



**FOR IMMEDIATE RELEASE**

**Media Inquiries:** [Joe Martyak](mailto:Joe.Martyak@ncla.org), 703-403-1111

**NCLA Amicus Brief Asks Supreme Court to Read Judicial Review Statute Broadly, as Congress Wrote It**

*Food and Drug Administration; et al. v. R.J. Reynolds Vapor Company; RJR Vapor Company L.L.C.; Avail Vapor Texas, L.L.C.; and Mississippi Petroleum Marketers and Convenience Stores Association*

**Washington, DC (December 23, 2024)** – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) at the U.S. Supreme Court in support of the Respondents in *Food and Drug Administration v. R.J. Reynolds Vapor Company*. NCLA’s brief urges the Justices to reject FDA’s effort to insulate itself from accountability. Even though the law allows “any person adversely affected” by an FDA order to challenge the agency’s decision in court, FDA oddly claims vaping retailers are not adversely affected by a ban on sale of vaping products. It is asking the Supreme Court to restrict that right to only parties to the agency proceedings. NCLA’s brief explains how this limit would conflict with the controlling statute as well as Supreme Court precedent.

Under the Family Smoking Prevention and Tobacco Control Act (“TCA”), manufacturers need FDA approval to sell certain e-cigarette or “vaping” products. R.J. Reynolds Vapor Company applied for permission to sell its “Vuse” e-cigarettes. FDA denied the application, which prevents all retailers from selling the Vuse e-cigarettes—ones they were allowed to sell while the application was pending. So, several retailers filed a petition for review in the U.S. Court of Appeals for the Fifth Circuit, stating that FDA’s decision “adversely affected” them by costing them lost sales. But FDA moved to dismiss their petition, arguing that the only person who could be “adversely affected” under the TCA is the manufacturer who filed the denied application. The Fifth Circuit rejected FDA’s argument, ruling that the retailers have standing to bring their petition for review of the order. The Supreme Court agreed to hear this case to address that issue and whether venue was appropriate in the district court.

This case could have broad impact. If FDA manages to narrow the scope of the TCA’s judicial review provision, the same limitation might be applied to many other statutes that provide for judicial review of agency actions all across the Administrative State. Many individuals and businesses harmed by agency action would then be prevented from seeking relief in federal court. NCLA’s *amicus* brief explains why it is important for the Supreme Court to respect Congress’s decision to make judicial review broadly available to all those who are “adversely affected” by FDA’s denial decision.

**NCLA released the following statements:**

“Statutes that permit injured people and businesses to ask courts to review agency actions provide an important check on agencies. Naturally, agencies resist this check. But judges should give injured citizens their day in court by reading these review statutes as broadly as Congress wrote them.”

— **Andrew Morris, Senior Litigation Counsel, NCLA**

“Accountability is the price FDA must pay for the enormous power it wields over both individuals and businesses. The Supreme Court should reject its effort to exercise the latter without submitting to the former.”

— **Daniel Kelly, Senior Litigation Counsel, NCLA**

“Vaping regulation is not an issue that concerns NCLA. But at stake in this case is whether retailers may sue FDA over orders outlawing the sale of products they sell, or whether only manufacturers can oppose such orders. Since Congress wrote a judicial review statute that encompasses retailers, they ought to be able to sue FDA directly.”  
— **Mark Chenoweth, President, 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.

###