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NCLA Asks en Banc D.C. Circuit to Rehear Case Challenging EPA's Market Control over Refrigerants

RMS of Georgia, LLC d/b/a Choice Refrigerants v. U.S. Environmental Protection Agency, et al.

Washington, DC (September 15, 2025) – Today, the New Civil Liberties Alliance asked the U.S. Court of Appeals for the D.C. Circuit for *en banc* rehearing of the *Choice Refrigerants v. EPA* lawsuit against the Environmental Protection Agency's unlawful control over the hydrofluorocarbons market. HFCs are refrigeration compounds used in air conditioners and refrigerators. EPA now picks which companies may produce and import HFCs (and how much) by wielding power Congress unconstitutionally handed the agency.

A D.C. Circuit panel denied the petition of NCLA's client, Choice Refrigerants, after EPA cut Choice's market share by roughly 30%. The panel's reasoning would allow Congress to nationalize industries and hand unaccountable bureaucrats control over markets. The panel also abandoned well-established methods of statutory interpretation and deferred to EPA actions and positions in a way that contradicts *Loper Bright v. Raimondo* and *Relentless Inc. v. Department of Commerce*, an NCLA Supreme Court victory. NCLA urges the *en banc* D.C. Circuit to reverse this error and rein in EPA's use of such unbounded legislative authority.

Congress passed the American Innovation and Manufacturing Act of 2020 (the AIM Act) to phase down HFC production, empowering EPA to distribute a limited and ever-shrinking number of allowances for companies to produce or import these critical products. The AIM Act gives EPA no guidance as to who should receive the allowances, violating constitutional restrictions on Congress's abdicating legislative power to executive agencies.

Instead of properly granting Choice Refrigerants the allowances attributable to its patent-protected products, EPA relied on Executive Orders to set aside some allowances for new market entrants who were "disadvantaged," rather than existing companies like Choice. EPA also oddly allocated some allowances to Choice's former import agent and to a Chinese-owned company that infringed Choice's patent and engaged in illegal dumping into the United States market. EPA ultimately granted Choice far fewer allowances than the company needed to maintain the market share it had worked for decades to create.

The panel upheld EPA's rule by wrongly reasoning that the "particular subject matter" of distributing market share "in a particular industry," is a "narrow sphere" over which "Congress 'can delegate considerable discretion.'" Whether Congress can nationalize an industry and leave on-going control of market share to an agency with little to no guidance is an exceptionally important question. So is whether a court can disregard the most fundamental principles of traditional statutory interpretation to save an otherwise unconstitutional law. Instead of addressing the AIM Act's text, the panel effectively deferred to EPA's implementation of the Act and its litigation-driven interpretation of the statute, defying the Supreme Court decision in *Relentless* that overturned *Chevron* deference to agencies. The *en banc* court should address these extremely important questions and errors.

NCLA released the following statements:

"Left unchecked, the panel's decision would allow Congress, so long as it acted industry-by-industry, to give market control over all industries to Executive Branch agencies. Such a ruling is exceptionally dangerous. Just as bad, the panel effectively deferred to how it thought EPA implemented the Act, accomplishing the now-overruled *Chevron* deference by a new method."
— Zhonette Brown, General Counsel and Senior Litigation Counsel, NCLA

"The D.C. Circuit flipped statutory interpretation on its head—not only reading its own language into the AIM Act but giving credence to stray remarks by congressmen on a different version of the bill, and assuming provisions were carried over from the Clean Air Act because the AIM Act bears some resemblance. NCLA seeks rehearing to correct the panel's misunderstanding of the AIM Act, and to vindicate our client's property rights."
— Kaitlyn Schiraldi, Staff Attorney, NCLA

"The D.C. Circuit upheld the HFCs allocation rule while simultaneously approving a version of EPA's implementation that departs significantly from how EPA implemented the rule in practice. The *en banc* court (or the panel on rehearing) needs to grapple with what EPA actually did, and decide whether the Constitution really allows *that*, not whether some hypothetical version of implementation that never happened would be okay."
— Mark Chenoweth, President, NCLA

For more information visit the case 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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