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NCLA Amicus Urges Ark. Supreme Court to Abandon “Great Deference” to State Agencies

American Honda Motor Co., Inc. v. Walther, Dir., and Arkansas Department of Finance and Administration

Washington, DC (March 16, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights organization, today filed an [amicus brief](#) asking the Arkansas Supreme Court to stop judges in the state from giving “great deference” to the Department of Finance and Administration in a post-2009 Arkansas tax procedure case.

Granting “great deference” to an agency’s statutory interpretations violates both the state and federal Constitutions because it requires judges to abandon both their duty of independent judgment in violation of Article 4 of the Arkansas Constitution and the requirements of the Arkansas Code of Judicial Conduct. Deference also violates the Due Process Clauses of the Arkansas Constitution and the Fourteenth Amendment of the U.S. Constitution by commanding that the judiciary display systematic bias in favor of agencies whenever they appear as litigants.

NCLA believes the Court should reverse the decision below by declaring agency deference unconstitutional. Or, even if the Court declines to defer to the agency’s statutory interpretations on statutory grounds, NCLA still encourages the Court to write an opinion flagging the constitutional problems with agency deference.

By clearly spelling out the constitutional problems with agency deference, the Arkansas Supreme Court can relieve lower courts of the burden of having to choose whether to obey the state supreme court’s deference regime or their own judicial oaths.

NCLA released the following statements upon filing its amicus brief:

“Great deference” puts lower court judges in an impossible situation; it is an assault on their duty of independence, their oaths, and the unbiased due process of law that courts owe to every litigant who appears before them. It is long past time for conscientious judges to call out the ways in which this ‘deference’ has misled the judiciary—and to advocate a return to the judicial independence and unbiased judgment that the state and federal constitutions command.”

—**Jessica Thompson, Litigation Counsel, NCLA**

“Arkansas should follow the lead of recent state supreme court decisions in Mississippi and Wisconsin and do away with deference to agency interpretations of state statutes or regulations. By joining the ‘Chevron Revolt’ against judicial deference doctrines, Arkansas can restore the integrity of an independent judiciary free of bias.”

—**Mark Chenoweth, Executive Director and General Counsel, NCLA**

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.

For more information visit us online at NCLAlegal.org.