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## **NCLA Asks Third Circuit to Put an End to CPSC’s Unconstitutional Pay-Per-View Law Scheme**

*Lisa Milice v. U.S. Consumer Product Safety Commission*

**Washington, DC (May 18, 2020)** – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group filed an [opening brief](#) today in the U.S. Court of Appeals for the Third Circuit on behalf of client Lisa Milice against the U.S. Consumer Product Safety Commission (CPSC). NCLA is helping Milice, a new mother, challenge CPSC’s practice of keeping consumer product safety standards hidden behind a private paywall. Legal scholar Peter L. Strauss, the Betts Professor Emeritus of Law at Columbia Law School, joined NCLA on the brief.

The brief asks the Court to review and vacate a recent CPSC Direct Final Rule (Rule), which incorporates by reference (and thus makes mandatory) a voluntary safety standard for infant bath seats.

Milice, a potential infant bath seat purchaser, asked CPSC to let her see a copy of its Safety Standard for Infant Bath Seats. The Commission responded that it does not allow people to see the Rule and directed her to buy a copy from ASTM International, a private organization that specializes in creating safety standards. ASTM charges \$56.00 for a copy of the law—about twice the cost of an infant bath seat. According to CPSC, any person interested in viewing one of the Commission’s safety standards that has been incorporated by reference must pay the purchase price ASTM sets—a deeply arbitrary and capricious policy that allows a private organization to hold a monopoly over access to a binding legal standard.

NCLA argues that CPSC (or any other government agency, for that matter) cannot charge for access to the law because citizens are the government and the authors of the law—and the law in its entirety belongs to the citizenry. CPSC’s failure to make a copy of the Rule freely accessible to the public violated the requirement in the Commission’s organic statute that CPSC must publish the text of its rules. The Commission’s scheme also violates the Freedom of Information Act and the Administrative Procedure Act’s guarantees that materials incorporated by reference into agency rules be reasonably available to the public.

CPSC’s scheme infringes due process of law that requires that people have notice of their legal obligations. It also violates the First Amendment, which protects the right to petition the government, which one cannot do with regard to the infant bath seats rule without knowing what it contains.

By refusing to publish the safety standard that the Rule incorporates, CPSC has de facto created a pay-per-law service run by a private monopolist. This attempt to privatize ownership of the law is contrary to our basic form of government.

NCLA’s brief asks the Third Circuit to vacate the Rule, order CPSC to make any binding standard freely accessible to the public whenever CPSC prepares to promulgate a new rule, and order CPSC to make any final rule that CPSC adopts available for free on a permanent basis.

**NCLA released the following statements:**

“Hiding the law from the public so that they have no idea how to comply with it or how it might protect them is something we expect from dictators, not our own government. CPSC’s legal paywall is an affront to the constitution.”

—**Caleb Kruckenberg, Litigation Counsel, NCLA**

“All you need to decide this case are the first three words of the Constitution’s Preamble: ‘We the People.’ The people are the government; we own the laws. CPSC has no constitutional authority to let some private organization sell our own laws back to us.”

—**Jared McClain, Staff 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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