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NCLA Amicus Brief Asks Fifth Circuit to Overturn Banking Administration Board’s Denial of Jury Trial

Jeffrey Moats v. National Credit Union Administration Board, Board Member Todd Harper, et al.

Washington, DC (December 3, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *Moats v. National Credit Union Administration Board* urging the U.S. Court of Appeals for the Fifth Circuit to reverse an order depriving former Texas credit union CEO Jeffrey Moats of a jury trial. The National Credit Union Administration (NCUA) prosecuted and punished Mr. Moats for alleged misconduct in its in-house tribunal overseen by an Administrative Law Judge (ALJ) it appointed. NCLA asks the Fifth Circuit to correct this violation of core constitutional rights.

The NCUA sought \$4 million in restitution from Mr. Moats, at least \$1 million in “civil penalties,” and an order permanently barring him from serving as a director, officer, or otherwise participating in the conduct of the affairs of any insured depository institution. Despite seeking such exorbitant penalties, the NCUA does not use juries in prosecuting and judging cases like Mr. Moats’s. Instead, its three-member Board of Directors makes the final decision on liability and penalties after in-house adjudication, relying on ALJs’ findings of fact. Mr. Moats has correctly argued that this strips him of his Seventh Amendment right to be tried before a jury, rather than a government bureaucrat, and his right to a hearing in an Article III court.

The district court in Mr. Moats’ case dismissed his appeal of the NCUA’s actions against him, ruling that Section 1786(k)(1) of Title 12, passed by Congress, expressly strips federal courts of jurisdiction to evaluate his constitutional claims. But the Seventh Amendment does not just uphold the jury trial right; it also directly limits Congress’s power to set up administrative tribunals. Congress lacks Article III judicial power in the first place, so it cannot get around the Seventh Amendment by taking away courts’ jurisdiction over cases brought by Mr. Moats and countless other Americans.

NCLA released the following statement:

“As we have said before, the Supreme Court’s *Jarkesy* decision is clear as day—cases where the federal government seeks monetary penalties must be tried to a jury. Congress cannot avoid this constitutional command simply by stripping courts of jurisdiction to hear such claims in the first place.”

— **Greg Dolin, 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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