



July 31, 2024

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Molly C. Dwyer, Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
PO Box 193939  
San Francisco, CA 94119-3939

**Re:    Matsumoto, et al. v. Labrador, Case No. 23-3787**  
**Response to Appellant’s Notice of Supplemental Authority Pursuant to Fed. R. App.**  
**P. 28j and Circuit R. 28-6**

Dear Ms. Dwyer:

On July 25, 2024, Appellants filed a notice of supplemental authority under Federal Rule of Appellate Procedure 28j and Circuit Rule 28-6 asserting that the United States Supreme Court’s decision in *Murthy v. Missouri*, 144 S.Ct. 1972, 1986 (2024) affects the standing analysis in this case. It does not.


*Murthy* does not involve a pre-enforcement challenge to a criminal statute, which is what Appellees brought here. Rather, *Murthy* involved an action brought by states and five individuals alleging that federal agencies and officials pressured social media companies into censoring certain content. Appellees’ brief and argument set out the proper Supreme Court and Ninth Circuit authority and standard for standing in pre-enforcement challenges to criminal statutes. Appellees Response Br. at 18-21. *Murthy* has no impact on this binding precedent.

In addition, Appellant’s argument that because no county prosecutor has brought a prosecution of them under Idaho Code § 18-623 in the year since this lawsuit was filed (and eight months since the Attorney General was enjoined from enforcing it), *Murthy* somehow supports that there was no injury, is misplaced for two reasons. First, there is no evidence in the record regarding Appellees’ conduct in the time since § 18-623 was enjoined. Second, the Attorney General, whose enforcement of the statute was enjoined, is a proper defendant in this case. Appellees Response Br. at 29-35. As set forth in Appellees’ brief, their injuries were redressable by the requested relief. *Id.*, at 25-27. *Murthy* does not affect this analysis for two reasons. First, again, it is not a pre-enforcement challenge to a criminal statute. Second, it did not involve an effort to enjoin an actor directly responsible for taking action. Here, Appellees sought and obtained an injunction against a proper defendant, the Attorney General. Appellees Response Br. at 29-35.

*The body of this letter contains 296 words.*

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Very truly yours,

A handwritten signature in blue ink, appearing to read "Wendy J. Olson", is written over a light blue rectangular background.

Wendy J. Olson