RELENTLESS

LOPER BRIGHT

CORNER POST

STARBUCKS

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NCLA

ANNUAL REPORT 2024

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NCLA SCORES 7 SCOTUS VICTORIES

Dear Friends and Supporters,

NCLA marked an astounding seventh year with seven significant wins at the U.S. Supreme Court last term. There has not been a term like it for major administrative law cases for at least half a century and, according to our founder Philip Hamburger, probably not since 1935. The case names listed on the cover of this annual report hardly tell the whole story behind our two original litigation victories and five *amicus curiae* victories, but they do convey that NCLA was in the thick of the battle to dismantle unlawful administrative power at every turn in 2024.

First and foremost, NCLA represented courageous fishermen clients in the pivotal **Relentless Inc. v. Department of Commerce** case, wherein we convinced the Court to overturn the *Chevron* deference doctrine. For 40 years, *Chevron* had given administrative agencies the upper hand by forcing federal courts to defer to those agencies' interpretations of law whenever there was a gap or ambiguity in a statute—and agencies specialized in finding and exploiting such gaps. No more. This victory over NOAA, argued and decided alongside *Loper Bright v. Raimondo*, brings a sea change to the way lower courts will approach cases, ensuring that judges—not bureaucrats—will interpret the laws created by Congress.

In a second noteworthy win, **Garland v. Cargill**, the Supreme Court ruled that ATF's unilateral bump-stock ban contradicted the criminal law Congress wrote. This decision safeguards the rights of Michael Cargill and half a million other Americans, ensuring that laws are written by elected members of Congress, not by executive branch bureaucrats.

In a less-discussed but vital victory, the Court held in **SEC v. Jarkesy** both that defendants in administrative enforcement proceedings have a right to a jury trial and a right to an Article III court (which no administrative law judge can provide). It thereby curtailed the so-called public rights doctrine, which had allowed Congress to siphon administrative enforcement cases to in-house courts at the agencies. In so doing, the Court restored the heart of the Seventh Amendment. NCLA not only filed an *amicus* brief in this case, we uniquely offered the key argument—one not made by the parties—that led the Court to vindicate the right to an Article III court. One of our attorneys strategized with Mr. Jarkesy's counsel to make key points in their brief for NCLA to build on and prepped them for oral argument.

In a more traditional *amicus* posture, NCLA encouraged the Court's outcome in **Corner Post v. Board of Governors**. There the Court upheld the right to judicial review, deeming the Administrative Procedure Act to allow businesses to challenge harmful regulations within six years of their injury, not just six years from when the regulation issued.

We also helped secure a victory in **Starbucks v. McKinney**, where the Supreme Court agreed to hear the case after NCLA supported granting certiorari. The Court then overturned a deferential legal standard that, for decades, had allowed the National Labor Relations Board to enjoin a company's conduct without showing likely legal violations. Going forward, this decision ensures NLRB must satisfy the same standards to secure a preliminary injunction as any other litigant.

The Court sided with us in the **NRA v. Vullo** case, holding that certain bureaucrats in New York violated the First Amendment by discouraging other regulated companies from doing business with the National Rifle Association. Unfortunately, the Court allowed the federal government, for the moment, to get away with social media censorship on a technicality in **Murthy v. Missouri**. There, the Supreme Court vacated a preliminary injunction against several government agencies that had censored Americans on social media, determining that NCLA's clients lacked standing to pursue a preliminary injunction because they could not adequately trace their censorship injury to specific government conduct. Despite this temporary setback, NCLA is determined to end the government's censorship industrial complex. As this case continues in lower courts, we have already won additional discovery that will help our clients establish standing to protect First Amendment rights.

Likewise, despite NCLA's *amicus* arguments against it, the Court held that CFPB's method of indirect funding through the Federal Reserve did not violate the Appropriations Clause. The Court's decision in **Consumer Financial Protection Bureau v. Community Financial Services Association of America** is wrong, but it may already be helping secure wins in other cases against the SEC and FCC in matters where agencies themselves devised their own novel methods of funding new programs. For example, NCLA is now suing SEC and FINRA over the Consolidated Audit Trail (CAT), a giant government database containing information on all of your stock transactions. Amazingly, SEC has created this Fourth Amendment-violating, multi-billion-dollar behemoth without statutory authority and without an appropriation from Congress. Keep an eye on our **Davidson v. Gensler** case to follow our efforts to bag the CAT.

We at the New Civil Liberties Alliance are filled with pride and gratitude for the victories we have achieved on behalf of our clients in 2024. Our relentless pursuit of justice and commitment to protecting civil liberties have yielded historic results, reinforcing the core principles of our Constitution. These victories are *your* victories, thanks to your generous support that made them possible. Together, we will continue to fight for Americans' civil liberties!

Gratefully,

MARK CHENOWETH
PRESIDENT
New Civil Liberties Alliance

SUPREME COURT WINS 2024

NCLA PERSUADES SCOTUS TO OVERTURN CHEVRON DEFERENCE

Relentless Inc. v. Dept. of Commerce
Loper Bright Enterprises v. Raimondo

In June, NCLA's *Relentless Inc. v. Department of Commerce* lawsuit convinced the Supreme Court to overturn the 1984 *Chevron v. Natural Resources Defense Council* ruling, and with it the unconstitutional *Chevron* doctrine. The Court vacated and remanded the First Circuit's decision that upheld a National Oceanic and Atmospheric Administration and National Marine Fisheries Service rule requiring fishing companies like NCLA's clients to pay for at-sea government monitors on their fishing boats. *Relentless* was argued and decided in tandem with *Loper Bright Enterprises v. Raimondo,* a case NCLA supported through *amicus* briefs at the Supreme Court and below.

The Justices recognized that the text of the Administrative Procedure Act commands courts to review agency rules like NOAA's *de novo*. Although the government claimed the Supreme Court must nevertheless uphold *Chevron* out of *stare decisis* respect for its prior precedents, the Court decided the unworkable *Chevron* doctrine was not entitled to *stare decisis*. *Chevron* destabilized the law and ran afoul of the rule-of-law values that *stare decisis* protects. So, it is once again the job of the federal courts to say what the law is.

Chief Justice Roberts's opinion for the Court dwelled on the importance of judicial independence to the American tradition and explained how *Chevron* deference undermined that. Although the decision overruled *Chevron* on statutory grounds (as inconsistent with the Administrative Procedure Act), concurring opinions also pointed out another constitutional problem with it. When a federal court defers to an agency's legal interpretation, the litigants opposing that agency did not have their case judged by an impartial adjudicator, which denies them constitutional due process of law.

Photo: Meghan Lapp, Fisheries Liaison & General Manager, Seafreeze, Ltd. (client)

Photo: Mark Chenoweth, Rich Samp, Michael Cargill (client), Jonathan Mitchell, and Sheng Li

IN NCLA'S CASE, U.S. SUPREME COURT RULES AGENCIES CANNOT ALTER A STATUTE'S MEANING

Garland v. Cargill

The Bureau of Alcohol, Tobacco, Firearms and Explosives issued its interpretive Final Rule in 2018 defining semi-automatic firearms equipped with bump stocks as "machine guns," which federal law prohibits. The rule required NCLA client Michael Cargill, a gun shop owner and Army veteran—and every other bump-stock owner nationwide—to either destroy or turn in their legally purchased devices. ATF had no right to create this law, which reversed the agency's own long-standing recognition that bump-stock-equipped firearms are not illegal machine guns. Congress adopted a statute banning machine guns in 1986 that did not cover bump stocks, and ATF does not have the authority to enact regulations that create new criminal liability.

In June 2024, the United States Supreme Court ruled in NCLA's *Garland v. Cargill* case that the bump-stock ban conflicted with the federal statute defining "machine guns." The Justices permanently set aside ATF's ban, safeguarding the rights of Mr. Cargill and hundreds of thousands of other Americans to be free from laws written (or rewritten) by Executive Branch bureaucrats. The decision provided a commonsense reading of the definition that Congress enacted, which requires a machine gun to "automatically" fire multiple bullets "by a single function of the trigger." A bump-stock-equipped rifle does not qualify because it fires only a single bullet for each function of the trigger.

The Supreme Court's decision affirmed the U.S. Court of Appeals for the Fifth Circuit's 2023 ruling against the ban in Mr. Cargill's case. On remand, the Western District Court of Texas permanently set aside the final rule.

SUPREME COURT AGREES WITH NCLA'S ARGUMENT TO RESTORE AMERICANS' RIGHTS TO TRIAL BY JURY

SEC v. Jarkesy

The Supreme Court struck a blow for freedom and overturned the Securities and Exchange Commission's unconstitutional administrative prosecution regime in *SEC v. Jarkesy* last summer. SEC had targeted investment professional and syndicated talk-radio host George R. Jarkesy, Jr. in a years-long administrative proceeding adjudicated by an Administrative Law Judge (ALJ) without a jury.

Agreeing with NCLA's *amicus* brief in the case, the Supreme Court ruled that SEC violated Mr. Jarkesy's Seventh Amendment right to a jury trial. As NCLA told the Court, Congress does not have judicial power and thus cannot delegate it.

NCLA had supported Mr. Jarkesy's cause and collaborated with his counsel for many years. The Supreme Court followed our lead, holding that the Seventh Amendment right to a jury trial applies to administrative proceedings. This decision revived one of the most important liberty protections in the Bill of Rights. Its holding applies to all federal agency proceedings, not just those at the SEC.

All litigants should insist on their jury-trial rights in these tribunals from now on, especially whenever an agency seeks financial penalties. Because ALJ proceedings lack juries, the Supreme Court's decision may require SEC to pursue many enforcement cases only in federal district court, where constitutional due process and jury trial protections can be assured.

The Court held that, other than cases in admiralty and equity, jury trials are required. It also narrowed the 'public rights' doctrine considerably, which had been too widely used to deny jury-trial rights in the past.

Photo: George Jarkesy

IN NCLA AMICUS WIN, SUPREME COURT UPHOLDS SMALL BUSINESS'S RIGHT TO JUDICIAL REVIEW

Corner Post, Inc. v. Board of Governors

The Board of Governors of the Federal Reserve System adopted Regulation II in 2011, establishing fees for debit-card transactions. A North Dakota convenience store and truck stop, Corner Post began operating in 2018 and filed its lawsuit challenging Regulation II in 2021, claiming it had incurred excessive interchange fees under the rule. The U.S. Court of Appeals for the Eighth Circuit ruled that Corner Post's opportunity to file suit had expired in 2017, six years after the rule was first issued, based on the Administrative Procedure Act's six-year time limit for challenging agency actions.

As NCLA requested in its *amicus* brief supporting this case, the Supreme Court reversed the Eighth Circuit in July 2024. The Justices determined that federal law allowed Corner Post to sue within six years of when its injury from Regulation II began to accrue, regardless of when the rule was originally promulgated. Placing the statute of limitations within six years of the regulation's promulgation would absurdly require Corner Post to have taken legal action before it was even founded. The high court ruled that the APA entitled Corner Post to adequate and meaningful judicial review of the rule in court.

The Government claimed Corner Post's ability to petition the Fed to change Regulation II via rulemaking, and then to challenge any denial of such a petition, was a viable alternative to a suit asking courts to set aside the rule. But the Supreme Court recognized this would not be "a sufficient substitute for *de novo* judicial review[.]"

IN NCLA AMICUS WIN, SUPREME COURT OVERTURNS A PRELIMINARY INJUNCTION STANDARD FAVORING THE NLRB

Starbucks v. McKinney

In *Starbucks Corp. v. McKinney,* the Supreme Court overturned a deferential legal standard that had allowed the National Labor Relations Board to enjoin a company's conduct without showing it likely broke the law. NCLA called for this outcome in its *amicus* brief supporting Starbucks. The Court held that federal judges may not issue preliminary injunctions unless NLRB meets four important requirements: (1) it is likely to succeed on the merits; (2) it would suffer irreparable injury absent an injunction; (3) the balance of equities favors an injunction; and (4) an injunction serves the public interest. Every other litigant has always had to satisfy these preliminary injunction factors.

The Justices' decision overruled five federal circuits that had been applying a relaxed standard when NLRB sought preliminary injunctions, permitting it to punish an employer based on legal and factual allegations that were most likely meritless. The ruling bars NLRB from initiating an administrative enforcement proceeding and obtaining a preliminary injunction in federal district court just by showing that (1) its claims are not frivolous, and (2) its claims serve NLRB's remedial purposes.

Previously, once the board secured a preliminary injunction forcing an employer to do its bidding under the inappropriate standard, NLRB had every incentive to drag out administrative proceedings. Meanwhile, the P.I. imposed mounting economic costs on the employer for the duration of those proceedings, whose length NLRB controlled. Especially for smaller companies, capitulation was often the only viable option to stanch the financial bleeding. NCLA cheered the end of this coercive dynamic.

IN NCLA AMICUS WIN, SUPREME COURT PROTECTS FREE SPEECH FROM OFFICIAL THREATS

NRA v. Vullo

The Supreme Court unanimously ruled in *NRA v. Vullo* that the National Rifle Association plausibly accused New York Department of Financial Services Superintendent Maria Vullo of violating its rights to free speech and association. In so doing, the Court reversed a panel of the U.S. Court of Appeals for the Second Circuit, which had held Vullo's alleged actions amounted to permissible government speech and enforcement of state law. Vullo issued statements effectively threatening to punish banks and insurers via regulatory action if they kept doing business with NRA, targeting the organization's pro-Second Amendment viewpoint.

The New Civil Liberties Alliance filed an *amicus* brief urging the Justices to decide NRA's complaint stated a claim upon which relief against Vullo's unconstitutional conduct, if proven, could be granted. NCLA commended the Court for holding that the egregious allegations against Vullo do state a First Amendment claim.

The Second Circuit had said Vullo did not "coerce" the banks and insurance companies to end their relationships with NRA, reaching this conclusion by employing a four-factor test to decide if her actions amounted to "coercion" under the First Amendment. The Supreme Court reversed that decision, holding Vullo could not threaten enforcement actions against companies her agency regulates to crack down on gun advocacy, even if the regulated insurance policies NRA was associated with were allegedly illegal under New York state law. Now, NRA and other organizations can continue their First Amendment protected-activity without fear of being dropped by insurance companies and banks due to government pressure.

OUR CASES IN LOWER COURTS

NCLA WINS EXPEDITED DISCOVERY IN SUIT AGAINST STATE DEPT. CENSORSHIP

The Daily Wire, The Federalist, Texas v. State Department

FREE SPEECH

The U.S. District Court for the Eastern District of Texas has granted NCLA expedited discovery in our *The Daily Wire, The Federalist, Texas v. State Dept.* lawsuit alleging massive violations of free speech and press rights. The State Department uses its Global Engagement Center (GEC) to finance the development and promotion of censorship technology and enterprises, including working with third parties like NewsGuard and the Global Disinformation Index, both of which blacklist American news organizations. These government-funded and government-promoted censorship technologies and enterprises target media outlets that oppose the government's narrative, including The Daily Wire and The Federalist, suppressing their readership by demoting and labeling their stories as risky or unreliable, which deprives them of advertising and demonetizes them.

The State Department's censorship regime violates the First Amendment rights of The Daily Wire, The Federalist, numerous similar outlets, and their readers. We look forward to revealing its true extent via expedited discovery. The State of Texas has joined NCLA in bringing this lawsuit, recognizing that the State Department and its GEC lack authority to fund and market censorship technologies for use against domestic targets and that doing so interferes with its sovereign interest in enforcing Texas law.

NCLA PERSUADES ENERGY DEPT. TO HALT UNLAWFUL 'EMERGENCY' DEMAND FOR CRYPTOCURRENCY MINING DATA

Texas Blockchain Council v. Department of Energy

SCOPE OF AUTHORITY

NCLA settled with the Department of Energy (DOE) and the Energy Information Administration (EIA) to formally end an attempt to force cryptocurrency mining companies to hand over sensitive information about their operations through a mandatory Cryptocurrency Mining Facilities Survey. NCLA alleged that the Office of Management and Budget (OMB) had given EIA emergency permission to collect this data despite EIA's failure to demonstrate that short-cutting the statutory process would prevent public harm, as federal law requires. Representing the Texas Blockchain Council and Riot Platforms, Inc., NCLA celebrated this victory in defense of privacy rights and the rule of law.

The lawsuit alleged that in unlawfully demanding these companies' data, EIA appeared to be responding to political pressure, rather than a genuine emergency implicating public harm. But the Paperwork Reduction Act allows emergency exceptions only in limited circumstances. EIA was wise to abandon this effort and pursue any proposed survey through proper legal channels.

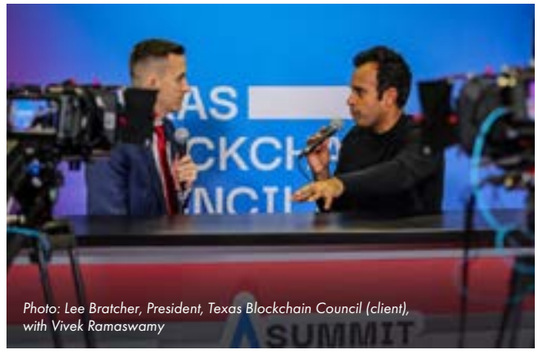


Photo: Lee Bratcher, President, Texas Blockchain Council (client), with Vivek Ramaswamy

NCLA SECURES TRIAL IN EX-PROFESSOR'S CASE AGAINST CORNELL'S TITLE IX KANGAROO COURT

Vengalattore v. Cornell University

DUE PROCESS

In September, the U.S. District Court for the Northern District of New York denied Cornell University's effort to avoid a trial in our client Dr. Mukund Vengalattore's lawsuit alleging that Cornell's sexual misconduct investigation discriminated against him in violation of Title IX. Dr. Vengalattore was a tenure-track Cornell physics professor in 2014 when a former graduate student sought to interfere with his tenure and made a false sexual misconduct allegation. Her claim launched an utterly biased and due-process deficient Title IX investigation ruining his promising career. Cornell's scheme was partly driven by its Title IX office, which succumbed to Department of Education pressure to stack its investigatory and adjudicatory processes against men accused of sexual misconduct.

A district court initially dismissed Dr. Vengalattore's Title IX claims in 2020, concluding the Title IX cause of action did not extend to faculty. The U.S. Court of Appeals for the Second Circuit reversed that ruling, with Judge José Cabranes observing: "insulated from review, it is no wonder that, in some cases, these procedures have been compared unfavorably to those of the infamous English Star Chamber."

Photo: Dr. Mukund Vengalattore (client)

TENTH CIRCUIT OVERTURNS NCLA CLIENT'S WRONGFUL CONVICTION UNDER USFS REGULATION FOR INSTAGRAM POST

U.S. v. Lesh

SCOPE OF AUTHORITY

NCLA client David Lesh, founder of the outdoor gear company Virtika, posted two photographs on his personal Instagram account in April 2020 that depicted a snowmobiler performing a jump at Colorado's Keystone Ski Resort. The resort sits on USFS-administered land and was closed at the time due to Covid-19. Mr. Lesh's post did not mention Virtika nor its products. Nevertheless, a federal magistrate judge convicted him on the count of operating a snowmobile outside of a designated route and then on another count of violating a regulation prohibiting unauthorized "work activity or service" on USFS lands. Denied a jury trial, Mr. Lesh faced one year in prison but was sentenced to six months' probation, 160 hours of community service, and a $10,000 fine.

In July 2024, the U.S. Court of Appeals for the Tenth Circuit overturned Mr. Lesh's second conviction, ruling that the regulation banning unauthorized "work activity or service" on USFS lands was impermissibly vague as applied to his conduct. The Tenth Circuit, under binding Supreme Court precedent, determined that Mr. Lesh was not deprived of his Sixth Amendment right to a jury trial because the so-called petty-offense exception applies, but two judges implied that the exception might be inconsistent with the Constitution and should be revisited.

Photo: David Lesh (client)

NCLA SEEKS TO STOP SEC'S ILLEGAL PURSUIT OF UNCONSTITUTIONAL NEW CLIMATE DISCLOSURE RULES

NCPPR v. SEC

SCOPE OF AUTHORITY

The Securities and Exchange Commission has issued new rules that would require public companies to disclose their climate-related business risks and mitigation procedures. The agency exceeded its statutory authority by making these intrusive rules, which run roughshod over core constitutional rights. Representing the National Center for Public Policy Research in the Eighth Circuit, NCLA demands an immediate end to this illegal SEC pursuit of climate activism at the cost of civil liberties.

The SEC rules would force public companies to reveal a broad swath of climate-related risks and their associated impacts, including potential "changes in law or policy," "reduced market demand for carbon-intensive products," and "litigation defense costs." In other words, the government is trying to require companies to guess how the government will regulate in the future, how consumers will respond to hypothetical government regulations, and how courts will rule with respect to those theoretical regulations. One rule would also mandate that companies disclose greenhouse-gas emissions from their operations and the energy they consume, even if such emissions are untethered to a traditional understanding of financial materiality. SEC's new rules violate the First Amendment, which limits compelled disclosures to "purely factual and uncontroversial information."

EN BANC FIFTH CIRCUIT HEARS NCLA LAWSUIT AGAINST LEGALLY DEFECTIVE NASDAQ BOARD DIVERSITY RULES

NCPPR v. SEC

SCOPE OF AUTHORITY

In February, NCLA convinced the U.S. Court of Appeals for the Fifth Circuit to grant *en banc* rehearing of our *National Center for Public Policy Research v. SEC* lawsuit challenging "Board Diversity Rules" that SEC promulgated without statutory authority. These rules impose race, gender, and sexual orientation quotas on corporate board membership for companies listed on the Nasdaq stock exchange, along with compelling corporate speech to explain any quota missed. SEC also furnishes lists of quota-satisfying names to companies unable to meet such quotas on their own. NCLA welcomed the opportunity to argue this case before the full Fifth Circuit in May, urging the Court to set these unlawful rules aside.

The 1934 Securities Exchange Act explicitly forbids SEC from approving Nasdaq rules that regulate matters unrelated to the Act's purposes. Gender, race, and sexual orientation fall outside the Act's purposes because SEC itself determined these demographic characteristics have no rational relationship to corporate performance and investor returns. Nevertheless, SEC approved these rules by concluding that compelled explanations and disclosures regarding gender, race, and sexual orientation promote "fair and orderly markets" by giving investors the information they need to engage in discrimination based on such characteristics.

NCLA FIGHTS TO TAKE DOWN SEC'S ILLEGAL MASS DATA COLLECTION MACHINE

Davidson v. Gensler

SCOPE OF AUTHORITY

NCLA's lawsuit on behalf of Erik Davidson, John Restivo and the National Center for Public Policy Research is working to shut down SEC's unconstitutional "Consolidated Audit Trail." The CAT is the largest government-mandated massive, illegal database in American history. Without any statutory authority, SEC is forcing brokers, exchanges, clearing agencies and alternative trading systems to capture and send detailed information on every investor's trades in U.S. markets to a centralized database, which SEC and private regulators can access forever.

Like thousands of other Americans, our clients expected the government to respect their constitutional rights. Running roughshod over that sacred trust, SEC has seized their data in violation of Article I of the Constitution, the Fourth Amendment, the Fifth Amendment, and the First Amendment's freedom of association and expression. SEC's *ultra vires* action also violates the Administrative Procedure Act.

The CAT database is reportedly the largest securities database ever created, and the most massive government database of any kind outside the National Security Agency (NSA), putting every American's financial data and security at grave and needless risk from theft.

Photo: John Restivo (client)

NCLA ASKS COURT TO VACATE DEPT. OF LABOR'S UNLAWFUL NEW INDEPENDENT CONTRACTOR RULE

Colt & Joe Trucking v. U.S. Department of Labor

SCOPE OF AUTHORITY

Representing the family-owned business Colt & Joe Trucking, NCLA is challenging the Labor Department's vague January 2024 rule governing whether a company-hired worker can be classified as an independent contractor instead of an employee subject to Fair Labor Standards Act (FLSA) wage and hour requirements.

The Department previously maintained a 2021 rule that generally allowed businesses to classify workers as independent contractors if they exercised independent judgment and control over their work and could profit as a result. Overthrowing this simple standard for no good reason, the new rule unlawfully broadens FLSA's definition of "employee" to effectively cover anyone performing services for another company under essentially whatever circumstance the Department wants. This leaves companies like the family-owned Colt & Joe Trucking completely unable to hire independent contractors without risking FLSA liability. To make matters worse, the new rule allows companies like Colt & Joe Trucking to be retroactively punished for making worker classification decisions based on the old definition.

NCLA SUES TO STOP USDA'S ILLEGAL RULE MANDATING ELECTRONIC EARTAGS FOR LIVESTOCK

R-CALF USA v. USDA

SCOPE OF AUTHORITY

NCLA represents ranchers, farmers, and livestock producers in a lawsuit against the U.S. Department of Agriculture (USDA) and its Animal and Plant Health Inspection Service's (APHIS) unlawful new rule requiring electronically readable identification (EID) eartags for certain cattle and bison transported across state lines, rather than long-used visual tags. The rule is also unnecessary, as the existing Animal Disease Traceability framework is already proven effective.

The Animal Health Protection Act does not give USDA and APHIS the power to mandate EID eartags. Courts certainly do not have to defer to the agencies' interpretation of the Act after NCLA's recent Supreme Court victory in *Relentless Inc. v. Department of Commerce*, which overturned *Chevron* deference. APHIS's rule imposes punishing new financial and practical burdens, particularly on smaller and independent cattle producers. APHIS violated the Regulatory Flexibility Act as well, failing to calculate the new rule's true cost to producers—and consumers.

Photo: Bill Bullard, CEO,R-CALF USA (client)

NCLA HELPS CHICANO POET FIGHT SAN ANTONIO'S DISMISSAL OF HIM IN FREE SPEECH DISPUTE

De León v. City of San Antonio

FREE SPEECH

NCLA launched a lawsuit against the City of San Antonio for unlawfully firing accomplished Chicano writer, artist, and activist Nephtalí De León as the City's poet laureate in violation of his protected free speech. The City unjustly terminated Mr. De León from the paid position of city poet laureate and then defamed him for his supposed use of a "racial slur" in an elegy he had written in honor of renowned Chicano writer-activist Dr. Roberto 'Cintli' Rodriguez, who spent his life fighting racial injustice.

Mr. De León did not use the Chicano Caló term at issue as a slur. By firing Mr. De León without notice or any opportunity to explain himself or the meaning of his poem, the City engaged in quintessential viewpoint discrimination and First Amendment retaliation against him. The City's unlawful and unwarranted actions have harmed his professional reputation and denigrated his life's work.

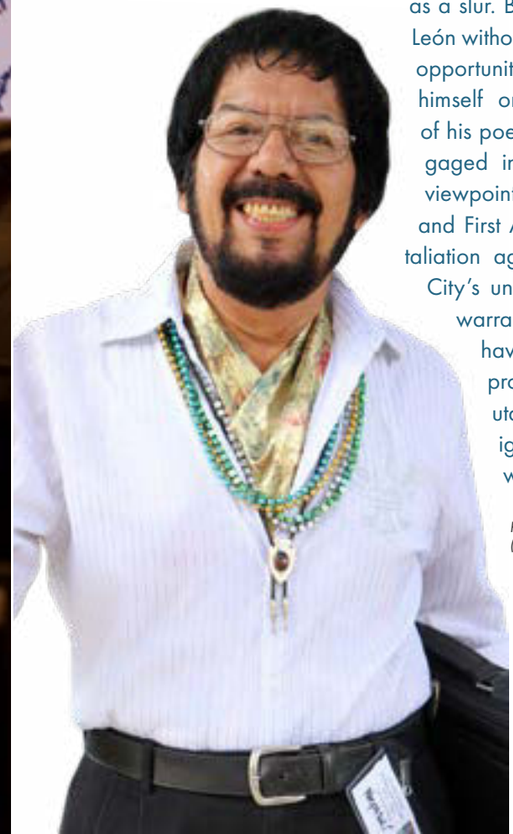


Photo: Nephtalí De León (client)

NCLA BATTLES LABOR DEPT.'S ILLEGAL POWER GRAB IN WAGE AND OVERTIME EXEMPTION RULE

Flint Avenue v. Department of Labor

SCOPE OF AUTHORITY

NCLA is pressing to vacate a new Department of Labor Final Rule setting a $58,656 minimum-salary requirement for "white collar" employees exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements. The Rule would unlawfully prevent employers, including countless small businesses, from claiming the exemption for 7.7 million white-collar employees nationwide who are paid less than the new salary requirement.

The new salary requirement would require employers to either raise salaries or reclassify these employees as hourly, thus preventing them from offering flexible work arrangements. NCLA's client, Flint Avenue, LLC, is a small software company that competes with large corporations to recruit high-skilled workers by offering its seven employees flexible arrangements, like unlimited vacation. The Rule would force it to reclassify several of those employees as hourly, making such mutually beneficial arrangements no longer feasible.

Photo: Amy Wood, CEO, Flint Avenue (client)

NCLA SUES CPSC, TRUMKA OVER FALSE STATEMENTS DISPARAGING WEIGHTED SLEEP SACKS

Dreamland Baby Co. v. CPSC, Trumka

DUE PROCESS

Dreamland Baby Co. CEO Tara Williams created the first weighted wearable sleep blanket sack for her son in his infancy. The "weight" at issue is equal to a slice of American cheese. The woman-owned small business has gone on to help more than a million families worldwide with their infant and toddler products.

CPSC Commissioner Richard Trumka made a proposal in fall 2023 to "pursue a mandatory standard to address foreseeable risks posed by" weighted infant sleep products. CPSC rejected that proposal by a 3-1 vote that November, with Chairman Alexander Hoehn-Saric saying the agency had not conducted enough research to pursue rulemaking on the issue in 2024.

Despite losing the vote, Trumka then sent retailers letters disparaging Dreamland's products and issued a public statement saying retailers should consider stopping sales. He posted additional inaccurate or misleading messages against these products on CPSC's website and his official social media accounts. These actions disregard the Consumer Product Safety Act's required rulemaking processes, preference for voluntary standards, and show impermissible bias against Dreamland.

NCLA represents Dreamland in a lawsuit against Trumka for violating Dreamland's constitutional and statutory rights, working to prevent further reputational, legal, and financial damage to Dreamland and other good-faith industry participants.

Photo: Tara Williams, CEO, Dreamland Baby Co. (client)

NCLA DEMANDS NIH CHANGE PUBMED NAME-CHANGE POLICY HARMING WOMEN IN SCIENCE

Reyngold v. NIH

DUE PROCESS

Dr. Marsha Reyngold was known as Marsha Laufer from 2004 to 2011 after legally changing her name when getting married. She has since reverted to using the last name Reyngold when publishing research in academic journals.

While Dr. Reyngold can link multiple names to her Open Researcher and Contributor Identifier in NIH's PubMed search engine, users are generally not aware of this unique identifier and only search by last name. PubMed does not advise users that a unique identifier for a given author even exists. PubMed's failure to show Dr. Reyngold's full scientific contributions by omitting articles written under another surname makes it more difficult for her to obtain grants and speaking engagements.

This same problem impacts millions of primarily female scientists who have changed their names for reasons of marriage or divorce.

NIH's arbitrary and capricious policy of refusing to cross-reference PubMed-catalogued studies by authors who have published under multiple names violates Fifth and Fourteenth Amendment guarantees to equal protection under the law. The agency is also depriving Dr. Reyngold and others of due process under the Fifth Amendment, which protects the fundamental right to marry or divorce. NCLA represents Dr. Reyngold to correct this systematic problem for her and everyone else.

NCLA LEADS SUIT AGAINST SEC'S ILLEGAL GAG RULE ON DEFENDANTS WHO SETTLE

Powell v. SEC

FREE SPEECH

NCLA represents SEC enforcement targets and media organizations eager to hear their stories in a lawsuit against the agency's "Gag Rule." In place since 1972, this rule forbids every American who settles a regulatory enforcement case with SEC from even truthfully criticizing their cases in public for the rest of their lives. SEC ignored NCLA's initial petition challenging the Gag Rule for several years, only issuing a denial after NCLA filed a renewed petition in December 2023.

SEC enacted the Gag Rule without notice and comment after falsely framing it as an internal "housekeeping" measure that would not affect third parties. The agency never had statutory authority to implement such a substantive rule, and it bypassed Administrative Procedure Act requirements to publish, provide notice and allow comment before promulgating a rule binding on third parties. Congress did not and could not give SEC power to gag anyone. To pass constitutional muster, speech bans must be narrowly tailored, serve a compelling government interest, and adopt the least restrictive means to protect that interest. The Gag Rule fails all those tests. The rule is accordingly an impermissible prior restraint, restricting speech based on content and viewpoint in violation of the First Amendment.

Photo: Photo: Peggy Little (NCLA attorney); Christopher Rausch, Cape Gazette; Cassandra Toroian; Thomas Powell (clients)

NCLA FIGHTS SEC'S UNCONSTITUTIONAL "RUBBER-STAMP" FOLLOW-ON ENFORCEMENT PROCEEDINGS

Lemelson v. SEC

DUE PROCESS

We're challenging the Securities and Exchange Commission's illegitimate "follow-on" enforcement proceeding against Rev. Fr. Emmanuel Lemelson, an ordained Greek Orthodox priest and activist investor. A Massachusetts federal jury in 2021 rejected nearly all of SEC's baseless charges against Fr. Lemelson, including all its incendiary allegations that he engaged in a scheme to defraud the market and even his own fund investors. Yet, SEC now threatens to bar or suspend him from the securities industry using its own "follow-on" administrative proceeding, in which SEC has appointed itself as the judge and jury.

A bedrock foundation of due process is a fair trial in a fair tribunal. That should mean the adjudicator cannot decide its own case, especially against a longstanding nemesis it has already prosecuted in a parallel court case and demonized in demonstrably false press releases. Having failed even to ask the federal court to bar or suspend Fr. Lemelson from the securities industry—much less convince the court to do so—SEC has now appointed itself judge and jury in its own administrative "follow-on" adjudication to achieve that objective unilaterally. This practice violates not only Fr. Lemelson's Fifth Amendment right to due process of law in an Article III court, but also his Seventh Amendment right to a trial by jury.

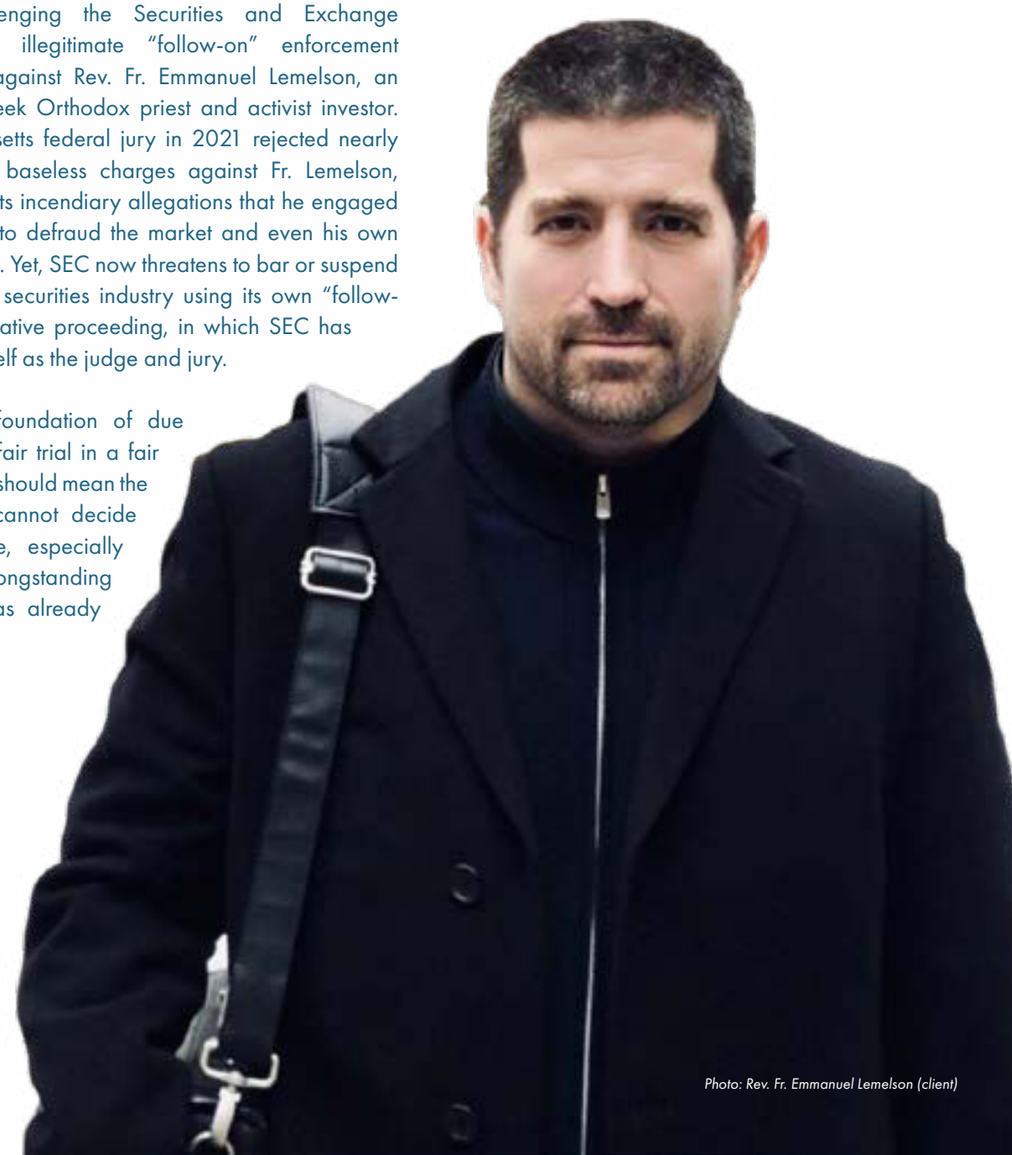


Photo: Rev. Fr. Emmanuel Lemelson (client)

AMICUS VICTORIES

NCLA filed 26 *amicus* briefs in 2024, speaking out against core Administrative State problems. Beyond Supreme Court victories in *NRA v. Vullo*, *Starbucks v. McKinney*, *SEC v. Jarkesy*, *Corner Post v. Board of Governors of the Federal Reserve*, and *Loper Bright v. Raimondo*, many other *amicus* briefs achieved success.

In *National Association of Private Fund Managers v. SEC*, the U.S. Court of Appeals for the Fifth Circuit vacated SEC's rule restricting certain contractual agreements between private investment funds and investment advisers. Following NCLA's *amicus* brief, the Court declared in November that SEC exceeded its authority in promulgating the rule because Congress never gave it oversight of private hedge funds.

Tracking our *amicus* brief in *Consumers' Research v. Federal Communications Commission*, the *en banc* Fifth Circuit ruled in July that Congress unconstitutionally delegated legislative power by allowing FCC to create and control a system for extracting Americans' money to finance the Universal Service Fund.

As we requested in a *Tesla v. NLRB amicus* brief, the *en banc* Fifth Circuit also vacated an NLRB order requiring Tesla CEO Elon Musk to delete a labor-related post from his personal Twitter account. The Court cited NCLA's 2022 *FDRLST Media v. NLRB* decision, ruling in October that NLRB's order against Musk violated the First Amendment.

In June, the Fifth Circuit affirmed an injunction in *Texas v. Yellen*, stopping the American Rescue Plan Act's Tax Cut Ban condition that required States to surrender their ability to decrease state taxes in exchange for federal rescue funds. NCLA had filed numerous *amicus* briefs supporting the injunction.

Our *Alaska v. Dept. of Education and Missouri v. Biden amicus* briefs asked the Eighth and Tenth Circuits to stop the Biden Dept. of Education from illegally cancelling student loan debt through its "SAVE" plan. The Supreme Court preserved an Eighth Circuit injunction blocking the plan in August.

In May, the Second Circuit upheld a district court decision dismissing the *In re Bystolic antitrust* lawsuit regarding reverse payments. Siding with our *amicus* brief and against the Federal Trade Commission's brief, the Second Circuit's unanimous decision vindicated patent holders' property rights. FTC had long worked to undermine patent rights by using antitrust laws to prevent drug companies from agreeing to reasonable settlements in patent-infringement disputes. This ruling gave FTC a needed correction.

The Tenth Circuit took NCLA's *amicus* advice in June and reversed a district court decision in *Johnson v. Smith* that upheld a Kansas state law authorizing warrantless searches for dog training and handling businesses. We had explained that the warrantless-search law infringes Fourth Amendment rights because dog training is not a "closely regulated" industry.

NCLA had filed an *amicus* brief calling for the Federal Circuit to reverse the U.S. Court of Federal Claims' dismissal of *Darby Development Company v. U.S.*, a suit against CDC's nationwide eviction moratorium. In August, the Federal Circuit granted our request, vindicating landlords' constitutional rights.

In October, the Ninth Circuit in *Loffman v. California Department of Education* halted enforcement of a California statute that barred private religious schools and their students' parents from accessing federal and state-level special education funds and programs. NCLA's *amicus* brief called for this result in defense of the First Amendment.

Our *amicus* brief in *Alpine Securities v. Financial Industry Regulatory Authority* asked the D.C. Circuit to end FINRA's unconstitutional use of executive power to prosecute and punish securities firms and brokers. In November, the Court stopped FINRA from expelling Alpine Securities from its membership without SEC review.

Thanks to the following organizations that filed amicus briefs in support of NCLA's cases and clients in 2024:

Advancing American Freedom • AI Innovation Association • American Chemical Council • American Commitment Foundation • American Free Enterprise Chamber of Commerce • American Securities Association • American Target Advertising, Inc. • Americans for Prosperity Foundation • America's Frontline Doctors • America's Future • Amicus Populi and Freedom X • Anglicans for Life • Association of American Physicians and Surgeons • Atlantic Legal Foundation • Blockchain Association • The Buckeye Institute • California Rifle and Pistol Association, Inc. • Capability Consulting • Catholics Count • Cato Institute • Center for American Liberty • Center of the American Experiment • Christians Engaged • Claremont Institute's Center for Constitutional Jurisprudence • Club for Growth • Competitive Enterprise Institute • The Defense of Freedom Institute • DeFi Education Fund • Downsize DC Foundation • DownsizeDC.org • The Family Action Council of Tennessee, Inc. • Family Institute of Connecticut Action • Federal Firearms Licensees of Illinois • Firearms Policy Coalition • Firearms Regulatory Accountability Coalition • First Amendment Lawyers Association • Foundation for Individual Rights and Expression • Foundation for Moral Law • FPC Action Foundation • Free Speech Coalition • Free Speech Def. and Ed. Fund • Freedom of the Press Foundation • Gun Owners Foundation • Gun Owners of America • Guns Save Life • Hamilton Lincoln Law Institute • The Independence Institute • Informed Consent Action Network • Institute for Free Speech • International Center for Law & Economics • Investor Choice Advocates Network • Liberty Counsel • Liberty Justice Center • Louder with Crowder, LLC • Manhattan Institute • Mountain States Legal Foundation • National Apostolic Christian Leadership Conference • National Association for Gun Rights • National Association of Criminal Defense Lawyers • National Center for Public Policy Research • National Coalition Against Censorship • National Federation of Independent Business • National Institute of Family and Life Advocates • National Religious Broadcasters • National Rifle Association of America, Inc. • National Shooting Sports Foundation, Inc. • New England Fishermen's Stewardship Association • Ohio Chamber of Commerce • Pacific Legal Foundation • The Rutherford Institute • Second Amendment Defense and Education, Ltd. • Second Amendment Law Center • Southeastern Legal Foundation • Southern Policy Law Institute • Tennessee Firearms Association • Texas Blockchain Council • Thomas More Society • U.S. Chamber of Commerce • The Western Journal

COMMUNICATIONS

NCLA RECOGNIZED AS A TOP SCOTUS LITIGATOR IN THE NEWS

In 2024, NCLA "quickly emerged as a top U.S. Supreme Court litigator, helping to lead a broad challenge to government agency power," according to Bloomberg Law. Our Supreme Court cases were covered by major national networks, including Fox News, CNN, ABC, CBS, and MSNBC, and featured in The Wall Street Journal, The New York Times, The Washington Post, The Associated Press, and Reuters. Awarded the title "Legal Lions of The Week" by Law360 twice, NCLA took full advantage of this and similar recognitions of our expertise, boosting our visibility and media presence across the board.

abc · CBS · AP · FOX NEWS channel · Bloomberg Law · POLITICO · CNN · THE HILL · The New York Times · THE WALL STREET JOURNAL. · The Washington Post

TV HITS	RADIO MENTIONS	ONLINE MENTIONS	PODCAST MENTIONS
147	1,141	13,500	101

NEW MULTIMEDIA PRODUCTION STUDIO!

In 2024, NCLA built a premier multimedia studio, marking a significant step forward in amplifying our influence and outreach in public-interest litigation. This new space equips us to create state-of-the-art content tailored to reach new target audiences. Thanks to an extremely generous donor, and her belief in the power of effective communications, we've enhanced our ability to produce professional video content that showcases the quality of our litigation work, engages a wider public, and solidifies our reputation as a leading civil liberties organization.

Photo: CBR Civil Liberties Studio

NCLA'S EXPERTS DEBATE ADMINISTRATIVE LAW

NCLA has firmly established itself as a leading legal voice, exposing major violations committed by the Administrative State. NCLA CEO Philip Hamburger wrote enlightening op-eds in The Wall Street Journal and National Review, highlighting the dangers of unchecked government power and advocating for strategic litigation to restore constitutional principles.

NCLA President Mark Chenoweth and Litigation Counsel Jenin Younes testified before congressional committees exposing constitutional problems with the federal agencies' in-house courts and government censorship.

NCLA's litigators became a go-to resource on Administrative Law and were regularly invited to join panels by The Federalist Society, The Heritage Foundation, Cato Institute, Manhattan Institute, Lawyers for Civil Justice, The Philadelphia Society, Philanthropy Roundtable, Stanford University, and University of Austin.

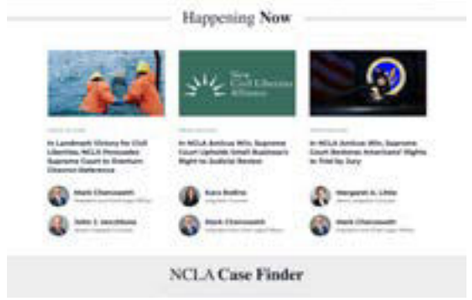

Photos: Jenin Younes and Mark Chenoweth testify before the U.S. House Committee on Small Business and the House Committee on the Judiciary' Subcommittee on Administrative State, respectively


Photos: Founder Philip Hamburger and General Counsel Zhonette Brown speak at the 2024 Federalist Society National Lawyers Convention

NCLA LAUNCHES NEW WEBSITE AND IMPROVED SOCIAL MEDIA

NCLA launched a brand-new website. Our redesigned platform is faster, easier to navigate, and packed with the latest updates. We streamlined our content with a new database, enabling you to search our cases, op-eds, and news. Scholars, practitioners, students, and allies can access in-depth materials tailored to them.

NCLA also stepped up our social media game by introducing new content formats such as graphics, animations, short-form videos, and audio conferences. Thousands tuned in to our X Space events on *Murthy* and *Chevron*. We grew to 53,500 followers in total.



X SPACE (TWITTER)

ENGAGEMENT

1. THE GINSBURG-SCALIA FELLOWSHIP

NCLA continued the Ginsburg-Scalia Fellowship, now in its third year. The Ginsburg-Scalia Fellowship brings together 18 elite law students from the Left and Right for a series of lectures from renowned conservative scholars of the Administrative State—a perspective sorely lacking from their law school experience.

This year's Ginsburg-Scalia Fellows came from top law schools and served as summer associates at leading DC law firms. Most Ginsburg-Scalia Fellows go on to serve in appellate clerkships, and this year's class was no exception, having already accepted offers to clerk for the 2nd, 4th, 5th, 9th, 11th, and D.C. Circuits.

2. THE LUNCH AND LAW SPEAKER SERIES

NCLA continued our Lunch and Law Series in 2024, bringing together legal experts and clients to address abuses of the Administrative State. The year's most popular episodes focused on NCLA's Supreme Court victories over *Chevron* deference and the ATF bump-stock ban. Our cases against government censorship and our *amicus* win in defense of Seventh Amendment jury rights also drew significant interest.

3. THE HAMBURGER-FRANKFURTER DEBATE

The Hamburger-Frankfurter Debate featured two prominent constitutional experts—Carter Phillips of Sidley Austin, and Louis Michael Seidman, Professor of Constitutional Law, Georgetown University Law Center—engaged in oral argument and debate on strengthening the nondelegation doctrine.

More than 80 law students enjoyed the debate and the reception afterward.

4. NCLA LEGAL CLERKSHIP PROGRAM

The NCLA Summer Legal Clerkship Program celebrated its sixth summer, and the 2024 summer clerk class included an unprecedented number of students from prestigious schools. Our 10-week program offered the clerks training by NCLA's litigators. Summer law clerks drafted briefs, crafted legal arguments, and prepared NCLA attorneys for hearings.

Past NCLA summer clerks have gone on to obtain positions that will allow them to contribute to NCLA's mission: judicial clerkships, positions with solicitor general and attorney general offices, and in the federal government.

Photo: Matthew Lambertson with Russ Ryan (NCLA attorney)

5. THE STUDENT NOTE CONTEST

The NCLA Student Note Contest promotes scholarship on key administrative topics by current law students. Notes address unresolved legal issues, typically by presenting enough background information for a non-expert to understand, and then proposing a solution.

The number of submissions exploded this year, tripling the entries received in any previous year. The winner, Matthew Lambertson of the University of Florida's Levin College of Law, submitted a note titled: "The Common Law and SEC Rule 10b-5(b): Narrowing the Securities 'Fraud' Exception to the First Amendment."

6. THE KING GEORGE III PRIZE AND GEORGE WASHINGTON AWARDS

In 2021, NCLA created and promoted an annual prize prize highlighting egregious civil rights abuses, by state and federal bureaucrats. Past "winners" include Anthony Fauci, Andrew Cuomo, and Merrick Garland.

This year, in the "Runaway Regulator" category, Secretary of Education Miguel Cardona took the KGIII Prize for unlawfully forgiving student loan debt. In this year's specially created "State Censorship" category, Homeland Security Secretary Alejandro Mayorkas won the KGIII Prize.

The winners of the George Washington Awards were: Tracy Høeg, Ram Duriseti, Aaron Kheriaty, Pete Mazolewski, and Azadeh Khatibi for Client Bravery; Roman Martinez for Outstanding *Pro Bono* Service; David C. Tryon and Alex Certo of The Buckeye Institute for Best *Amicus Curiae* Brief; and A. Gregory Grimsal for Best Local Counsel. Former NCLA Senior Litigator Rich Samp received the Cincinnatus Award.

GWU law professor Jonathan Turley

7. ADMINISTRATIVE LAW CONFERENCE

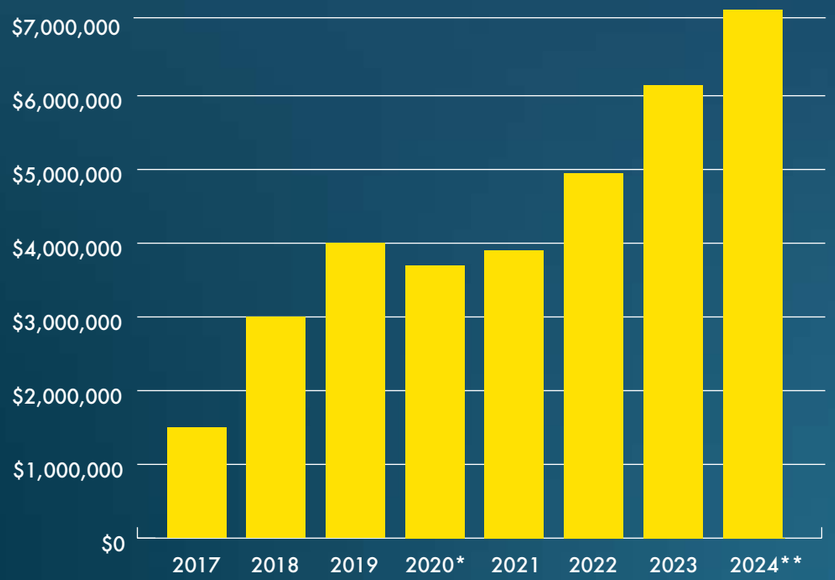
On the 10th anniversary of the publication of Philip Hamburger's seminal book, NCLA hosted our first conference entitled "Is Administrative Law *Still* Unlawful?" The event on April 10, 2024, at The George Washington University, featured three panels—and GWU law professor Jonathan Turley as a lunchtime speaker—exploring critical questions about administrative law. The first panel, moderated by Mark Chenoweth, discussed constitutional challenges post-*Axon/Cochran*, including jury trial rights and removal protections. Philip Hamburger led the second panel in examining potential future targets following reduced deference after *Relentless* and *Loper Bright*, including fact deference. The third panel, moderated by Judge Neomi Rao, discussed the *Jarkesy* case, addressing concerns about jury rights and the nondelegation doctrine.

DEVELOPMENT

39% increase in number of online donations from 2023

53% increase in online dollars from 2023

NCLA Donations Over the Years



*NCLA did not accept any PPP funds for Covid-19 relief
** Estimated amount

I'M IMMERSING MYSELF IN THIS MASTER-WORK. THERE AREN'T WORDS FOR MY APPRECIATION, FOR YOUR EFFORTS AND YOUR SKILL.

Congrats to our good friends at @NCLAlegal for their #SCOTUS victory in Garland v. Cargill.

NCLA, founded by Mr. Hamburger, litigated Relentless. NCLA can savor the unjiggering of what Chief Justice Roberts calls a 'judicial invention.'

THANK YOU FOR DOING THE COUNTRY A GREAT SERVICE.

Thank you for slaying the Chevron deference monster

ONE OF THE MOST MONUMENTAL CLAW BACKS OF OUR TIME. THANK YOU! I CELEBRATED.

We the People LOVE you...WE are so grateful...you slayed a dragon and created freedom!

NCLA ARGUED AND WON THE RELENTLESS CASE AT THE SUPREME COURT. CONGRATULATIONS TO YOU ALL!

THE ONLY REASON THAT WE GOT TO THE SUPREME COURT WAS BECAUSE OF NCLA!

CONGRATULATIONS ON OVERTURNING CHEVRON DEFERENCE AND ON THE JARKESY CASE.

This is a win for Americans against encroachment of rights by unelected bureaucrats in general.

Our legal team, NCLA, took this case, and they won it, and we can't thank them enough for everything they've done to help the fishermen in this country.

Thank you so much for fighting this battle.

Thank you VERY much for chasing the Chevron Doctrine. Keep up the good work!

Thank you for waging battle against the abusive bureaucracy!

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REBECCA WOOD
Partner
Sidley Austin LLP

In memoriam *HON. JAMES BUCKLEY* *WILL CONSOVOY* *MICHAEL UHLMANN*

OUR TEAM

Not pictured: Kaitlyn Schiraldi, Margot Cleveland, Garrett Snedeker, Andreia Trifoi, and Bart Valad

OUR MISSION

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.

OUR NEW LOCATION

4250 N. Fairfax Drive
Suite 300
Arlington, VA 22203

LET JUDGES JUDGE.

LET LEGISLATORS LEGISLATE.

STOP BUREAUCRATS FROM DOING EITHER!

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