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## **New NCLA Lawsuit Exposes Public Company Accounting Oversight Board’s Star Chamber Proceedings**

*John Doe v. Public Company Accounting Oversight Board*

**Washington, DC (March 5, 2024)** – Today, the New Civil Liberties Alliance filed a [Complaint](#) in the U.S. District Court for the Middle District of Tennessee challenging the Public Company Accounting Oversight Board’s (PCAOB) secret, unaccountable, and inherently biased prosecutorial processes. PCAOB has investigated and brought a secret prosecution aiming to brand NCLA’s client a wrongdoer, strip away his livelihood and impose severe financial penalties against him—without a jury trial, due process of law, an impartial adjudicator, or any constitutional accountability. NCLA’s client, John Doe (a pseudonym used to protect his anonymity), asks the Court to stop these disciplinary proceedings and declare them unconstitutional. NCLA is pleased to partner with Tom Potter in the Nashville office of Burr & Forman LLP on this important matter of first impression.

After years of intrusive investigation, PCAOB can impose punishing sanctions against individual accountants and accounting firms in its regulatory ambit. For example, it can issue a permanent ban on an individual’s associating with any registered firm, revoke a firm’s registration, and exact civil monetary penalties of up to \$1.1 million for individuals and \$22 million for firms—per violation. These potential penalty amounts are *20 times higher* for firms than the statutory penalties the Securities and Exchange Commission itself may impose.

PCAOB officials lack constitutional authority to prosecute John Doe. The Board’s core investigative, prosecutorial, and pseudo-judicial activity is performed and superintended by private citizens, none of whom is constitutionally appointed as an officer of the United States nor is subject to real-time direction and supervision by any presidentially appointed and Senate-confirmed government officer. PCAOB hearing officers are inferior constitutional officers who have not been lawfully appointed under the Appointments Clause of the Constitution, and they are unconstitutionally shielded by multiple layers of protection from removal by the President.

PCAOB prosecutions are also being funded by money raised and spent in violation of the Appropriations, Taxing, and Spending Clauses of the Constitution and the separation of powers principles enshrined in those clauses. The Board’s disciplinary proceedings deprive John Doe of his right to a jury trial, violating the Sixth and Seventh Amendments. PCAOB’s disciplinary process—which misappropriates Article III judicial power from federal courts where it belongs—is systemically biased, secretive, and unfair in violation of the Due Process Clause of the Fifth Amendment and the Sarbanes-Oxley Act of 2002.

Increasingly, Congress outsources vast governmental powers to private actors who are not elected by the citizenry nor appointed by the President. This pernicious trend has elicited understandable scorn, as Supreme Court justices have [described](#) PCAOB as “highly unusual” and as an “unprecedented extra-constitutional stew.”

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

“PCAOB’s investigative and disciplinary machinery is profoundly unconstitutional for numerous reasons as detailed in our complaint. To begin with, private citizens and private corporations have no legitimate role to play

in prosecuting and punishing alleged violations of federal law, especially not through secretive and inherently biased non-jury proceedings that make a mockery of due process. We are asking the federal court to put an end to this uniquely unconstitutional Star Chamber.”

— **Russ Ryan, Senior Litigation Counsel, NCLA**

“It is high time that the ‘unprecedented extra-constitutional stew’ that is the PCAOB gets tossed out for good. There is no place in our constitutional framework for private corporations like PCAOB to wield federal governmental power while operating in secret and escaping all meaningful accountability.”

— **Casey Norman, Litigation Counsel, NCLA**

**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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