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NCLA Amicus Brief Discourages Ninth Cir. *En Banc* Court from Deferring to State Administrators’ Interpretations of U.S. Constitution, State Statutes and Regulations

George K. Young, Jr. v. State of Hawaii, et al.

Washington, DC (June 5, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in the U.S. Court of Appeals for the Ninth Circuit in *George K. Young, Jr. v. State of Hawaii, et al.* in support of Mr. Young. NCLA’s brief dissuades the full court from deferring to state administrators’ factual speculations and to their interpretations of the U.S. Constitution or of state statutes and regulations. It also warns of constitutional problems that would come with granting deference to state administrators’ statements of law and of fact. The *en banc* Court should, like the panel majority, empower trial courts and juries to perform traditional factfinding functions, and it should interpret statutory text using all available traditional tools of construction.

The panel majority declined to give *Turner* deference—a deference doctrine that requires federal courts to give substantial deference to Congress’s predictive facts. The dissent would afford *Turner* deference to the state’s factual predictions. NCLA’s brief urges the Court not to so defer.

NCLA’s amicus brief also argues that federal courts should decline to defer to the state administrators’ interpretations of state statutes under *Chevron* or *Auer* doctrines because such deference is unconstitutional. It requires judges to abandon their duty of independent judgment in violation of Article III and the judicial oath, and it violates the Due Process Clause by commanding judicial bias toward a litigant.

NCLA released the following statement:

“Deference doctrines such as *Chevron*, *Auer* or *Turner* are all horizontal deference doctrines. Their rationale, assuming it is constitutional, should not apply vertically when government litigants ask federal courts to defer to interpretations or fact-findings contained in state or local laws. In any event, deference to the government litigant’s interpretation when combined with fact-finding deference given under *Turner* to the legislature’s ‘predictive judgments’ is a notably unconstitutional concoction that the *en banc* Ninth Circuit should firmly reject.”

— **Adi Dynar, Litigation 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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