

The Maine lobster industry is [suing](#) the Monterey Aquarium for advising consumers to avoid Maine lobsters. This is “cancel culture” on steroids. The Aquarium has taken a stand the industry doesn’t like, so the industry is trying to silence it and its other critics. “Silencing” here is quite literal: the industry is seeking an injunction to gag the Aquarium. It would be hard to design a more blatant violation of the First Amendment.

To begin with, you can’t sue people for damages unless they’ve said something false. That’s not at all clear here. The dispute is whether Maine lobstering is a possible risk to the highly endangered right whale. The Aquarium says the whales are endangered due to “interactions with unknown fisheries, of which the lobster fishery may be a part.” That statement is false only if we know for certain that the lobster fishery isn’t part of the problem. The industry’s evidence doesn’t prove that. We seem to be dealing with opinions rather than statements that are provably false, so libel law shouldn’t apply in the first place.

Even if the Aquarium’s statements were false, there are four other constitutional flaws in the lawsuit. Each one would be fatal by itself. If I were designing a classroom hypo, it would be hard to come up with something so unconstitutional.

Here are the four flaws:

First, the dispute about Maine lobstering is clearly a matter of public concern – for instance, Maine’s representatives in Congress have spoken out about it. Under Supreme Court [precedent](#), a libel suit involving a matter of public concern must include proof of negligence. Even if it turns out that the Aquarium’s conclusions were wrong, its statements seem to be within the range of reasonable disagreement. Without this constitutional protection, we’d all be at risk of being driven into bankruptcy when we talked about a controversial issue if a jury later happened to disagree with our conclusions.

Second, it’s important that the Aquarium’s statements aren’t about an individual lobster producer, they’re about a large group of people. The Supreme Court allows libel suits about individualized false claims. It’s quite different when a claim is about a group. I’d be rich if I could sue every time someone said professors teach only woke nonsense rather than anything useful. In fact, one of the useful things I teach is libel law. The industry’s lawyers might have avoided filing such a defective case if they had only taken my class as beginning law students.

Third, the industry’s real complaint was that the Aquarium advocated that consumers steer shy of its lobsters. In a [case](#) involving a lawsuit against the NAACP, the Supreme Court made it clear that efforts to organize consumer boycotts relating to issues of public policy

are protected by the First Amendment. If it weren't for that protection, a lot of conservatives would be in trouble for advising people to steer clear of "woke" businesses.

I've saved the most outrageously unconstitutional part of the complaint for last. The Supreme Court [ruled](#) nearly a century ago that you can't get an injunction as a remedy for false statements or to prevent other harms short of immediate, dire threats to national security. That's called the rule against prior restraints on speech, and it's one of the most powerful rules in First Amendment law.

Although this dispute over lobsters may seem a bit quaint, it's actually a very serious threat to free speech. The lobster industry is literally trying to silence the Aquarium with a gag order, filing suit in a Maine court where the Aquarium will be less likely to get a fair hearing. No doubt it also hopes to frighten its other critics into silence. If this effort succeeds, we will no doubt see climate advocates sued for massive damages in West Virginia. And by the same token, major investment banks will sue conservatives who accuse them of putting progressive politics ahead of the interests of their investors. This is a road we should not go down.

My advice: If you care about free speech, don't eat Maine lobsters.