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## **NCLA Amicus Brief Asks Fifth Circuit to Uphold Jury-Trial Rights in FDIC Enforcement Cases**

*Cornelius Campbell Burgess v. Administrative Law Judge Jennifer Whang, Federal Deposit Insurance Corp., Acting Chairman Martin J. Gruenberg, Director Michael J. Hsu, Director Rohit Chopra*

**Washington, DC (January 23, 2025)** – The New Civil Liberties Alliance has filed an *amicus curiae* [brief](#) in *Burgess v. Whang*, urging the U.S. Court of Appeals for the Fifth Circuit to uphold a preliminary injunction stopping the Federal Deposit Insurance Corporation’s (FDIC) unconstitutional administrative enforcement proceeding against Cornelius Campbell Burgess. FDIC is trying to heavily fine Mr. Burgess, a former executive for a small Texas bank, and ban him from the banking industry for life without a jury trial, using an in-house agency tribunal to adjudicate his case. In light of the Supreme Court’s historic [Securities and Exchange Commission v. Jarkesy](#) decision last year, the Fifth Circuit must reject FDIC’s attempt to circumvent a jury trial.

The *Jarkesy* ruling affirmed the basic proposition that Congress cannot reassign adjudication of cases known to common law from Article III courts to administrative tribunals. FDIC claims that decision does not apply to its enforcement proceeding against Mr. Burgess because a federal statute passed by Congress explicitly bars district courts from trying his case with or without a jury. However, Congress cannot engineer an end-run around Article III—nor the Seventh Amendment—through jurisdiction-stripping. Were Congress allowed to do that, the Constitutional guarantees would be hollow.

FDIC’s argument that Mr. Burgess’s case involves public rights, rather than private rights, making it exempt from Article III’s strictures and jury trial requirements, is equally meritless. The Supreme Court has repeatedly held that the “public rights” doctrine is limited to matters that were historically handled by the executive and legislative branches exclusively. But the violations that Mr. Burgess was charged with have historically been matters for the courts, so they do not fall within the “public rights” category.

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

“The health of the American banking system is, of course, of paramount importance to the country. But the Constitution does not make special exceptions for ‘important industries.’ NCLA is confident that our banking system, which is the envy of the world, can, and should, be safeguarded consistent with the requirements of Article III and the Seventh Amendment.”

— **Greg Dolin, Senior Litigation Counsel, NCLA**

“The Constitution vested the judicial power in courts alone. The Constitution’s separation of powers—the essential structural guarantor of our liberties—would be meaningless if Congress could reassign the power to adjudicate to the very executive agency also prosecuting the case. The Bill of Rights promises to preserve the right to a jury trial at common law. The Constitution thus guarantees Mr. Burgess a neutral judicial court *and* a jury.”

— **Peggy Little, 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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