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NCLA Asks Fifth Circuit to Rule Against Limitless Texas Attorney General Searches of Business Records

Spirit AeroSystems, Inc. v. Texas Attorney General W. Kenneth Paxton, Texas Secretary of State Jane Nelson

Washington, DC (February 10, 2025) – Today, the New Civil Liberties Alliance filed an *amicus curiae* brief in *Spirit AeroSystems v. Paxton*, urging the U.S. Court of Appeals for the Fifth Circuit to uphold a district court ruling that Texas's "Right to Examine" statute is unconstitutional. This statute authorizes the Texas Attorney General to force any company operating in the state to turn over its business records or face criminal penalties and forfeit its right to do business there. The Fifth Circuit must prevent future enforcement of the "Right to Examine" statute, which is an odious general warrant that eviscerates foundational American privacy rights.

Here, the Attorney General used the "Right to Examine" statute to demand that Spirit AeroSystems hand over its records for his review. After Spirit AeroSystems sued in response, the U.S. District Court for the Western District of Texas accepted a magistrate's recommendation to declare the statute unconstitutional. Even that court only required a warrant prior to compliance with it, not prior to its being served. But "[u]nless the review takes place *prior* to service on the target," writes NCLA, "a warrant is literally all form and no substance."

The "Right to Examine" statute is a general warrant because it enables the Attorney General to demand access to any business record of a company active in the state that he deems "necessary," without any stated reason required. The Attorney General does not have to specify which records he seeks to access nor secure a court's advance approval. Nothing in the statute prevents the Attorney General from perusing company records out of simple curiosity. This statute violates the protections against unreasonable searches enshrined by the Fourth Amendment specifically to prohibit general warrants in the United States. Warrants must be obtained from neutral magistrates prior to search; they must describe the object of the search and place(s) to be searched; the prosecutor must provide the magistrate a justifiable reason for conducting the search; and he must swear an oath in support of those facts. Adhering to these limits protects citizens and companies from searches at the executive's unfettered discretion.

NCLA released the following statements:
"General warrants destroy the constitutionally-protected right to be free from unreasonable searches and seizures. The Texas statute resurrects that historically despised power—one Texas does not need to fulfill its legitimate investigatory functions."
— Daniel Kelly, Senior Litigation Counsel, NCLA

"For far too long, courts and legislatures have enabled executive officials to demand and rummage through private papers without any prior warrant from a court of law. The Texas 'Right to Examine' law is just one example, and it should be stricken as a blatant affront to the Fourth Amendment."
— Russ Ryan, Senior Litigation Counsel, NCLA

"Law and order is all well and good. But in this country prosecutors must obtain warrants based on reasonable suspicion of wrongdoing from a neutral magistrate before demanding to search a company's business records."
— 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.

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