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## **NCLA Amicus Brief Asks Tenth Circuit to Overturn Intrusive Dog Kennel Inspection Regime**

*Scott Johnson, Harlene Hoyt, Covey Find Kennel, LLC v. Justin Smith, D.V.M., in his official capacity as Animal Health Comm'r at the Kansas Dep't of Agriculture*

**Washington, DC (July 18, 2023)** – A Kansas state law egregiously authorizes warrantless searches of dog training and handling businesses and forces owners to be available for government inspections of their kennels at the drop of a hat or risk possible fines and losing their required license. The New Civil Liberties Alliance has filed an *amicus curiae* [brief](#) with the U.S. Court of Appeals for the Tenth Circuit in the case of *Johnson v. Smith*, asking the Court to overturn this aspect of state law as an infringement on the Appellants' Fourth Amendment rights "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

Married couple Scott Johnson and Harlene Hoyt of Winfield, Kansas, own and operate the dog training and handling business Covey Find Kennel, LCC, out of a facility adjacent to their home. To maintain the business's license under the Kansas Pet Animal Act, either Johnson or Hoyt must be present at the property for an unannounced physical search within 30 minutes of an inspector's notice, or potentially receive a no-contact fee.

The Act's inspection requirement permits the Kansas Department of Agriculture to trespass on people's property and invade their privacy without first showing probable cause to a judge. This licensing and warrantless search regime violates the Fourth Amendment, as well as the fundamental right to free travel and movement.

Strangely, the U.S. District Court for the District of Kansas dismissed Johnson and Hoyt's lawsuit in May, incorrectly ruling that precedent excepting "closely regulated" businesses from Fourth Amendment protection against warrantless, privacy-invading searches applies to their dog training and handling business. Under that decision's broad application of what is supposed to be a narrow exception, such intrusions would become commonplace across a wide range of Kansas industries, as long as they face some regulations—which nearly every industry does. NCLA is asking the Tenth Circuit to reverse the decision below and clarify that the "closely regulated business" exception does not apply to property searches or to the dog handling and training industry.

### **NCLA released the following statements:**

"I'm not sure which is worse here, the Kansas state legislature going overboard when it expanded this law several years back to authorize truly unreasonable searches, or the district court in this case, which bizarrely concluded that dog training and handling is a closely regulated industry that receives lesser Fourth Amendment protection."  
— **Mark Chenoweth, President and General Counsel, NCLA**

"If this district court ruling is upheld, businesses in the many industries where state licenses are required could lose an important Fourth Amendment protection: the venerable requirement that government must obtain a search warrant before it searches a property, whether a home or a business. By reversing the district court, the court of appeals can prevent Kansas from using licensing requirements to eliminate this crucial constitutional protection."  
— **Andrew Morris, Senior Litigation Counsel, NCLA**

For more information visit the *amicus* 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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