

Cozen O'Connor Team Wins Landmark First Amendment Ruling

Friday, June 21, 2019

On June 17, 2019, the U.S. Supreme Court granted a complete victory to long-time firm client Manhattan Community Access Corporation (MNN) in a seminal case on the First Amendment and the state action doctrine. The Supreme Court overturned the Second Circuit, allowing the dismissal of all constitutional claims against MNN, holding that MNN is not a state actor.

MNN is a nonprofit that, among other things, operates nine public access cable TV channels in Manhattan, and is the leading public access center in the country. MNN was sued by two video producers who had been suspended from the channels and alleged that they were being denied the right to broadcast on MNN's channels based on their viewpoint. The case raised the critical issue of whether a private entity like MNN can be considered a "state actor" for purposes of the First Amendment.

Except under rare circumstances, the First Amendment only applies to government action, and only state actors can be sued for constitutional violations. Cozen O'Connor has represented MNN throughout the entire case spanning five years starting with the moment the producers were suspended. The producers sued in federal court, alleging violations of their First Amendment rights. The U.S. District Court for the Southern District of New York (Judge Pauley) dismissed the case, agreeing with MNN's argument that it was not a state actor. But a divided Second Circuit panel reversed, creating a split with two other federal circuits, which had ruled the other way in similar cases.

Last summer, the Cozen O'Connor team successfully petitioned the Supreme Court to grant a *writ of certiorari*, making it one of just 69 cases heard by the Court this term — the court granted less than 1% of all petitions for *certiorari*. After briefing, which included *amicus* briefs from 12 parties, on February 25, Michael de Leeuw argued the case in a very active and engaged oral argument that challenged the arguments of both sides.

Writing for the majority, Justice Kavanaugh held that MNN's operation of a public access channel is not a function that has been "traditionally and exclusively performed by the government" because public access has never been run by the government in New York City. The Court also declined to find that simply providing a forum for speech can turn a private entity into a state actor. The Court held that MNN is akin to an extensively regulated utility, and the Court has never held that extensive regulation was sufficient to convert a private entity into a state actor. Justice Kavanaugh was joined by Chief Justice Roberts and Justices Alito, Thomas, and Gorsuch. Justice Sotomayor wrote a dissent that was joined by Justices Ginsburg, Breyer, and Kagan.

The decision concludes as follows: "It is sometimes said that the bigger the government, the smaller the individual. ... Expanding the state-action doctrine beyond its traditional boundaries would expand governmental control while restricting individual liberty and private enterprise. We decline to do so in this case." A copy of the opinion can be found [here](#).

The decision will allow MNN to continue to produce and air the broadest array of viewpoints in the country and continue to teach media skills to high school students and other residents of New York City. An adverse ruling would have had dire consequences operationally for MNN and would have harmed public access centers across the country. The ruling will have wide-ranging implications in First Amendment and media law, including with respect to claims involving the editorial decisions of social media platforms such as Twitter, YouTube, Facebook, and all companies also facing identical

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