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NCLA Amicus Brief Urges Supreme Court of Georgia to Declare Judicial Deference Unconstitutional

Premier Healthcare Investments, L.L.C. v. UHS of Anchor, L.P.

Washington, DC (April 28, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group filed an [amicus brief](#) today in the Supreme Court of Georgia in the case of *Premier Healthcare Investments, L.L.C. v. UHS of Anchor, L.P.* NCLA submitted a neutral brief in support of neither party that solely focuses on the constitutional arguments for rejecting judicial deference and reaffirming the judiciary’s fundamental role outlined in the Constitution to say what the law is. NCLA hopes that Georgia will join the growing *Chevron* revolt by state supreme courts, including the Arkansas Supreme Court earlier this year.

Under the Georgia Constitution and Code of Judicial Conduct, judges are required to exercise independent judgment and to refrain from bias when interpreting the law, but the doctrine of judicial deference commands Georgia judges to abandon their independence and give controlling weight to the agency’s opinion of what a statute means. Judicial deference also runs afoul of due process principles that forbid judges from showing bias for or against a litigant who appears before them when resolving disputes.

The Supreme Court of Georgia has never addressed the constitutional objections to judicial deference raised in the *amicus* brief—but this case presents the opportunity to do so. The Court of Appeals opinion below openly questioned the viability of judicial deference in Georgia and noted some judges on that court believe the time has come to reconsider such deference. Supreme Court Justice Clarence Thomas recently critiqued judicial deference in his dissent from the denial of certiorari in NCLA’s [Baldwin v. United States](#) case, “In the past, I have left open the possibility that ‘there is some unique historical justification for deferring to federal agencies.’ [...] It now appears to me that there is no such special justification and that [judicial deference] is inconsistent with accepted principles of statutory interpretation from the first century of the Republic.” The Georgia native’s objections to judicial deference are reflected in the growing trend of states like Florida and Mississippi that have rejected deferring to agencies’ legal interpretations.

The Supreme Court of Georgia should follow suit and declare judicial deference unconstitutional in its opinion.

NCLA released the following statement:

“Even if it’s rarely granted, judicial deference to an agency interpretation compels judges to abandon their duty of independent judgment. No rationale can support a judicial practice that commands systematic bias in favor of the government’s preferred interpretations of statutes. The constitutional failings of judicial deference will continue to haunt the judiciary so long as the doctrine lurks in the caselaw. It’s time for courts to eliminate that lurking threat.”

—**Jessica Thompson, Litigation 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.

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