

22-842 NATIONAL RIFLE ASSOCIATION V. VULLO

DECISION BELOW: 49 F.4th 700

LOWER COURT CASE NUMBER: 21-636-cv

QUESTION PRESENTED:

Bantam Books v. Sullivan held that a state commission with no formal regulatory power violated the First Amendment when it "deliberately set out to achieve the suppression of publications" through "informal sanctions," including the "threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation." 372 U.S. 58, 66-67 (1963). Respondent here, wielding enormous regulatory power as the head of New York's Department of Financial Services ("DFS"), applied similar pressure tactics-including backchannel threats, ominous guidance letters, and selective enforcement of regulatory infractions-to induce banks and insurance companies to avoid doing business with Petitioner, a gun rights advocacy group. App. 199-200 ¶ 21. Respondent targeted Petitioner explicitly based on its Second Amendment advocacy, which DFS's official regulatory guidance deemed a "reputational risk" to any financial institution serving the NRA. *Id.* at 199, n.16. The Second Circuit held such conduct permissible as a matter of law, reasoning that "this age of enhanced corporate social responsibility" justifies regulatory concern about "general backlash" against a customer's political speech. *Id.* at 29-30. Accordingly, the questions presented are:

1. Does the First Amendment allow a government regulator to threaten regulated entities with adverse regulatory actions if they do business with a controversial speaker, as a consequence of (a) the government's own hostility to the speaker's viewpoint or (b) a perceived "general backlash" against the speaker's advocacy?
2. Does such coercion violate a clearly established First Amendment right?

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 11/3/2023