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Media Inquiries: [Judy Pino](mailto:judy.pino@ncla.org), 202-869-5218

NCLA Seeks Summary Judgment in Case Challenging NOAA's Unlawful at-Sea Monitor Mandate

Relentless Inc., et al. v. U.S. Dept. of Commerce, et al.

Washington, DC (December 7, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed a [motion](#) asking the U.S. District Court for the District of Rhode Island to award summary judgment in favor of NCLA's clients in *Relentless Inc., et al. v. U.S. Dept. of Commerce, et al.* NCLA argues that the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA), and the National Marine Fisheries Service have no power to make fishermen pay for monitors the government puts on their boats. So, NCLA is asking the Court to declare NOAA's regulation seeking to implement an industry-funded, at-sea-monitor mandate on the nation's Atlantic herring fishermen unconstitutional and set it aside.

NCLA's clients, small Rhode Island fishing businesses, are entitled to summary judgment on three grounds. First, the mandate violates the U.S. Constitution's Article I. Congress never authorized these agencies to require payments for at-sea monitors in the Atlantic herring fishery. The federal agencies' attempt to fund their operations through a requirement that fishermen contract with government contractor at-sea monitors outside of Congressional appropriations, violates the Magnuson-Stevens Act (MSA)—meant to protect, manage, and grow U.S. fishery resources. The MSA's structure and purpose, and its associated regulatory framework, prohibit industry-funded monitoring as proposed by the Secretary of Commerce, NOAA and the other Defendants.

Second, industry funding unconstitutionally forces NCLA's clients into a market they do not wish to join. They are being forced to hire these monitors only because an administrative agency has created the office without statutory basis. NOAA wants to require small commercial fishing businesses to purchase the equipment to "solve" the "problem" of Congress not appropriating the amount of money NOAA wants for monitoring, and it wants to penalize them if they do not enter this market by barring them from the fisheries.

Lastly, the February 7, 2020 Final Rule, which created the requirement to "increase monitoring" in some fishery management plans and "assess the amount and type of catch and more precisely monitor annual catch limits," violates the Regulatory Flexibility Act. The Act requires administrative agencies to consider the effects of their actions on small businesses and to reduce their impact where possible. It was discovered that of the 66 businesses affected by the Final Rule, 62 were small businesses, and only 30, like NCLA's clients, were actively fishing Atlantic herring. The agencies involved completely ignored alternatives to their unlawful proposals contrary to Congressional mandate.

Agencies cannot be allowed to fund themselves without authorization from Congress. And the U.S. Department of Commerce and its subsidiaries failed to comply with the MSA and the RFA while trying to fund their regulatory activities at the expense of small commercial fishing businesses.

NCLA released the following statements:

“One of the main checks on government, and an important bulwark of liberty, is how much government activity Congress is willing to fund. If Agencies, without Congressional authorization, are allowed to pick the pockets of anyone whom they regulate as it suits them, the Founders’ efforts to give Congress the Power of the Purse will be circumvented.”

– **John Vecchione, NCLA Senior Litigation Counsel**

For more information visit the case page [here](#).

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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