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In NCLA Amicus Win, Tenth Circuit Clears Path to Toppling 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 Commissioner at the Kansas Department of Agriculture

Washington, DC (June 11, 2024) – The U.S. Court of Appeals for the Tenth Circuit has [reversed](#) a district court decision in *Johnson v. Smith* that upheld a Kansas state law authorizing intrusive warrantless searches for dog training and handling businesses. The New Civil Liberties Alliance filed an *amicus curiae* [brief](#) explaining that the warrantless-search law infringes the Appellants’ Fourth Amendment rights “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” While the Tenth Circuit affirmed the district court’s dismissal of the Appellants’ claim that the state law violates their right to travel, it remanded the case to the lower court to determine whether the Fourth Amendment authorizes warrantless searches of dog training and handling businesses—the issue we briefed. NCLA expects the district court to now overturn the law.

Married couple Scott Johnson and Harlene Hoyt, of Winfield, KS, own and operate their licensed Brittany Spaniel training and handling business Covey Find Kennel, LCC, out of a facility next to their home. To maintain the license, the Kansas Pet Animal Act requires one of them to be present at the property for an unannounced physical search on 30 minutes’ notice from an inspector. It permits the Kansas Department of Agriculture to trespass on their property, invade their privacy, and severely hamper their right to travel without first showing probable cause to a judge. NCLA believes this licensing and warrantless search regime violates the Fourth Amendment.

The U.S. District Court for the District of Kansas dismissed Johnson and Hoyt’s lawsuit last year, 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. The Tenth Circuit concluded that it lacked sufficient information to decide whether businesses like Covey Find Kennel are closely regulated and thus exempt from the search warrant requirement. The district court’s broad application of what is supposed to be a narrow exception would allow such intrusions to become commonplace across a wide range of Kansas industries. It would extend the exception to virtually every regulated industry. NCLA appreciates that the Tenth Circuit overturned the district court’s error in expanding the exception. Now, the district court should clarify that the narrow “closely regulated business” exception does not apply to training and handling dogs.

NCLA released the following statements:

“As NCLA argued, applying the narrow Fourth Amendment exception for closely regulated businesses to a facility training Brittany Spaniels is absurd. That dog won’t hunt. The court below should quickly spike this law.”
— **Mark Chenoweth, President, NCLA**

“The district court should apply U.S. Supreme Court precedent to reject this warrantless search regime. That outcome would prevent the Kansas legislature from using licensing requirements to override important constitutional protections.”
— **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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