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**NCLA Brief Responds to CPSC and ASTM Excuses for Keeping Consumers in the Dark on Safety**

*Lisa Milice v. U.S. Consumer Product Safety Commission*

**Washington, DC (August 7, 2020)** – “Buyer Beware” takes on a whole new meaning if you wish to see the U.S. Consumer Product Safety Commission’s (CPSC) safety standards for a product before purchasing it. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed a [reply](#) to the government’s brief in the case of *Lisa Milice v. U.S. Consumer Product Safety Commission*, taking the CPSC to task over the practice of keeping its standards hidden behind a private paywall.

NCLA client and new mom Lisa Milice is asking the U.S. Court of Appeals for the Third Circuit to require CPSC to meet its legal duty to provide the public free and guaranteed access to CPSC’s binding product safety standards. Ms. Milice, who was looking to purchase an infant bath seat, asked CPSC to let her see a copy of its safety standard for infant bath seats. The Commission advised Milice that she would have to purchase a copy of the standard through ASTM, a private organization that specializes in creating safety standards, for \$56.00—about twice the cost of an infant bath seat (which costs approximately \$30.00).

CPSC defends its practice by claiming it has no choice but to hide the law from the public because it must respect ASTM’s copyright above all else. However, a third party’s copyright interests do not in any way justify the Commission’s violating the constitutional rights of consumers. NCLA argues that CPSC (or any other government agency, for that matter) cannot charge for access to the law because citizens are the government and the authors of the law—and the law in its entirety belongs to the citizenry.

In response to NCLA’s lawsuit, ASTM has indicated its willingness to voluntarily make a read-only version of the standard available for free on its own website. But there is currently no legal mechanism to compel the company to provide access to its standards freely—or at all on the government’s behalf. In fact, ASTM can ignore or exclude participants, remove its standards from its website, or even increase its prices exponentially—all without legal recourse.

Hiding the law behind a paywall violates due process. Ms. Milice asks this Court to order CPSC to make any binding standards permanently accessible to the public for free.

**NCLA released the following statements:**

“Ms. Milice does not have—and should not have—an interest in how CPSC and ASTM resolve their copyright dispute. If the agency created such a conundrum by outsourcing its functions to a private entity, it is exclusively the government’s responsibility to fix the problem without violating citizens’ rights. Secret law does more than undermine consumer choice and violate the Freedom of Information Act (FOIA), it also violates the Constitution.”

— **Caleb Kruckenberg, Litigation Counsel, NCLA**

“It’s astounding to see our U.S. government stand up in court and tell a concerned citizen that she has no right to see the law unless she pays a private party for access to it. Most people can feel in their gut that the right thing to do here is to allow free access to these safety standards, so that Ms. Milice and other consumers can decide how best to keep their infants safe from harm.”

— **Jared McClain, Staff 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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