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NCLA’s Joint Amicus Brief Challenges Calif.’s Levying of Multimillion-Dollar Fines Without Due Process

Lent, et al. v. California Coastal Commission, et al.

Washington, DC (July 20, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a joint [amicus brief](#) today in the California Court of Appeal, Second Appellate District in the case of *Lent, et al. v. California Coastal Commission, et al.* Warren and Henny Lent are challenging the multimillion-dollar penalty the California Coastal Commission (CCC) imposed against them under section 30821 of the California Coastal Act in violation of their due process rights. The case is the first to challenge a CCC’s penalty order issued under the recently enacted section 30821.

The Commission seeks deference to its interpretation that sections 30820 and 30821 permit consideration of deterrence in its administrative civil penalty determination. The Commission seeks judicial deference to its interpretation of the law, which would violate Article III and the Due Process Clauses of the California Constitution, as well as violate the Fourteenth Amendment of the U.S. Constitution. Judicial deference would require judges to abandon their duty of independent judgment and exhibit bias in favor of government litigants like the CCC, thereby exposing the citizens of California to administrative hearings with potential fines of up to \$20.5 million for a single violation.

In 2016, the Commission levied a massive \$4.185 million-dollar administrative civil penalty against the Lents, two Malibu homeowners falsely accused of blocking public access to the beach. The original fine recommended by Commission staff was \$950,000, but during the public comment period of the hearing haggling over the penalty demand caused it to balloon in real time, providing no notice to the Lents or meaningful opportunity for them to respond. Any such binding involuntary adjudication that occurs outside the courts also violates due process.

In this case, the CCC has argued that seeking civil penalties under an alternate penalty provision, section 30820, through litigation was “arduous” and required “tremendous expenditure of resources.” The use of Section 30821 instead, according to the CCC, has led “to much quicker resolution of violations.” The speed and efficiency of section 30821’s administrative shortcut, achieved in part by evading litigation before an independent court, is likely to become a preferable enforcement method for the CCC—all done at the expense of due process of law and the right to be tried in front of an impartial and independent judge.

The Court’s decision will establish and define the scope of the Commission’s power and strongly impact not only the due process rights of the Lents, but the rights of others who become targets of enforcement in the future. The Lents are represented by Pacific Legal Foundation. NCLA’s *amicus* brief is being filed jointly with the National Federation of Independent Business Small Business Legal Center and the California Farm Bureau Federation.

NCLA released the following statements:

“Section 30821 of the California Coastal Act empowers the Commission to levy ruinous penalties in binding, involuntary adjudications occurring outside of the courts. Such methods necessarily violate the due process rights of enforcement targets like the Lents and are wholly improper.”

— **Kara Rollins, Litigation Counsel, NCLA**

“The goal of any adjudicatory procedure should be justice. While we often say that “justice delayed is justice denied,” the opposite can also be true. In this case the CCC has found a way to expedite enforcement proceedings at the expense of due process, solely for the purpose of grabbing money out of the hands of property owners as fast as possible. That isn’t justice; that is a disaster.

— **Harriet Hageman, Senior Litigation Counsel, NCLA**

“California courts have not historically deferred to state administrative agencies in interpreting statutes. They should not start doing so now. There is a *Chevron* revolt underway among state supreme courts, and California should pay heed. The federal rule deferring to agency interpretations strips courts of their judicial independence and forces them to show bias toward government litigants. Such conduct leads to obnoxiously unjust results like the fine handed down to the Lents. California courts must have courage to hold onto their judicial independence and forswear deferring to the kind of self-serving statutory interpretation that the CCC undertook in this case.”

— **Mark Chenoweth, Executive Director and General Counsel, NCLA**

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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