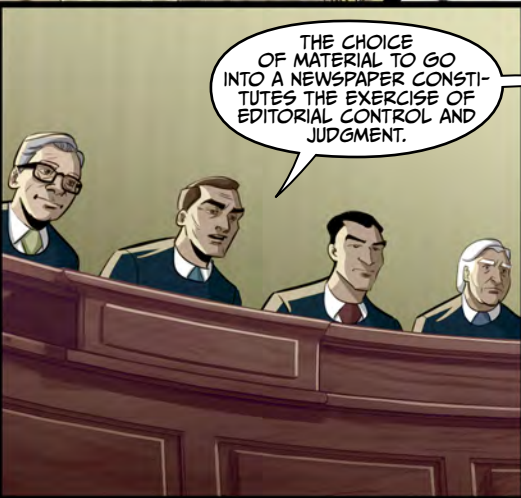
BUT WHEN THE GOVERNMENT ENACTS LAWS TO FORCE THE MEDIA TO BE "UNBIASED"—

—THOSE LAWS RAISE SERIOUS CONCERNS UNDER THE FIRST AMENDMENT FREEDOMS OF SPEECH AND THE PRESS.



THE CHOICE OF MATERIAL TO GO INTO A NEWSPAPER CONSTITUTES THE EXERCISE OF EDITORIAL CONTROL AND JUDGMENT.

IT HAS YET TO BE DEMONSTRATED HOW GOVERNMENTAL REGULATION OF THIS CRUCIAL PROCESS CAN BE EXERCISED CONSISTENT WITH THE FIRST AMENDMENT.



WHEN FLORIDA ENACTED A RIGHT-TO-POST LAW FOR SOCIAL MEDIA 50 YEARS LATER, THE LEGAL DEBATE OVER ITS SURVIVAL BOILED DOWN TO A SEEMINGLY ODD QUESTION:



ARE SOCIAL MEDIA COMPANIES MORE LIKE NEWSPAPERS—

—OR THE POSTAL SERVICE?



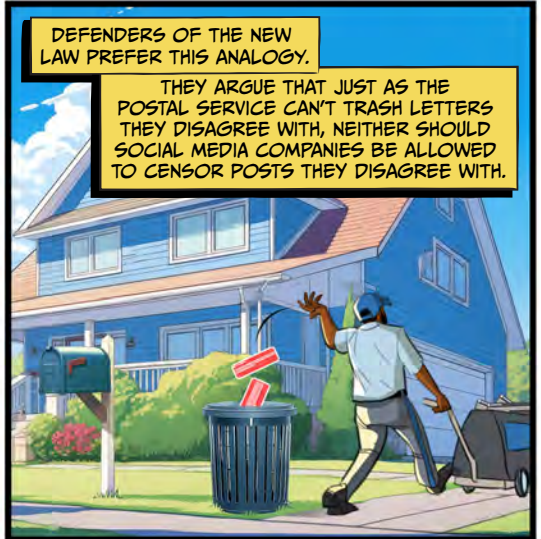
IN ONE ANALOGY, SOCIAL MEDIA IS LIKE THE POSTAL SERVICE.



EVERY ONLINE POST IS JUST A MESSAGE SENT DIRECTLY TO SUBSCRIBERS, LIKE OLD-FASHIONED SUBSCRIPTION NEWSLETTERS.

DEFENDERS OF THE NEW LAW PREFER THIS ANALOGY.

THEY ARGUE THAT JUST AS THE POSTAL SERVICE CAN'T TRASH LETTERS THEY DISAGREE WITH, NEITHER SHOULD SOCIAL MEDIA COMPANIES BE ALLOWED TO CENSOR POSTS THEY DISAGREE WITH.

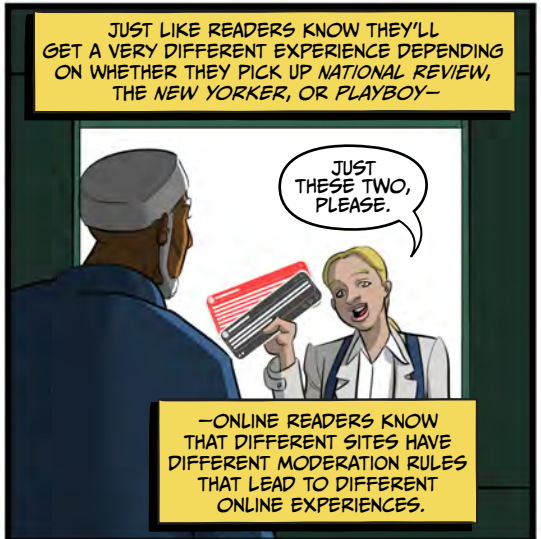


BUT IN ANOTHER ANALOGY, EACH SOCIAL MEDIA SITE IS A UNIQUE, EDITED READING EXPERIENCE.



WITH THIS VIEW, THERE IS AS MUCH DIVERSITY ACROSS SITES AS THERE IS ACROSS NEWSPAPERS AND MAGAZINES.

JUST LIKE READERS KNOW THEY'LL GET A VERY DIFFERENT EXPERIENCE DEPENDING ON WHETHER THEY PICK UP NATIONAL REVIEW, THE NEW YORKER, OR PLAYBOY—

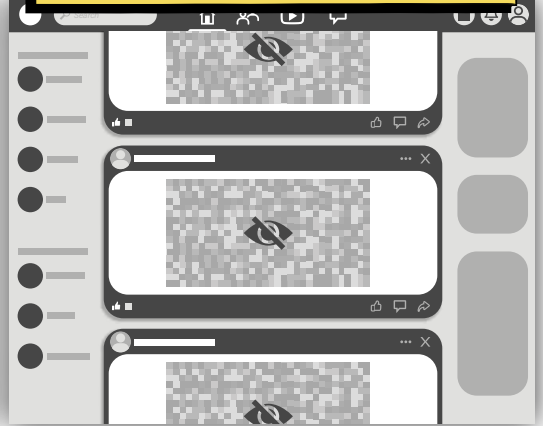
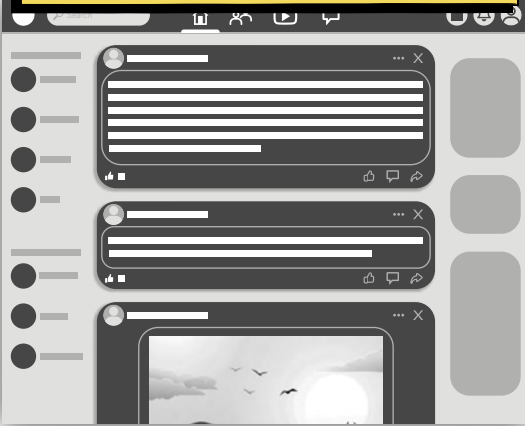


JUST THESE TWO, PLEASE.

—ONLINE READERS KNOW THAT DIFFERENT SITES HAVE DIFFERENT MODERATION RULES THAT LEAD TO DIFFERENT ONLINE EXPERIENCES.

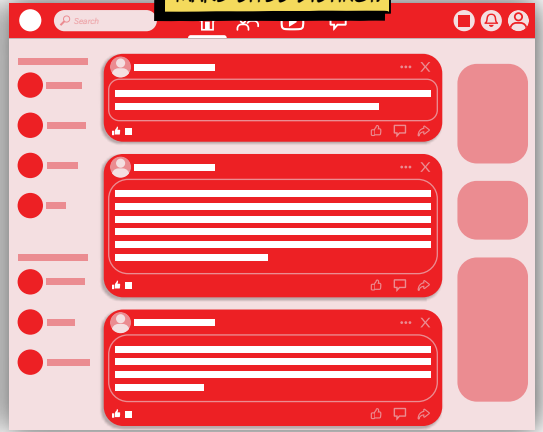
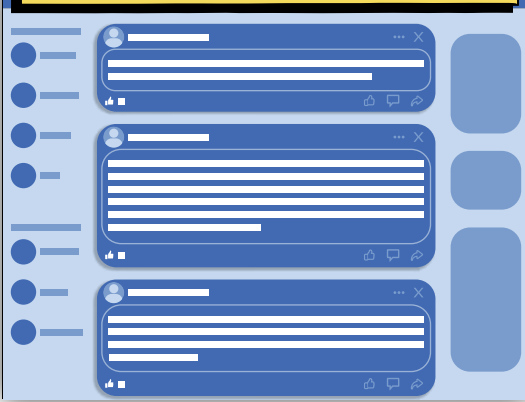
SOCIAL MEDIA SITES ARE FLOODED WITH BILLIONS OF POSTS PER DAY, WHICH ARE REVIEWED BY A MIX OF AUTOMATED AND HUMAN MODERATORS.

IF THESE SITES WEREN'T MODERATED, THEY WOULD QUICKLY BE FLOODED WITH THINGS MOST OF THEIR READERS DON'T WANT TO SEE.



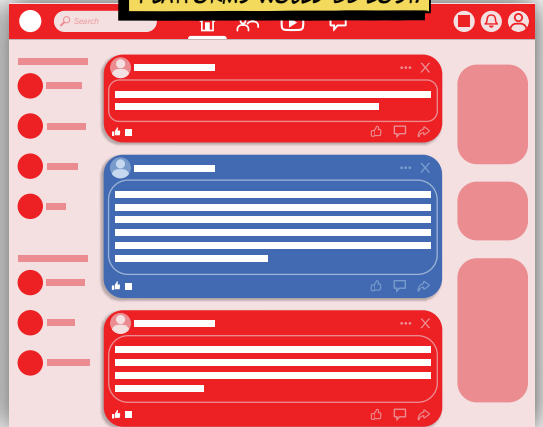
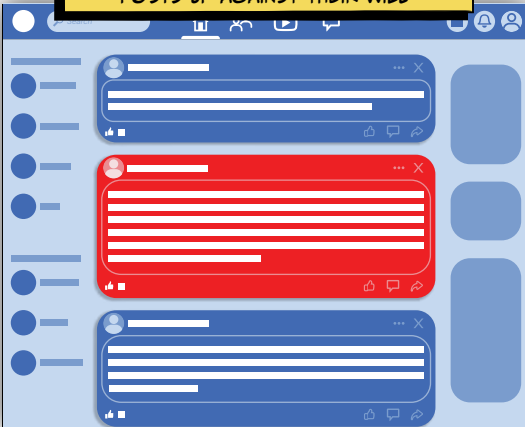
BUT MODERATION ISN'T JUST ABOUT X-RATED MATERIAL. SOME SITES HAVE A SPECIFIC POINT OF VIEW AND WANT TO LIMIT POSTS SO THAT THEY FIT THE SITE'S THEME AND PERSPECTIVE.

THESE MODERATION DECISIONS ARE WHAT MAKE SITES DISTINCT.



IF A STATE LAW FORCED SITES TO LEAVE POSTS UP AGAINST THEIR WILL—

—THIS VARIETY ACROSS PLATFORMS WOULD BE LOST.



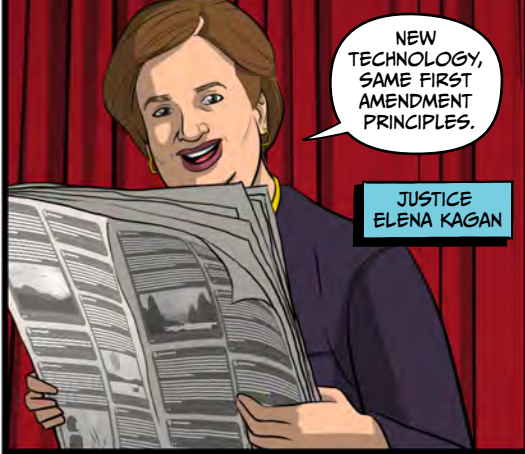
SOON EVERY PLATFORM WOULD LOOK VERY SIMILAR, WITH NO POINT OF VIEW AND NO TAILORING TO A PARTICULAR AUDIENCE'S PREFERENCES.



THE SUPREME COURT CONSIDERED THE FLORIDA LAW TOGETHER WITH A SIMILAR LAW FROM TEXAS. AND ALTHOUGH A SURPRISE TWIST PREVENTED THE COURT FROM RESOLVING THE CASES, THE COURT MADE CLEAR THAT SOCIAL MEDIA COMPANIES HAVE A FIRST AMENDMENT RIGHT TO CHOOSE WHAT THEY CARRY, JUST LIKE NEWSPAPERS.

NEW TECHNOLOGY, SAME FIRST AMENDMENT PRINCIPLES.

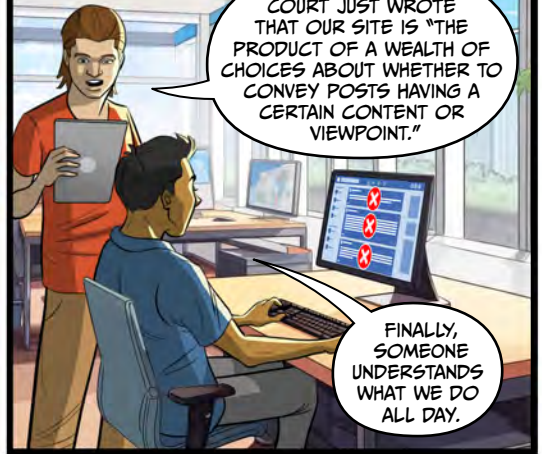
JUSTICE ELENA KAGAN



THE OFFICES OF A SOCIAL MEDIA COMPANY MIGHT LOOK A BIT DIFFERENT FROM THE MIAMI HERALD'S NEWSROOM. BUT BOTH ARE FILLED WITH REAL PEOPLE MAKING PROTECTED EDITORIAL JUDGMENTS.

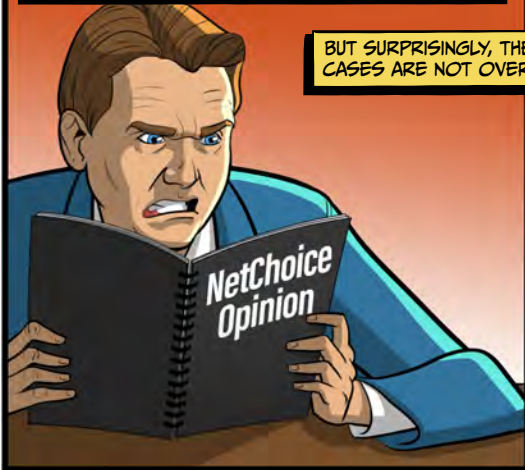
THE SUPREME COURT JUST WROTE THAT OUR SITE IS "THE PRODUCT OF A WEALTH OF CHOICES ABOUT WHETHER TO CONVEY POSTS HAVING A CERTAIN CONTENT OR VIEWPOINT."

FINALLY, SOMEONE UNDERSTANDS WHAT WE DO ALL DAY.

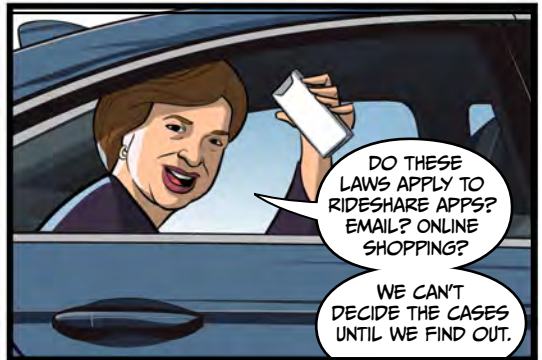


JUSTICE ELENA KAGAN, WRITING FOR FIVE JUSTICES, EXPLAINED THAT A STATE "MAY NOT INTERFERE WITH THOSE JUDGMENTS SIMPLY BECAUSE IT WOULD PREFER A DIFFERENT MIX OF MESSAGES."

BUT SURPRISINGLY, THE CASES ARE NOT OVER.



EVERYONE TREATED THE CASES LIKE THEY WERE ABOUT SOCIAL MEDIA. YET THE FLORIDA AND TEXAS LAWS ARE WRITTEN BROADLY, AND IT'S POSSIBLE THEY MIGHT APPLY TO OTHER TECH SERVICES BESIDES SOCIAL MEDIA SITES.

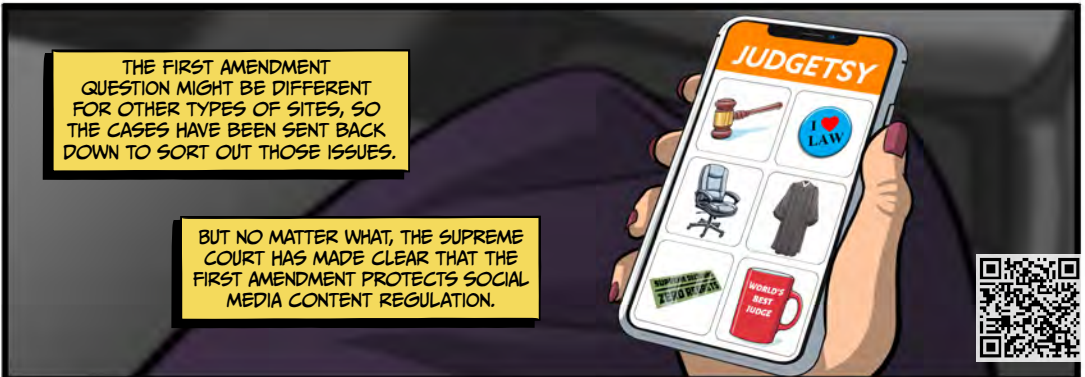


DO THESE LAWS APPLY TO RIDESHARE APPS? EMAIL? ONLINE SHOPPING?

WE CAN'T DECIDE THE CASES UNTIL WE FIND OUT.

THE FIRST AMENDMENT QUESTION MIGHT BE DIFFERENT FOR OTHER TYPES OF SITES, SO THE CASES HAVE BEEN SENT BACK DOWN TO SORT OUT THOSE ISSUES.

BUT NO MATTER WHAT, THE SUPREME COURT HAS MADE CLEAR THAT THE FIRST AMENDMENT PROTECTS SOCIAL MEDIA CONTENT REGULATION.



United States

2

Rahimi



Clark Neily

GUNS HAVE PLAYED AN IMPORTANT BUT COMPLEX ROLE IN AMERICAN HISTORY, CULTURE, AND LAW.

GUNS HAVE BEEN USED TO...

EXPLORE FRONTIERS

HUNT FOR FOOD AND SPORT

FIGHT WARS

ASSASSINATE PRESIDENTS

COMMIT CRIMES

AND PREVENT CRIMES.

ON THE ONE HAND, AMERICANS WON THEIR INDEPENDENCE, ENDED SLAVERY, AND HELPED DEFEAT NAZI GERMANY WITH GUNS.



BUT ON THE OTHER HAND, WE ALSO HAVE SOME OF THE HIGHEST RATES OF MURDER, VIOLENT CRIME, AND SUICIDE IN THE DEVELOPED WORLD—

—AND GUNS PLAY A ROLE IN ALL OF THOSE PROBLEMS.

AMERICA IS ONE OF THE ONLY COUNTRIES WHERE THE RIGHT TO OWN A GUN IS EXPLICITLY PROTECTED BY LAW.



THE SECOND AMENDMENT TO THE U.S. CONSTITUTION PROVIDES THAT:

*A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.*

PEOPLE DISAGREE OVER THE MEANING OF THE SECOND AMENDMENT.

SOME SAY IT PROTECTS AN INDIVIDUAL RIGHT TO OWN A GUN—



—WHILE OTHERS CLAIM IT'S ONLY ABOUT ACTUAL GOVERNMENT MILITIAS.

AFTER 200 YEARS OF SILENCE, THE SUPREME COURT HELD IN 2008 THAT THE SECOND AMENDMENT PROTECTS THE RIGHT TO OWN A GUN AT HOME FOR SELF-DEFENSE.

TAP TAP TAP



SCOTUSbug @SCOTUSbug

The Court has issued its opinion in *DC v. Heller*—it holds that DC's gun ban is unconstitutional and violates people's Second Amendment right to keep guns at home for self-defense.

698

1.1K

6.4K



BUT HELLER LEFT OPEN MANY OTHER QUESTIONS, SUCH AS THE STATUS OF CONCEALED CARRY, THE LEGALITY OF ASSAULT RIFLES AND RED-FLAG LAWS, AND WHETHER CERTAIN CATEGORIES OF PEOPLE LIKE ILLEGAL DRUG USERS AND CONVICTED FELONS CAN BE STRIPPED OF THEIR SECOND AMENDMENT RIGHTS.

ANOTHER GROUP PROHIBITED FROM OWNING GUNS UNDER FEDERAL LAW IS ANYONE SUBJECT TO A DOMESTIC VIOLENCE RESTRAINING ORDER (DVRO).\*

WHO COULD ARGUE WITH THAT?

\*EXCEPT POLICE, WHOSE POSSESSION OF DUTY WEAPONS IS EXEMPT FROM THAT PROHIBITION.

THIS GUY: ZACKEY RAHIMI.

RAHIMI HAS A HISTORY OF VIOLENCE, INCLUDING SHOOTING GUNS AT PEOPLE AND INTO THE AIR AT A HAMBURGER DRIVE-THROUGH.

RAHIMI ALSO COMMITTED DOMESTIC VIOLENCE, ASSAULTING THE MOTHER OF HIS SON IN A PARKING LOT AND SHOOTING AT A BYSTANDER WHO TRIED TO INTERVENE.



RAHIMI'S EX APPLIED FOR A DOMESTIC VIOLENCE RESTRAINING ORDER, WHICH RAHIMI AGREED TO.

THIS MADE IT ILLEGAL FOR RAHIMI TO POSSESS FIREARMS.



HE WAS SUPPOSED TO GET RID OF THEM ALL—

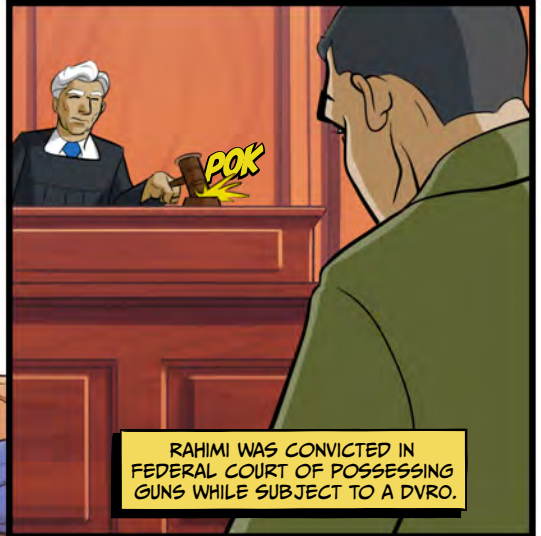


—BUT HE DIDN'T.

WHILE SERVING A WARRANT FOR OTHER CRIMES, POLICE CAUGHT RAHIMI WITH SEVERAL FIREARMS THAT THE DVRO MADE ILLEGAL FOR HIM TO POSSESS UNDER FEDERAL LAW.



THEY ARRESTED RAHIMI AND TURNED HIM OVER TO THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES.

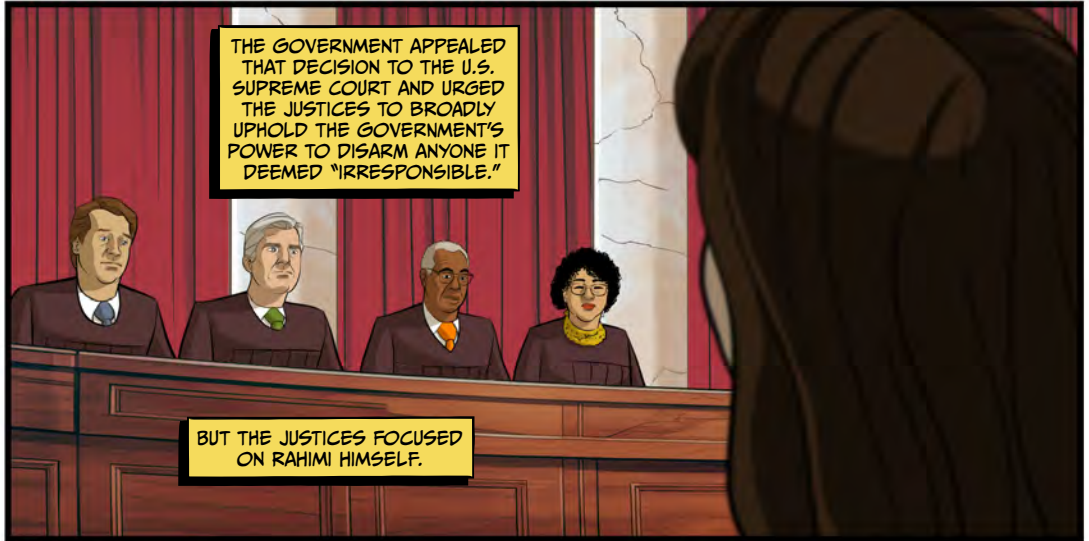


RAHIMI WAS CONVICTED IN FEDERAL COURT OF POSSESSING GUNS WHILE SUBJECT TO A DVRO.



ON APPEAL, RAHIMI'S PUBLIC DEFENDER ARGUED THAT THE DVRO LAW VIOLATES THE SECOND AMENDMENT BECAUSE PEOPLE WERE NOT GENERALLY DISARMED FOR DOMESTIC VIOLENCE IN EARLY AMERICA.

THE APPELLATE COURT AGREED AND DECLARED THE LAW UNCONSTITUTIONAL.



THE GOVERNMENT APPEALED THAT DECISION TO THE U.S. SUPREME COURT AND URGED THE JUSTICES TO BROADLY UPHOLD THE GOVERNMENT'S POWER TO DISARM ANYONE IT DEEMED "IRRESPONSIBLE."

BUT THE JUSTICES FOCUSED ON RAHIMI HIMSELF.



UNSURPRISINGLY, THE SUPREME COURT UPHELD RAHIMI'S CONVICTION AND AFFIRMED THE GOVERNMENT'S POWER TO DISARM PEOPLE WHO, LIKE HIM, HAD BEEN FOUND BY A JUDGE TO BE DANGEROUS.

EIGHT OF THE NINE JUSTICES AGREED THAT THE GUN-DISPOSSESSION LAW WAS CONSTITUTIONAL AS APPLIED TO ZACKEY RAHIMI—



—BUT THEY DISAGREED AMONG THEMSELVES ABOUT THE PROPER WAY TO ANALYZE THIS AND OTHER SECOND AMENDMENT CASES.

THE MAJORITY FOUND THAT A PAIR OF CENTURIES-OLD LAWS ENABLING THE GOVERNMENT TO TEMPORARILY DISARM SOME DANGEROUS PEOPLE AND REQUIRE OTHERS TO POST A BOND WERE SUFFICIENTLY ANALOGOUS TO DEFEAT RAHIMI'S CONSTITUTIONAL CHALLENGE. JUSTICE THOMAS DISSENTED.



THE DISAGREEMENT CENTERED ON WHAT ROLE HISTORY SHOULD PLAY IN INTERPRETING THE MEANING AND SCOPE OF THE SECOND AMENDMENT.

THE JUSTICES WERE PARTICULARLY CONCERNED ABOUT GIVING WEIGHT TO AMERICA'S "HISTORICAL TRADITION" OF GUN OWNERSHIP—

—WHILE NOT LETTING THE LAW BECOME "TRAPPED IN AMBER"—

—AND THUS UNRESPONSIVE TO UNIQUELY MODERN RISKS AND CONCERNS.



BURR

HAMILTON



STAY TUNED...




NRA  
u  
Vullo



Murthy  
u  
Missouri



Brent Skorup



DECADES BEFORE THE AMERICAN REVOLUTION, LAWMAKERS IN PARLIAMENT AND STATEHOUSES HAD A PRIVILEGE OF FREE SPEECH.

EVERYONE ELSE, HOWEVER, COULD BE PROSECUTED OR FINED FOR EXPRESSING CONTROVERSIAL VIEWS.

TO PREVENT PROTEST AND REBELLION, BRITISH OFFICIALS REQUIRED PRINTERS OF COLONIAL NEWSPAPERS TO ACQUIRE A LICENSE TO OPERATE.

THE AMERICAN PEOPLE WANTED SELF-GOVERNMENT AND FREE SPEECH. THEREFORE, THE FIRST AMENDMENT TO THE U.S. CONSTITUTION PROHIBITS CONGRESS, OR ANY GOVERNMENT OFFICIAL, FROM "ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS."



DISTRIBUTING CRITICISM OF THE GOVERNMENT COULD MEAN LOSS OF LICENSE, ARREST, AND BANKRUPTCY.



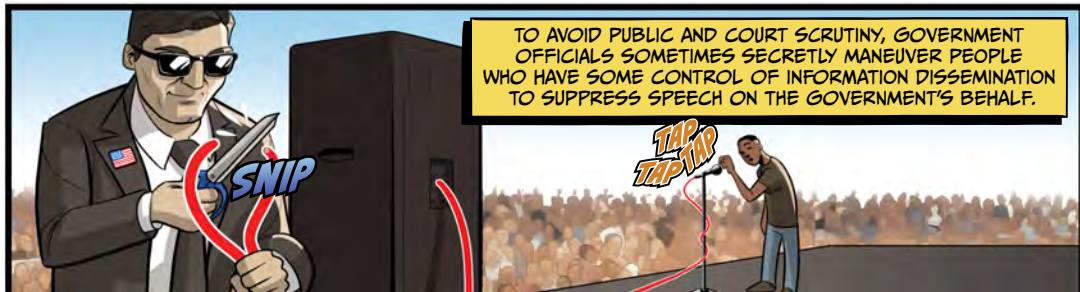
THE DRAFTERS OF THE FIRST AMENDMENT RECOGNIZED FREE SPEECH AS A POWERFUL CHECK ON GOVERNMENT POWER AND PROTECTED FREEDOM OF SPEECH FOR AMERICANS BROADLY.

TODAY, THIS NATIONAL TRADITION OF DISSENT AND PROTEST INFORMS LAWMAKERS OF AMERICANS' GRIEVANCES AND PRIORITIES.



HOWEVER, FREE SPEECH CAN FRUSTRATE GOVERNMENT OFFICIALS' PLANS AND OPERATIONS.

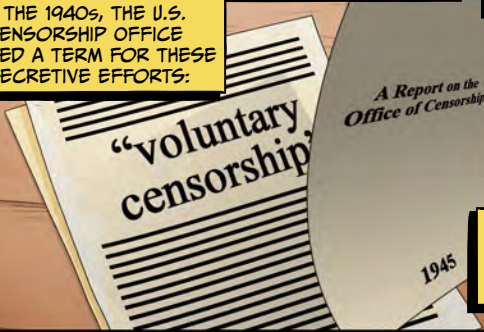
TO AVOID PUBLIC AND COURT SCRUTINY, GOVERNMENT OFFICIALS SOMETIMES SECRETLY MANEUVER PEOPLE WHO HAVE SOME CONTROL OF INFORMATION DISSEMINATION TO SUPPRESS SPEECH ON THE GOVERNMENT'S BEHALF.



TWO SUPREME COURT DECISIONS, NATIONAL RIFLE ASSOCIATION V. VULLO AND MURTHY V. MISSOURI, CONSIDERED WHEN THE GOVERNMENT'S EFFORTS TO INDUCE OTHERS TO SUPPRESS SPEECH GO TOO FAR AND ABRIDGE AMERICANS' FREE EXPRESSION.

FEDERAL AND LOCAL OFFICIALS PRESSURING OR ENLISTING PRIVATE PARTIES TO CENSOR OR PUNISH UNPOPULAR SPEAKERS GOES BACK AT LEAST A CENTURY.

IN THE 1940s, THE U.S. CENSORSHIP OFFICE COINED A TERM FOR THESE SECRETIVE EFFORTS:



FOR INSTANCE, IN 1943, U.S. MEDIA REGULATORS DISCREETLY TOLD RADIO AND WIRE SERVICE EXECUTIVES TO CENSOR NEWS OF THE SOVIETS' MASS EXECUTIONS OF POLAND'S POLITICAL CLASS.



BOTH NATIONS WERE U.S. ALLIES IN THE WAR. THE ROOSEVELT ADMINISTRATION PRIORITIZED GOOD RELATIONS WITH THE SOVIETS BUT FEARED LOSING POLISH-AMERICANS' VOTE IN THE 1944 ELECTION.

MOST RADIO AND WIRE COMPANIES COMPLIED—THEY FACED BANKRUPTCY IF THEIR TEMPORARY LICENSES WERE NOT RENEWED BY THE GOVERNMENT.

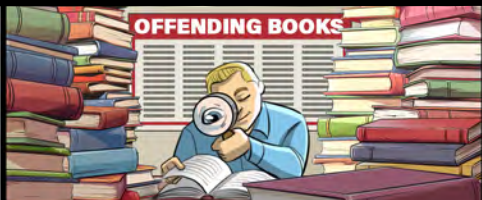
WHEN A POPULAR RADIO JOURNALIST IN DETROIT REPORTED THE SOVIET WAR CRIMES, GOVERNMENT OFFICIALS TOLD STATION OWNERS THE STORY NEEDED TO STOP.



THE JOURNALIST WAS SUSPENDED, AND THE STORIES CEASED.

VOLUNTARY CENSORSHIP IS SECRETIVE. A FEW YEARS LATER, STATE OFFICIALS IN RHODE ISLAND GOT CAUGHT URGING CENSORSHIP, HOWEVER, AND DREW THE SUPREME COURT'S ATTENTION.

IN THE 1950s, THE RHODE ISLAND LEGISLATURE CREATED A "MORALITY IN YOUTH" COMMISSION. THESE VOLUNTEERS IDENTIFIED AND CIRCULATED LISTS OF BOOKS AND MAGAZINES WITH INDECENT CONTENT.



THE COMMISSION WOULD NOTIFY BOOKSELLERS WHO SOLD SUCH PUBLICATIONS THAT POLICE WOULD CHECK IN TO ENSURE COMPLIANCE WITH ALL LAWS.

THE PUBLISHERS OF SOME OF THOSE BOOKS SUED, AND IN *BANTAM BOOKS V. SULLIVAN*, THE SUPREME COURT HALTED THE COMMISSION'S ACTIONS.



THE COURT SAID "PERSUASION" AND "INTIMIDATION" BY GOVERNMENT-APPOINTED VOLUNTEERS, IF DESIGNED TO STIFLE SOMEONE ELSE'S EXPRESSION, CAN VIOLATE THE FIRST AMENDMENT.

WHICH BRINGS US TO CURRENT CONTROVERSIES.

THE ISSUE IN *MURTHY V. MISSOURI*:

BUT FIRST, THE RELATED CASE OF *NRA V. VULLO*:

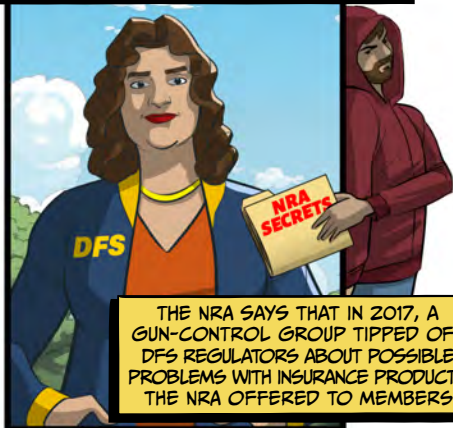


*MURTHY V. MISSOURI* ASKS WHETHER SOCIAL MEDIA USERS CAN SUE EXECUTIVE BRANCH OFFICIALS WHO PRIVATELY AND PUBLICLY DEMAND THAT SOCIAL MEDIA COMPANIES CENSOR CONTROVERSIAL POSTS ABOUT COVID-19 AND OTHER TOPICS.



IF STATE REGULATORS PRIVATELY AND PUBLICLY DEMAND THAT INSURERS STOP DOING BUSINESS WITH THE NRA BECAUSE OF ITS POLICY VIEWS, CAN THE NRA SUE FOR FREE SPEECH VIOLATIONS?

MARIA VULLO WAS THE POWERFUL HEAD OF THE DEPARTMENT OF FINANCIAL SERVICES (DFS), WHICH REGULATED NEW YORK'S FINANCIAL AND INSURANCE INDUSTRIES.



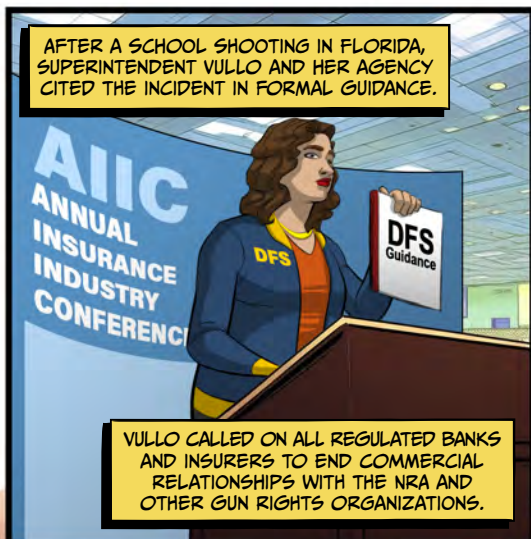
THE NRA SAYS THAT IN 2017, A GUN-CONTROL GROUP TIPPED OFF DFS REGULATORS ABOUT POSSIBLE PROBLEMS WITH INSURANCE PRODUCTS THE NRA OFFERED TO MEMBERS.



THE NRA SAYS THE AGENCY USED THIS TIP AS A PRETEXT TO TARGET THE NRA.

NOTABLY, VULLO SUMMONED THE NRA'S INSURERS TO PRIVATE MEETINGS AND ADVISED THEM TO STOP SERVING THE NRA.

AFTER A SCHOOL SHOOTING IN FLORIDA, SUPERINTENDENT VULLO AND HER AGENCY CITED THE INCIDENT IN FORMAL GUIDANCE.



VULLO CALLED ON ALL REGULATED BANKS AND INSURERS TO END COMMERCIAL RELATIONSHIPS WITH THE NRA AND OTHER GUN RIGHTS ORGANIZATIONS.

BANKS AND INSURERS ABRUPTLY DISCONTINUED SERVICES TO THE NRA. SOME WERE OFFERED REGULATORY LENIENCY BY VULLO IF THEY AGREED TO NEVER WORK WITH THE NRA AGAIN.

ONE INSURER CALLED THE NRA, APOLOGETIC, AND EXPLAINED HIS FEARS OF REGULATORY REPRISAL.

SORRY, BUT IF WE INSURE YOU, WE MAY LOSE OUR BUSINESS LICENSE!

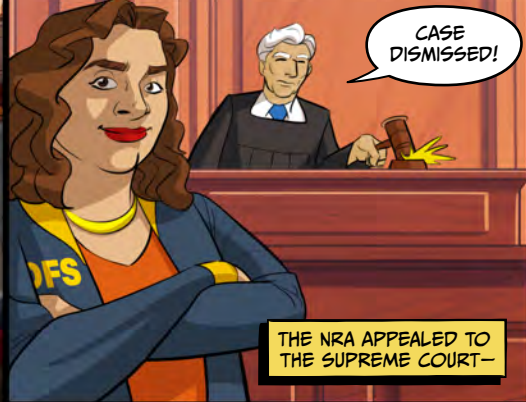


THE NRA SUED IN FEDERAL COURT AND ALLEGED FIRST AMENDMENT VIOLATIONS BY NEW YORK OFFICIALS. THEY ARGUED THAT VULLO'S AND THE DFS'S ACTIONS RESEMBLED THE INDIRECT CENSORSHIP IN *BANTAM BOOKS V. SULLIVAN* BY THE MORALITY IN YOUTH COMMISSION.



VULLO TRIED TO GET THE CASE DISMISSED. SHE ARGUED THAT THE GUIDANCE WAS MERE GOVERNMENT SPEECH AND THE PRIVATE MEETINGS WERE APPROPRIATE BECAUSE SOME OF THE INSURANCE COMPANIES' AGREEMENTS WITH THE NRA SEEMED TO HAVE TECHNICAL VIOLATIONS.

ALTHOUGH A LOWER COURT DENIED VULLO'S ATTEMPT TO DISMISS THE CASE, VULLO APPEALED, AND THE COURT OF APPEALS AGREED TO THROW THE CASE OUT.



THE NRA APPEALED TO THE SUPREME COURT—

—AND WON.

THE COURT NOTED DFS'S AUTHORITY OVER INSURANCE COMPANIES, THAT VULLO'S PRIVATE STATEMENTS SEEMED LIKE VEILED THREATS, AND THAT INSURERS AND BANKS HAD STOPPED WORKING WITH THE NRA.



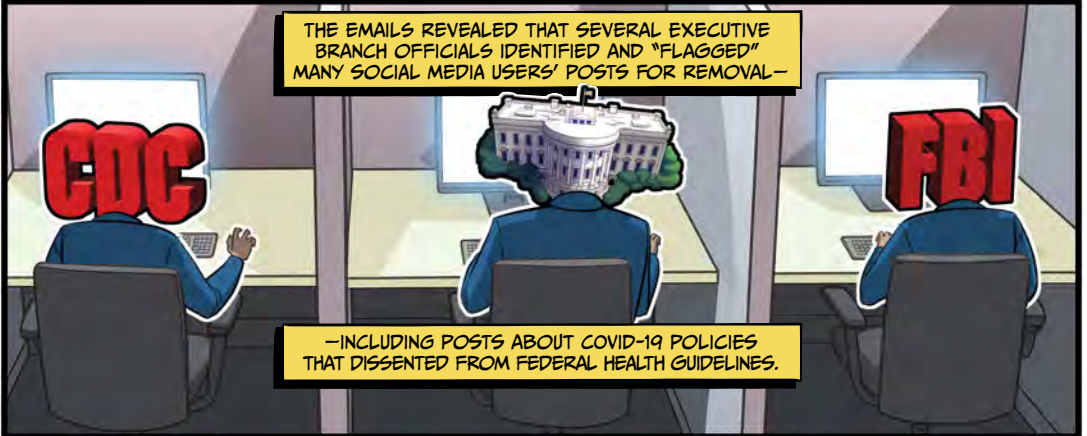
THE FIRST AMENDMENT PROHIBITS GOVERNMENT OFFICIALS FROM WIELDING THEIR POWER SELECTIVELY TO PUNISH OR SUPPRESS SPEECH, DIRECTLY OR THROUGH PRIVATE INTERMEDIARIES.

MURTHY V. MISSOURI ALSO INVOLVED "VOLUNTARY CENSORSHIP."



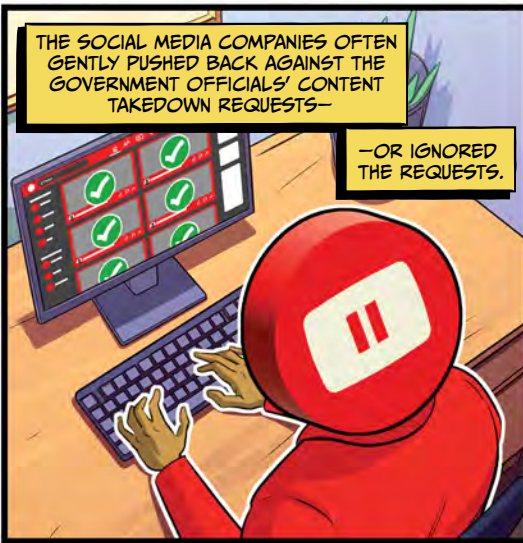
SEVERAL CITIZENS DISCOVERED THROUGH LEAKS AND LEGAL PROCEDURES THAT U.S. OFFICIALS FREQUENTLY COMMUNICATED WITH SOCIAL MEDIA COMPANY EMPLOYEES REGARDING MISINFORMATION ONLINE.

THE EMAILS REVEALED THAT SEVERAL EXECUTIVE BRANCH OFFICIALS IDENTIFIED AND "FLAGGED" MANY SOCIAL MEDIA USERS' POSTS FOR REMOVAL—



—INCLUDING POSTS ABOUT COVID-19 POLICIES THAT DISSENTED FROM FEDERAL HEALTH GUIDELINES.

THE SOCIAL MEDIA COMPANIES OFTEN GENTLY PUSHED BACK AGAINST THE GOVERNMENT OFFICIALS' CONTENT TAKEDOWN REQUESTS—



—OR IGNORED THE REQUESTS.

BUT SOMETIMES THE SOCIAL MEDIA COMPANIES REMOVED THE POSTS AFTER THE GOVERNMENT URGED THEIR REMOVAL.

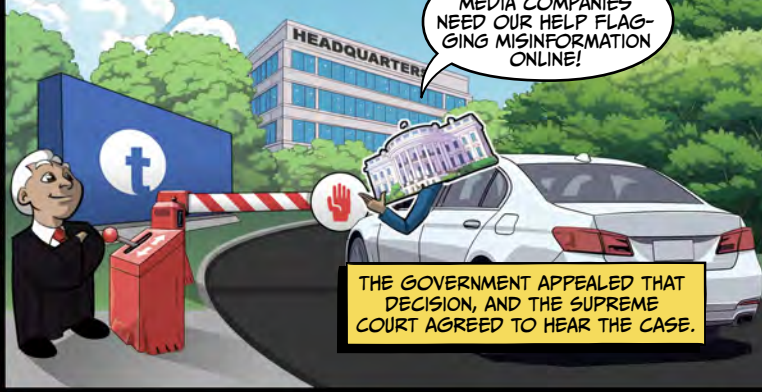


THE CITIZENS SUED, AND, CITING GOVERNMENT EMAILS THEY OBTAINED, ARGUED THAT SOME OF THEIR POSTS DISSIDENTING FROM GOVERNMENT GUIDELINES WERE UNCONSTITUTIONALLY CENSORED.



BOTH THE TRIAL JUDGE AND THE COURT OF APPEALS AGREED THERE WAS LIKELY A FIRST AMENDMENT PROBLEM.

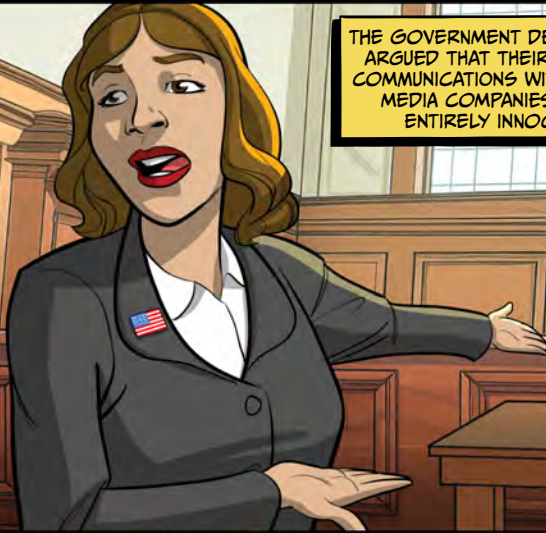
THE APPEALS COURT ORDERED THE GOVERNMENT DEFENDANTS NOT TO "COERCE OR SIGNIFICANTLY ENCOURAGE" SOCIAL MEDIA COMPANIES TO ALTER ANY CONTENT CONTAINING PROTECTED SPEECH.



THE GOVERNMENT APPEALED THAT DECISION, AND THE SUPREME COURT AGREED TO HEAR THE CASE.

THE GOVERNMENT DEFENDANTS ARGUED THAT THEIR SECRET COMMUNICATIONS WITH SOCIAL MEDIA COMPANIES WERE ENTIRELY INNOCENT.

THE DEFENDANTS ALSO CLAIMED THE SOCIAL MEDIA USERS HAD NOT SHOWN ENOUGH EVIDENCE THAT THEIR CENSORSHIP WAS CAUSED BY THE GOVERNMENT, GIVEN THAT SOCIAL MEDIA COMPANIES REMOVE USER POSTS ALL THE TIME.



THE COURT AGREED WITH THE GOVERNMENT—THE REMOVAL OF THE PLAINTIFFS' POSTS MIGHT HAVE BEEN A DECISION OF THE SOCIAL MEDIA COMPANIES ALONE. PEOPLE SUING THE GOVERNMENT NEED TO SHOW MORE THAN SECRET MEETINGS DISCUSSING TOPICS THE GOVERNMENT WOULD LIKE CENSORED.

THE SUPREME COURT SENT THE CASE BACK TO THE LOWER COURT FOR MORE FACT-FINDING.

IN THE MEANTIME, THE GOVERNMENT'S PRIVATE MEETINGS WITH SOCIAL MEDIA COMPANIES HAVE RESUMED.

TO BE CONTINUED...

THE PLAINTIFFS HAVE NOT POINTED TO ANY PAST RESTRICTIONS LIKELY TRACEABLE TO THE GOVERNMENT DEFENDANTS.



Culley

u

Marshall

★ ★ ★ ★ ★ ★ ★ ★  
Laura Bondank-Harmon

ALABAMA,  
FEBRUARY 2019

HALIMA CULLEY AND LENA SUTTON NEVER EXPECTED THE STATE TO SEIZE THEIR VEHICLES.

SO THEY DIDN'T THINK TWICE BEFORE LOANING THEIR CARS TO FRIENDS AND FAMILY MEMBERS.

THAT IS, UNTIL POLICE SEIZED THEIR VEHICLES—

**POLICE AUTO  
IMPOUND LOT  
NO TRESPASSING**

—AND TRIED TO KEEP THEM THROUGH A PROCESS KNOWN AS CIVIL FORFEITURE.

THE MEN DRIVING WERE CAUGHT WITH ILLEGAL SUBSTANCES, SO WE'RE GOING TO KEEP THE VEHICLES.

BUT WE DIDN'T KNOW ABOUT THE DRUGS!

CIVIL FORFEITURE ALLOWS POLICE TO SEIZE MONEY AND PROPERTY IF THEY SUSPECT IT IS CONNECTED TO A CRIME.

AND IF THE GOVERNMENT CAN PROVE THAT THE MONEY OR PROPERTY WAS CONNECTED TO A CRIME, THE STATE IS ALLOWED TO KEEP IT, EVEN IF THE OWNER IS NEVER ARRESTED OR CONVICTED.

I'LL TAKE THAT!

Please...  
**KEEP OFF  
THE GRASS**

YOUR HONOR, HE WAS EATING THIS CANDY WHILE SITTING ON THE GRASS, AND THE SIGN CLEARLY SAID "KEEP OFF THE GRASS."

BUT I CAN'T READ!

DOESN'T MATTER.

THIS CANDY BELONGS TO THE ALABAMA DEPARTMENT OF PUBLIC SAFETY NOW.

ALABAMA DEPARTMENT  
OF PUBLIC SAFETY

STATE AND LOCAL GOVERNMENTS  
RELY ON CIVIL FORFEITURE AS A  
SIGNIFICANT SOURCE OF REVENUE—

—WHICH HAS LED  
TO CIVIL FORFEITURE  
REGIMES THAT ARE  
RIFE WITH ABUSIVE  
PRACTICES.

NEXT YEAR'S  
BUDGET

I BUSTED  
AN ILLEGAL BINGO  
GAME LAST SUNDAY.  
NOW WE HAVE ENOUGH  
TO GET THOSE NEW  
UNIFORMS.

CIVIL FORFEITURE CASES CAN  
LAST FOR YEARS, AND FIGHTING  
A FORFEITURE CAN COST  
THOUSANDS OF DOLLARS.

WHAT'S WORSE, THE  
PEOPLE MOST AFFECTED  
BY ABUSIVE PRACTICES  
ARE THE ONES LEAST ABLE  
TO CHALLENGE THEM.

PLEASE,  
OFFICER, I NEED  
THAT MONEY TO PAY  
MY RENT.

YOU  
SHOULD HAVE  
THOUGHT ABOUT  
THAT BEFORE YOU  
BROKE THE  
LAW!

CIVIL FORFEITURE CASES ARE VERY DIFFERENT FROM  
CRIMINAL PROSECUTIONS. WHEN A PERSON IS ACCUSED  
OF COMMITTING A CRIME, THE CONSTITUTION PROVIDES  
A PLETHORA OF SPECIFIC PROCEDURAL PROTECTIONS.

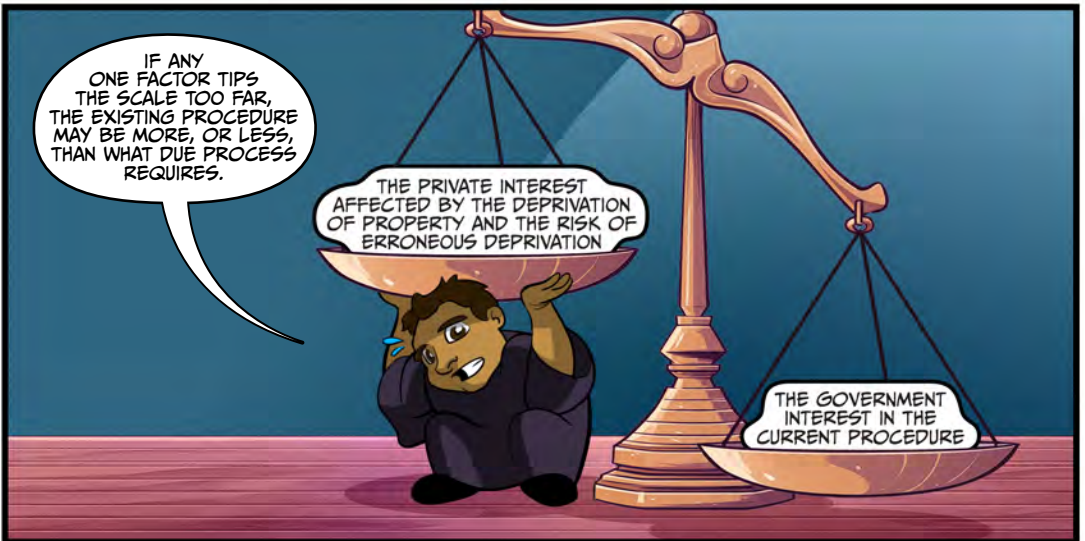
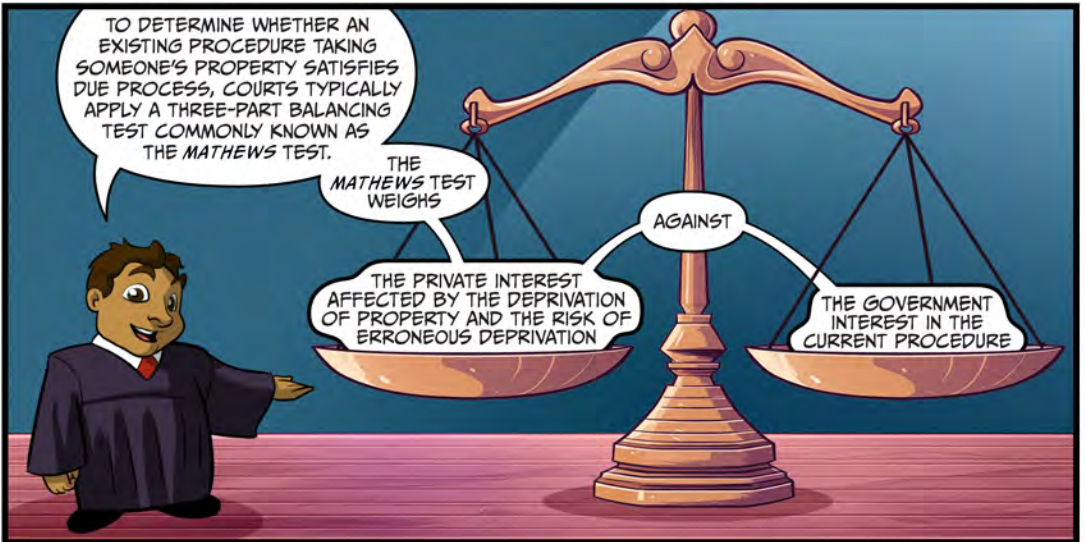
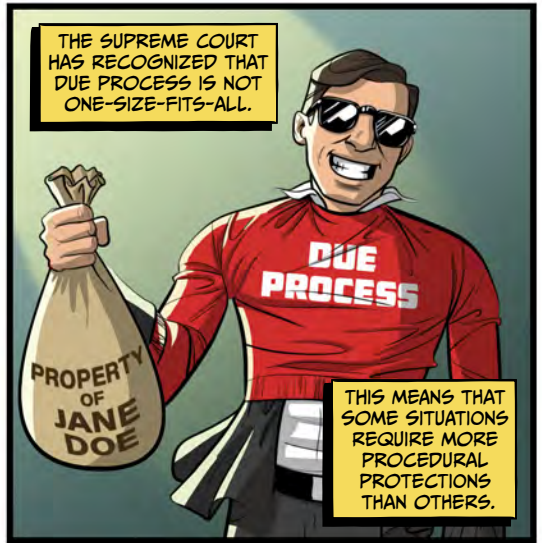
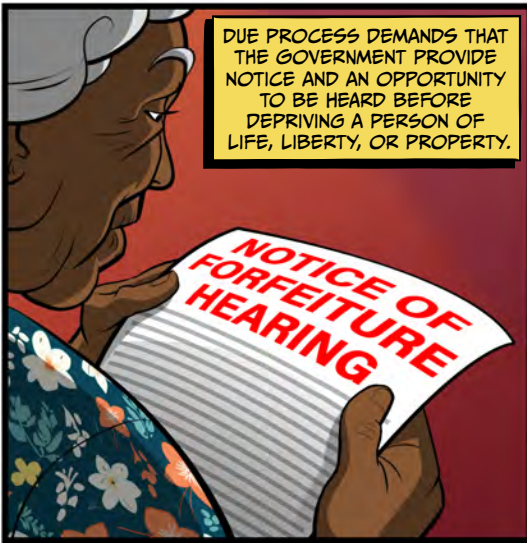
I KNOW  
MY RIGHTS!

I'M  
NOT ANSWERING  
ANY QUESTIONS,  
AND I WANT A  
LAWYER!

AND I GET  
A PUBLIC JURY  
TRIAL IN THE STATE  
AND DISTRICT WHERE  
THE ALLEGED CRIME  
HAPPENED!

SLAM

SIMILAR PROTECTIONS DO NOT EXIST IN CIVIL CASES.  
INSTEAD, INDIVIDUALS RELY ON THE GENERAL REQUIREMENTS  
OF DUE PROCESS AS THEIR SOLE MEANS OF PROTECTION  
AGAINST ABUSIVE CIVIL FORFEITURE PRACTICES.



AFTER CULLEY'S AND SUTTON'S CARS WERE SEIZED, THE STATE CHOSE TO KEEP THEM UNTIL THE FINAL HEARING IN THEIR RESPECTIVE FORFEITURE CASES.

WHAT DO YOU MEAN YOU'RE GOING TO KEEP MY CAR HERE?

HOW AM I GOING TO GET TO WORK? I'LL LOSE MY JOB!

BUT I DIDN'T DO ANYTHING WRONG! HOW WILL I GET TO MY DOCTOR'S APPOINTMENTS?

CULLEY AND SUTTON EVENTUALLY WON THEIR FORFEITURE CASES AND THE STATE WAS ORDERED TO RETURN THEIR PROPERTY.

BUT THEY WERE STILL FORCED TO GO MORE THAN A YEAR WITHOUT THEIR CARS BECAUSE THE LAW DID NOT PROVIDE A POST-SEIZURE HEARING TO ENABLE THEM TO CHALLENGE THE STATE'S RETENTION OF THEIR PROPERTY.



HOPING TO CHANGE THINGS, THEY SUED THE STATE FOR VIOLATING THEIR DUE PROCESS RIGHTS, ARGUING THAT PROPERTY OWNERS ARE ENTITLED TO A PROMPT HEARING TO CHALLENGE THE STATE'S SEIZURE AND RETENTION OF THEIR VEHICLES.

THE STATE KEPT MY CAR FOR OVER A YEAR!

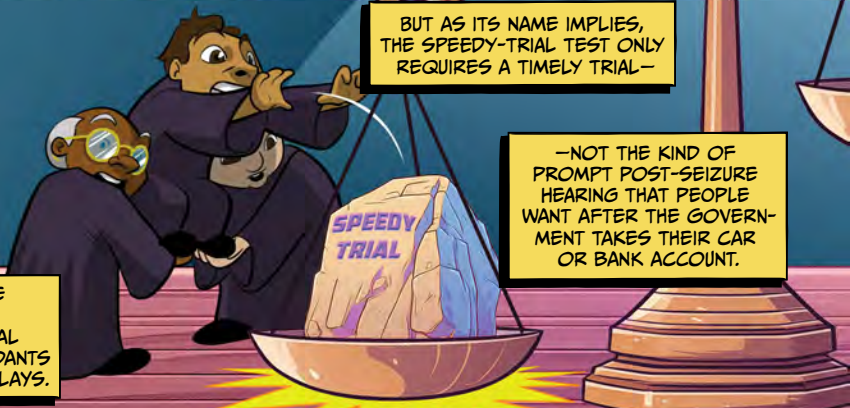
THEY KEPT MINE FOR NEARLY **TWO** YEARS!

HOWEVER, THE APPEALS COURT CHOSE NOT TO APPLY THE *MATHEWS* TEST TO ASSESS WHETHER THE STATE'S PROLONGED DETENTION OF MS. SUTTON'S AND MS. CULLEY'S CARS VIOLATED THEIR RIGHTS TO DUE PROCESS.

BUT AS ITS NAME IMPLIES, THE *SPEEDY-TRIAL* TEST ONLY REQUIRES A TIMELY TRIAL—

INSTEAD, IT APPLIED THE *SPEEDY-TRIAL* TEST, WHICH APPLIES IN CRIMINAL CASES TO PROTECT DEFENDANTS FROM EXCESSIVE TRIAL DELAYS.

—NOT THE KIND OF PROMPT POST-SEIZURE HEARING THAT PEOPLE WANT AFTER THE GOVERNMENT TAKES THEIR CAR OR BANK ACCOUNT.



ALTHOUGH THEY LOST AT THE COURT OF APPEALS, CULLEY AND SUTTON WERE NOT READY TO QUIT, SO THEY ASKED THE SUPREME COURT TO HEAR THEIR CASES.

THEY ARGUED THAT THE COURT OF APPEALS WAS WRONG TO APPLY THE SPEEDY-TRIAL TEST INSTEAD OF THE *MATHEWS* TEST—



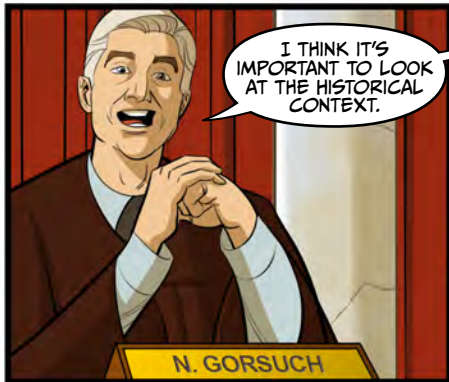
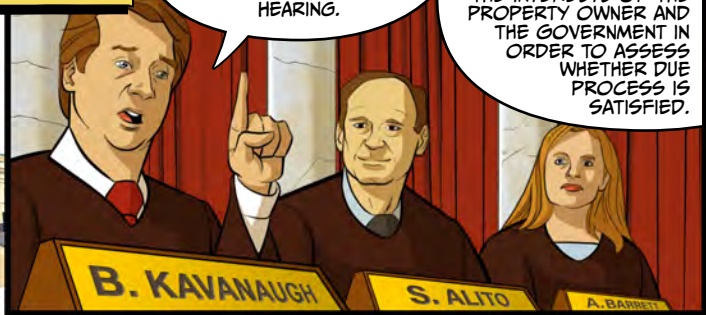
—AND THAT UNDER THE *MATHEWS* TEST, DUE PROCESS REQUIRES A PROMPT POST-SEIZURE HEARING.

THE SUPREME COURT AGREED TO HEAR THE CASE.

UNFORTUNATELY, THE MAJORITY DID NOT AGREE WITH CULLEY AND SUTTON.

IN CIVIL FORFEITURE CASES, DUE PROCESS REQUIRES A TIMELY FORFEITURE HEARING, BUT IT DOES NOT REQUIRE A SEPARATE PRELIMINARY HEARING.

IT DOESN'T MATTER WHICH TEST LOWER COURTS APPLY BECAUSE BOTH SEEK TO BALANCE THE INTERESTS OF THE PROPERTY OWNER AND THE GOVERNMENT IN ORDER TO ASSESS WHETHER DUE PROCESS IS SATISFIED.



I THINK IT'S IMPORTANT TO LOOK AT THE HISTORICAL CONTEXT.

IN THE PAST, CIVIL FORFEITURE WAS USED TO CONFISCATE ONLY CERTAIN TYPES OF PROPERTY—MOST COMMONLY, SHIPS FOLLOWING CUSTOMS VIOLATIONS.

SINCE YOU FAILED TO COMPLY WITH U.S. CUSTOMS LAW, WE'RE SEIZING YOUR SHIP SO YOU CAN'T ESCAPE TO ANOTHER COUNTRY.



TODAY'S CIVIL FORFEITURE REGIMES ARE FAR MORE WIDE-SWEEPING THAN HISTORICAL PRACTICES.

I CONCUR WITH THE MAJORITY BECAUSE I AGREE THAT DUE PROCESS REQUIRES ONLY A PROMPT FINAL HEARING, BUT I QUESTION WHETHER MODERN CIVIL FORFEITURE FITS SQUARELY WITH THE CONSTITUTION'S PROMISE OF DUE PROCESS.

WE WERE ASKED TO DECIDE WHICH TEST SHOULD BE APPLIED TO DUE PROCESS CHALLENGES IN CIVIL FORFEITURE CASES.

THE MAJORITY'S OPINION GOES WAY BEYOND THE QUESTION PRESENTED AND HAMSTRINGS LOWER COURTS FROM ADDRESSING MYRIAD ABUSES IN THE CIVIL FORFEITURE SYSTEM.



FOR THESE REASONS, I DISSENT.

THE COURT'S DECISION IN THIS CASE STRENGTHENED AN ALREADY POWERFUL TOOL FOR POLICE.



IT'S SO GREAT THAT WE CAN SEIZE THIS STUFF AND ENJOY IT FOR MONTHS—OR EVEN YEARS—BEFORE THE OWNER CAN GET IT BACK.

YOU MEAN IF THE OWNER GETS IT BACK!

NOW, UNLESS STATE LAW PROVIDES OTHERWISE, POLICE ARE ABLE TO KEEP SEIZED PROPERTY FOR LONG PERIODS OF TIME WITHOUT HAVING TO JUSTIFY THE PROLONGED DETENTION.



FOR MANY PEOPLE, THAT MEANS GOING WITHOUT CARS OR MONEY UNTIL THE COURT GETS AROUND TO HOLDING A FINAL HEARING.

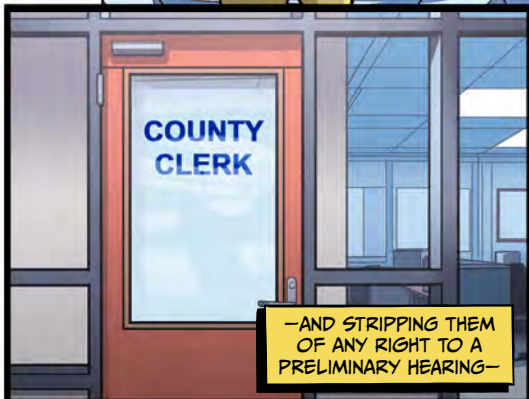
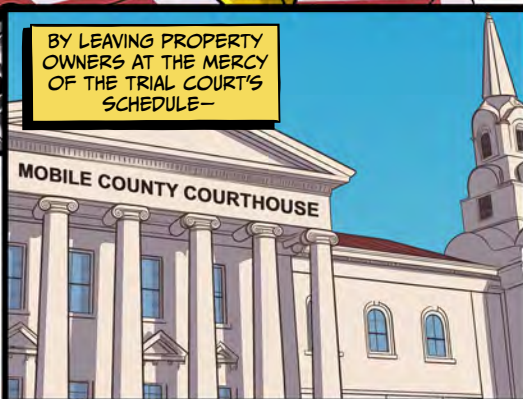
FIGHTING A CIVIL FOREFEITURE CASE IS ALREADY CHALLENGING.



SUTTON AND CULLEY WERE ABLE TO GET THEIR CARS BACK, BUT MOST PEOPLE ARE NOT SO LUCKY.



BY LEAVING PROPERTY OWNERS AT THE MERCY OF THE TRIAL COURT'S SCHEDULE—



—AND STRIPPING THEM OF ANY RIGHT TO A PRELIMINARY HEARING—

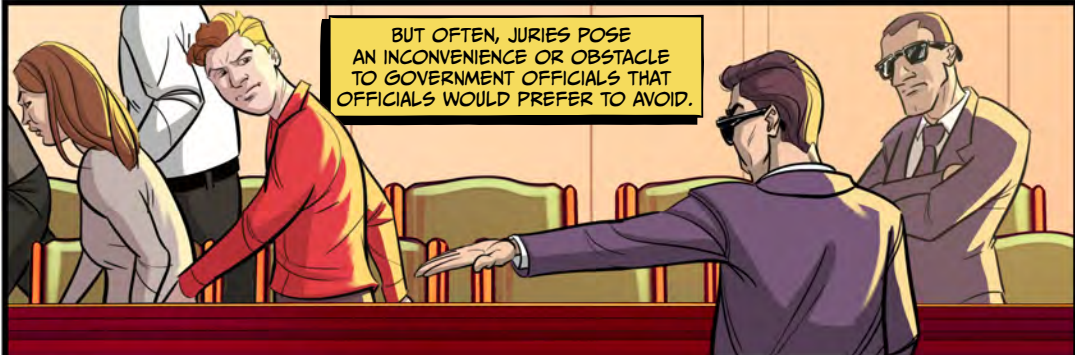
—THE SUPREME COURT'S DECISION MAKES THE PROCESS EVEN HARDER FOR PEOPLE FIGHTING TO WIN BACK THEIR PROPERTY.





JURY TRIALS ARE A MAINSTAY IN AMERICAN NEWS, TV SHOWS, AND MOVIES ABOUT LAW AND JUSTICE.


JURIES, COMPOSED OF COMMON PEOPLE, ARE AN IMPORTANT AMERICAN TRADITION AND A CHECK ON GOVERNMENT POWER.



BUT OFTEN, JURIES POSE AN INCONVENIENCE OR OBSTACLE TO GOVERNMENT OFFICIALS THAT OFFICIALS WOULD PREFER TO AVOID.



THE FRAMERS OF THE U.S. AND STATE CONSTITUTIONS BELIEVED JURY TRIALS WERE IMPORTANT TO PROTECTING LIBERTY.



Bill of Rights  
Congress of the United States.

Seventh Amendment  
In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

THE BILL OF RIGHTS INCLUDED TWO AMENDMENTS OUT OF TEN THAT GUARANTEED JURY TRIALS.

WHILE PERHAPS NOT AS FAMOUS AS THE SIXTH AMENDMENT GUARANTEE OF JURY TRIALS IN CRIMINAL CASES, THE SEVENTH AMENDMENT PROTECTS THE RIGHT OF TRIAL BY JURY IN NONCRIMINAL CASES, SPECIFICALLY "SUITS AT COMMON LAW."

BUT INCREASINGLY, AMERICANS ARE TRIED AND PUNISHED WITH FINES AND LOSS OF LIVELIHOOD BY GOVERNMENT BUREAUCRATS SITTING AS AGENCY "JUDGES" TO ADJUDICATE ALLEGED REGULATORY VIOLATIONS.



**NO JURIES NEEDED?!**  
CAN THIS BE CONSTITUTIONAL?

ONE FEDERAL AGENCY WHERE JURYLESS HEARINGS OCCUR IS THE SECURITIES AND EXCHANGE COMMISSION (SEC) IN WASHINGTON, DC. SEC REGULATORS ENFORCE THE NATION'S STOCK-TRADING AND FINANCIAL LAWS.

IN 2010, THE SEC GOT NEW AUTHORITY FROM CONGRESS.

NEW LAW



SEC OFFICIALS NOW COULD DECIDE—



—TO TRY PEOPLE AS BEFORE, IN A FEDERAL COURT, BEFORE A CITIZEN JURY AND A SENATE-CONFIRMED JUDGE—



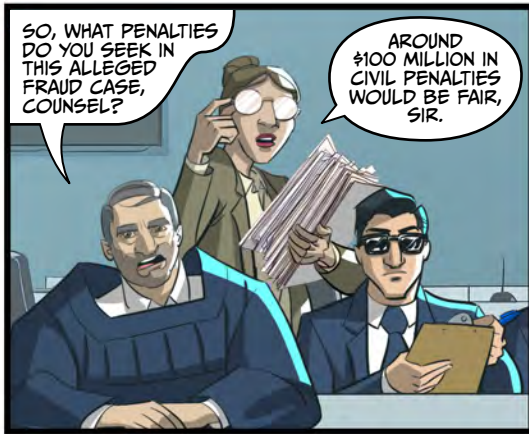
—OR TO TRY PEOPLE IN AN IN-HOUSE HEARING BEFORE AN SEC EMPLOYEE.

IN 2013, THE SEC SHUNTED GEORGE JARKESY INTO ONE OF ITS IN-HOUSE HEARINGS, ALLEGING THAT HE HAD FRAUDULENTLY INVESTED.



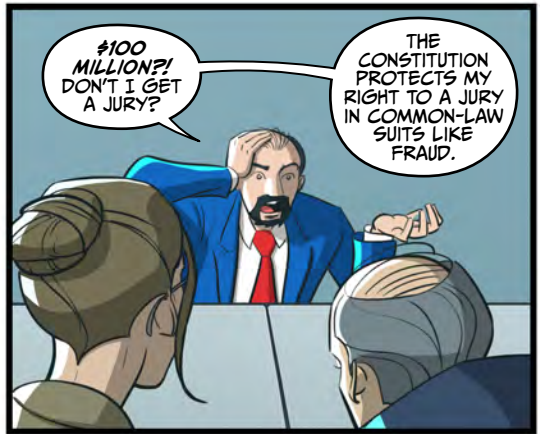
VARIOUS SEC EMPLOYEES SERVED AS THE INVESTIGATORS, THE PROSECUTORS, AND THE JUDGE IN JARKESY'S CASE.





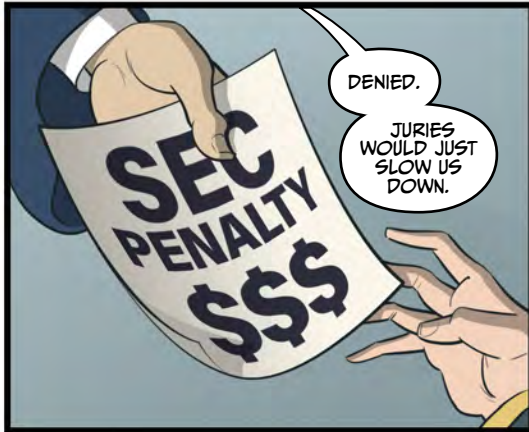
SO, WHAT PENALTIES DO YOU SEEK IN THIS ALLEGED FRAUD CASE, COUNSEL?

AROUND \$100 MILLION IN CIVIL PENALTIES WOULD BE FAIR, SIR.



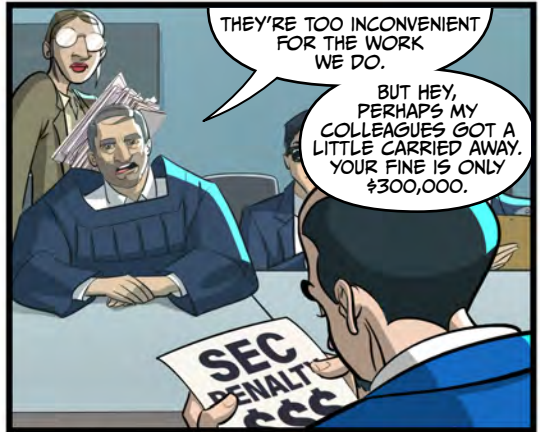
\$100 MILLION?! DON'T I GET A JURY?

THE CONSTITUTION PROTECTS MY RIGHT TO A JURY IN COMMON-LAW SUITS LIKE FRAUD.



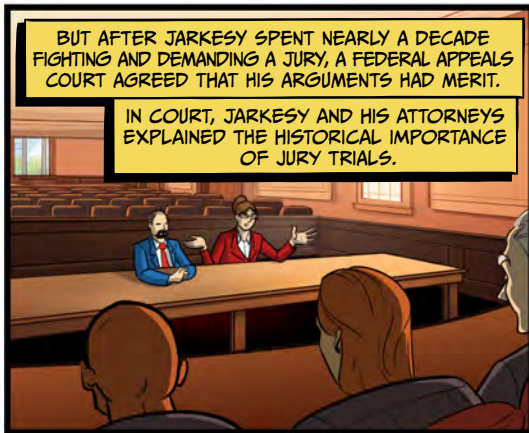
DENIED.

JURIES WOULD JUST SLOW US DOWN.



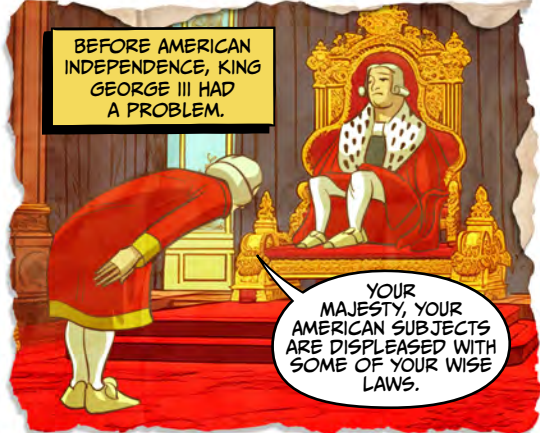
THEY'RE TOO INCONVENIENT FOR THE WORK WE DO.

BUT HEY, PERHAPS MY COLLEAGUES GOT A LITTLE CARRIED AWAY. YOUR FINE IS ONLY \$300,000.



BUT AFTER JARKESY SPENT NEARLY A DECADE FIGHTING AND DEMANDING A JURY, A FEDERAL APPEALS COURT AGREED THAT HIS ARGUMENTS HAD MERIT.

IN COURT, JARKESY AND HIS ATTORNEYS EXPLAINED THE HISTORICAL IMPORTANCE OF JURY TRIALS.



BEFORE AMERICAN INDEPENDENCE, KING GEORGE III HAD A PROBLEM.

YOUR MAJESTY, YOUR AMERICAN SUBJECTS ARE DISPLEASED WITH SOME OF YOUR WISE LAWS.



THE KING'S COLONIAL OFFICIALS WOULD BRING SUITS AGAINST HIS AMERICAN SUBJECTS.

BUT THE JURIES—FELLOW AMERICANS—WOULD DECIDE FOR THE DEFENDANTS.



IN RESPONSE, THE BRITISH BEGAN DENYING JURY TRIALS TO AMERICAN COLONISTS.



THE INFAMOUS SUGAR ACT AND STAMP ACT MOVED AMERICAN SUBJECTS OUT OF COMMON-LAW COURTS WITH JURIES—

—TO ADMIRALTY COURTS, BEFORE A SOLE BRITISH JUDGE.

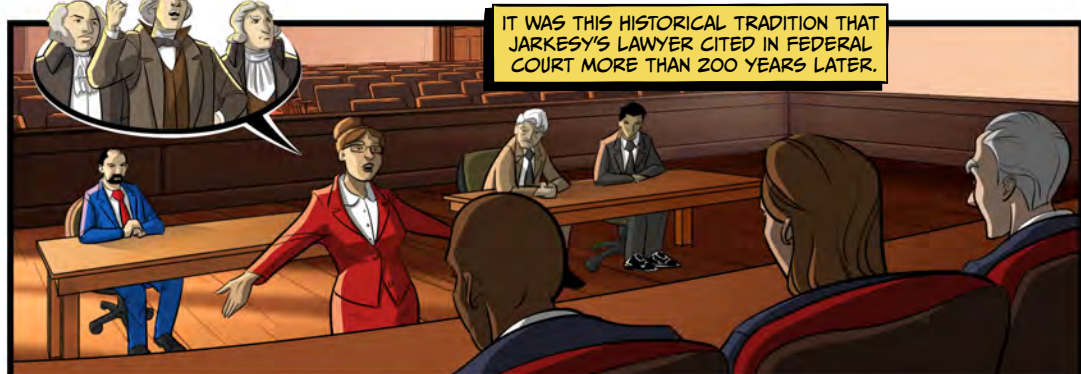
AMERICANS OF ALL STRIPES RESENTED THIS CLUMSY EFFORT TO UNDERMINE THEIR LIBERTY.

Crown  
Penalty  
\$\$\$

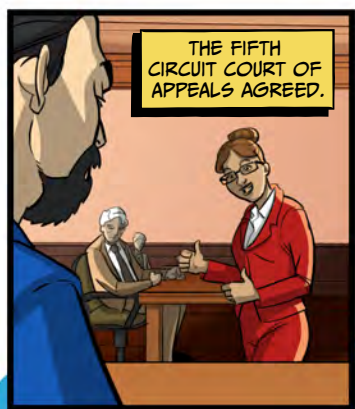
WHEN THE SIGNERS OF THE DECLARATION OF INDEPENDENCE RECOUNTED THE KING'S MOST OBJECTIONABLE POLICIES, THEY INCLUDED LAWS "DEPRIVING US IN MANY CASES, OF THE BENEFITS OF TRIAL BY JURY."

JOHN ADAMS, THOMAS JEFFERSON, AND ALEXANDER HAMILTON EACH EMPHASIZED THE NECESSITY OF JURY TRIALS.

I CONSIDER TRIAL BY JURY AS THE ONLY ANCHOR EVER YET IMAGINED BY MAN, BY WHICH A GOVERNMENT CAN BE HELD TO THE PRINCIPLES OF ITS CONSTITUTION.



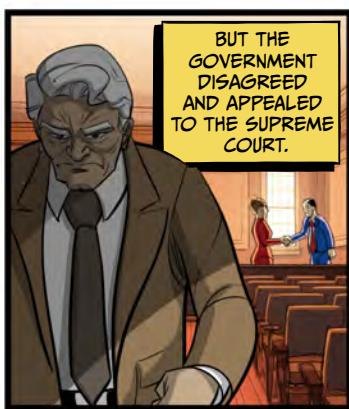
IT WAS THIS HISTORICAL TRADITION THAT JARKEYS'S LAWYER CITED IN FEDERAL COURT MORE THAN 200 YEARS LATER.



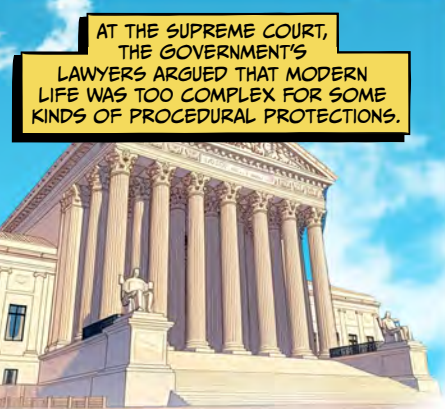
THE FIFTH CIRCUIT COURT OF APPEALS AGREED.



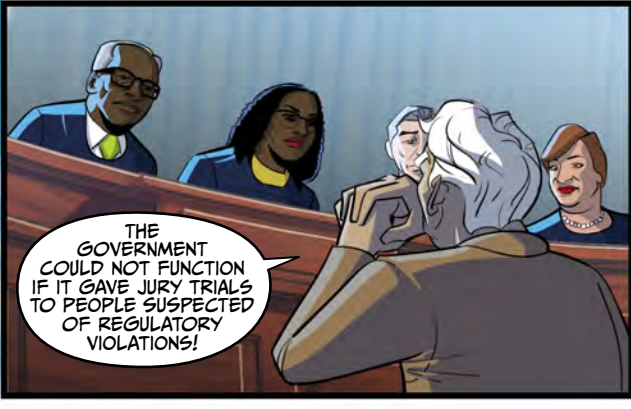
MR. GEORGE JARKEYS IS ENTITLED TO A JURY TRIAL IN CIVIL FRAUD CASES BROUGHT BY THE SEC.



BUT THE GOVERNMENT DISAGREED AND APPEALED TO THE SUPREME COURT.



AT THE SUPREME COURT, THE GOVERNMENT'S LAWYERS ARGUED THAT MODERN LIFE WAS TOO COMPLEX FOR SOME KINDS OF PROCEDURAL PROTECTIONS.



THE GOVERNMENT COULD NOT FUNCTION IF IT GAVE JURY TRIALS TO PEOPLE SUSPECTED OF REGULATORY VIOLATIONS!

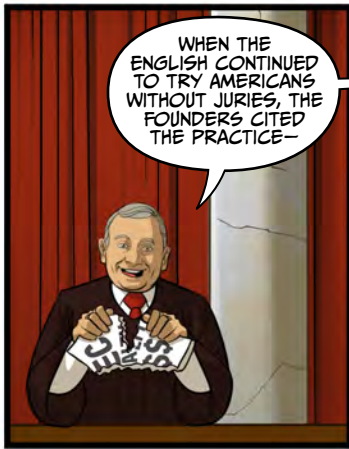


THE SEC'S MODERN CONCEPTION OF "FRAUD" LOOKS NOTHING LIKE COMMON-LAW FRAUD, AND THEREFORE THE SEVENTH AMENDMENT IS INAPPLICABLE!



THE SUPREME COURT WAS UNPERSUADED.

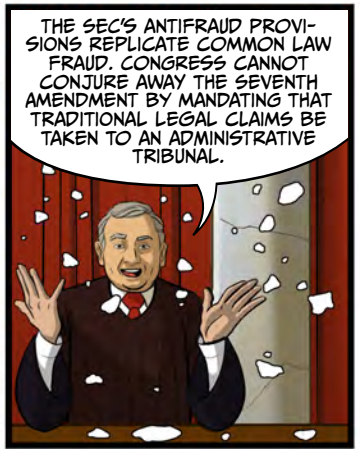
IN A 6-3 DECISION WRITTEN BY CHIEF JUSTICE JOHN ROBERTS, THE SUPREME COURT AFFIRMED THE APPEALS COURT.



WHEN THE ENGLISH CONTINUED TO TRY AMERICANS WITHOUT JURIES, THE FOUNDERS CITED THE PRACTICE—



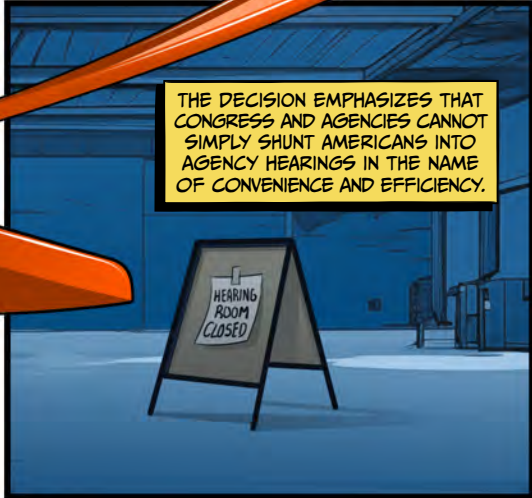
—AS A JUSTIFICATION FOR SEVERING OUR TIES TO ENGLAND.



THE SEC'S ANTIFRAUD PROVISIONS REPLICATE COMMON LAW FRAUD. CONGRESS CANNOT CONJURE AWAY THE SEVENTH AMENDMENT BY MANDATING THAT TRADITIONAL LEGAL CLAIMS BE TAKEN TO AN ADMINISTRATIVE TRIBUNAL.



A DEFENDANT FACING A FRAUD SUIT HAS THE RIGHT TO BE TRIED BY A JURY OF HIS PEERS BEFORE A NEUTRAL ADJUDICATOR.



THE DECISION EMPHASIZES THAT CONGRESS AND AGENCIES CANNOT SIMPLY SHUNT AMERICANS INTO AGENCY HEARINGS IN THE NAME OF CONVENIENCE AND EFFICIENCY.

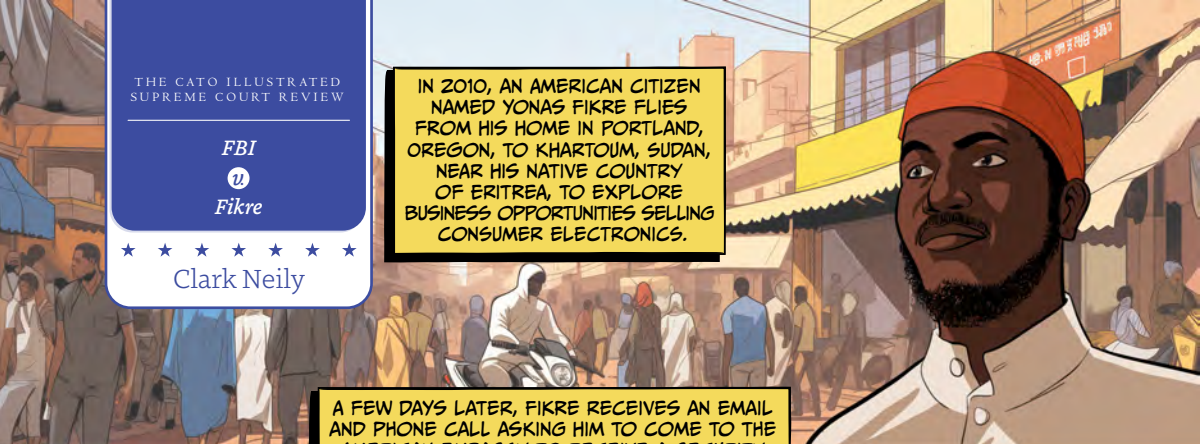


TRIAL BY JURY BEFORE A NEUTRAL TRIBUNAL REMAINS AN INDISPENSABLE CHECK ON GOVERNMENT POWER.



FBI  
11  
Fikre

★ ★ ★ ★ ★ ★ ★ ★  
Clark Neily



IN 2010, AN AMERICAN CITIZEN NAMED YONAS FIKRE FLIES FROM HIS HOME IN PORTLAND, OREGON, TO KHARTOUM, SUDAN, NEAR HIS NATIVE COUNTRY OF ERITREA, TO EXPLORE BUSINESS OPPORTUNITIES SELLING CONSUMER ELECTRONICS.



A FEW DAYS LATER, FIKRE RECEIVES AN EMAIL AND PHONE CALL ASKING HIM TO COME TO THE AMERICAN EMBASSY TO RECEIVE A SECURITY BRIEFING FOR AMERICANS TRAVELING IN SUDAN.

BUT WHEN HE ARRIVES AT THE EMBASSY, HE'S USHERED INTO A ROOM WITH TWO FBI AGENTS.

YOU'VE BEEN PLACED ON THE NO FLY LIST, SON.

THE NO FLY LIST IS A LIST MAINTAINED BY THE TERRORIST SCREENING CENTER—

—OF PEOPLE WHO ARE PROHIBITED FROM FLYING INTO, OUT OF, WITHIN, OR OVER THE UNITED STATES.

THE AGENTS HAVE AN ASTONISHING PROPOSAL.

BECOME AN UNDERCOVER INFORMANT FOR US, AND WE'LL COMPENSATE YOU SUBSTANTIALLY.

IT'S YOUR CHANCE TO ENJOY THE GOOD LIFE!

"THE GOOD LIFE" INCLUDES BEING TAKEN OFF THE NO FLY LIST SO HE CAN RETURN HOME.

FIKRE SAYS NO AND WALKS OUT OF THE MEETING.



AFTER BEING FOLLOWED AROUND KHARTOUM BY SHADY CHARACTERS, FIKRE GOES TO ABU DHABI IN THE UNITED ARAB EMIRATES, WHERE HE RECEIVES A WORK PERMIT AND BEGINS INVESTING IN HIS CONSUMER ELECTRONICS BUSINESS.



BUT ONE NIGHT, FIKRE'S HOME IS RAIDED BY SECRET POLICE, WHO BLINDFOLD HIM AND DRIVE HIM OFF TO A SECRET LOCATION—



—WHERE HE IS BEATEN WITH NIGHTSTICKS AND QUESTIONED—



—FOR MONTHS—

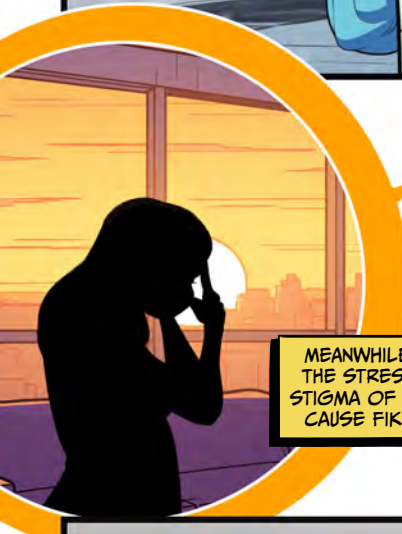


—AS HIS INTERROGATORS URGE HIM TO COOPERATE WITH THE FBI.

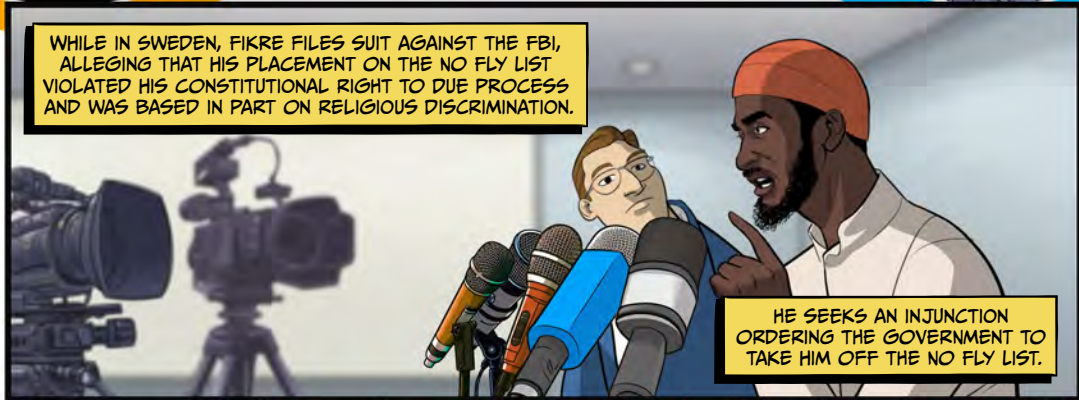


FIKRE IS EVENTUALLY TAKEN TO THE AIRPORT IN ABU DHABI AND PUT ON A PLANE TO SWEDEN, WHERE HE ARRIVES TRAUMATIZED, WITH NO WARM CLOTHES AND LITTLE MONEY.

YEARS GO BY AS FIKRE TRIES AND FAILS TO GET ASYLUM IN SWEDEN AND TRIES AND FAILS TO GET TAKEN OFF THE NO FLY LIST.



MEANWHILE, BACK HOME IN OREGON, THE STRESS OF SEPARATION AND THE STIGMA OF HER HUSBAND'S EXPERIENCE CAUSE FIKRE'S WIFE TO DIVORCE HIM.



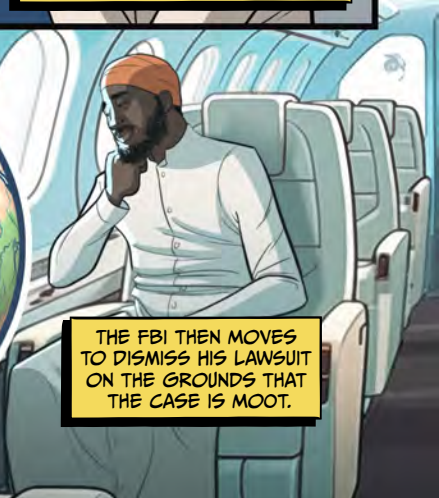
WHILE IN SWEDEN, FIKRE FILES SUIT AGAINST THE FBI, ALLEGING THAT HIS PLACEMENT ON THE NO FLY LIST VIOLATED HIS CONSTITUTIONAL RIGHT TO DUE PROCESS AND WAS BASED IN PART ON RELIGIOUS DISCRIMINATION.

HE SEEKS AN INJUNCTION ORDERING THE GOVERNMENT TO TAKE HIM OFF THE NO FLY LIST.

IN 2015, THE SWEDISH GOVERNMENT FLIES FIKRE HOME TO PORTLAND ON A PRIVATE JET.



JUST OVER A YEAR LATER, AND WITHOUT EXPLANATION, FIKRE IS REMOVED FROM THE NO FLY LIST.

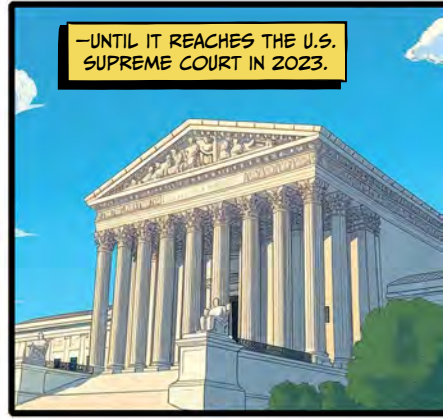


THE FBI THEN MOVES TO DISMISS HIS LAWSUIT ON THE GROUNDS THAT THE CASE IS MOOT.

THE TRIAL COURT AGREES AND DISMISSES FIKRE'S CASE.

THE COURT OF APPEALS REVERSES, AND THE CASE PING-PONGS BACK AND FORTH FOR SEVERAL YEARS—

—UNTIL IT REACHES THE U.S. SUPREME COURT IN 2023.



THE ISSUE BEFORE THE SUPREME COURT IS A NARROW ONE.

WHEN A DEFENDANT STOPS DOING WHATEVER PROMPTED THE LAWSUIT—

—IN THIS CASE, KEEPING FIKRE ON THE NO FLY LIST—



—THE DOCTRINE OF VOLUNTARY CESSATION REQUIRES THEM TO SHOW THAT—



—“SUBSEQUENT EVENTS MAKE IT ABSOLUTELY CLEAR THAT THE ALLEGEDLY WRONGFUL BEHAVIOR COULD NOT REASONABLY BE EXPECTED TO RECUR.”



THE GOVERNMENT RESPONDS BY FILING A DOCUMENT PROMISING NOT TO PUT FIKRE BACK ON THE NO FLY LIST BASED ON “CURRENTLY AVAILABLE INFORMATION.” BUT THE FBI REFUSES TO DISAVOW ITS INITIAL DECISION TO PUT FIKRE ON THE LIST OR DISCLOSE ITS REASONS FOR DOING SO IN THE FIRST PLACE.

THIS LEAVES FIKRE WITH NO IDEA WHAT MIGHT CAUSE HIM TO BE PLACED ON THE LIST AGAIN.

ALL NINE SUPREME COURT JUSTICES AGREE THAT THE FBI'S PROMISE IS INSUFFICIENT. WRITING FOR THE MAJORITY, JUSTICE GORSUCH EXPLAINS THAT—

TALKING TO THE WRONG PERSON?

CHECKING OUT THE WRONG BOOK AT THE LIBRARY?

GOING TO THE WRONG MOSQUE?



—THE GOVERNMENT'S SPARSE DECLARATION FALLS SHORT OF DEMONSTRATING THAT IT CANNOT REASONABLY BE EXPECTED TO DO AGAIN IN THE FUTURE WHAT IT IS ALLEGED TO HAVE DONE IN THE PAST.



SO FIKRE'S CASE RETURNS TO THE TRIAL COURT FOR FURTHER PROCEEDINGS, INCLUDING DISCOVERY FROM THE FBI ABOUT WHY IT PUT HIM ON THE NO FLY LIST.



**N** TO BE CONTINUED... IN 2025!!

# ACKNOWLEDGMENTS

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THOMAS BERRY IS A LEGAL FELLOW IN THE CATO INSTITUTE'S ROBERT A. LEVY CENTER FOR CONSTITUTIONAL STUDIES AND EDITOR-IN-CHIEF OF THE *CATO SUPREME COURT REVIEW*. BEFORE JOINING CATO, BERRY WAS AN ATTORNEY AT THE PACIFIC LEGAL FOUNDATION AND CLERKED FOR JUDGE E. GRADY JOLLY OF THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT.



JAMES CRAVEN IS THE CATO INSTITUTE'S MANAGER OF LEGAL STUDIES AND A FORMER CRIMINAL DEFENSE ATTORNEY. BRINGING HIS FIGHT AGAINST MASS INCARCERATION AND UNACCOUNTABLE GOVERNMENT TO WASHINGTON, CRAVEN SERVED AS ACTING DIRECTOR OF CRIMINAL JUSTICE REFORM AT THE REASON FOUNDATION BEFORE JOINING CATO'S PROJECT ON CRIMINAL JUSTICE IN 2020.



BRENT SKORUP IS A LEGAL FELLOW IN THE CATO INSTITUTE'S ROBERT A. LEVY CENTER FOR CONSTITUTIONAL STUDIES. SKORUP'S RESEARCH AREAS INCLUDE FREE SPEECH, TECHNOLOGY LAW, FOURTH AMENDMENT PROTECTIONS, REGULATION, AND PROPERTY LAW.



LAURA BONDANK-HARMON IS A LEGAL ASSOCIATE IN THE CATO INSTITUTE'S ROBERT A. LEVY CENTER FOR CONSTITUTIONAL STUDIES WHOSE AREAS OF INTEREST INCLUDE THE WARRANT REQUIREMENT, POLICE ACCOUNTABILITY, PLEA BARGAINING, AND CIVIL FORFEITURE. BEFORE JOINING CATO, HARMON WAS A TRIAL ATTORNEY IN MICHIGAN, WHERE SHE REPRESENTED CLIENTS IN BOTH CIVIL AND CRIMINAL CASES.

## ABOUT THE CATO INSTITUTE

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