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NCLA Challenges Modern Star Chamber Proceedings at Public Company Accounting Oversight Board

John Doe v. Public Company Accounting Oversight Board (PCAOB)

Washington, DC (January 19, 2023) – The New Civil Liberties Alliance filed a [complaint](#) today in the U.S. District Court for the Northern District of Texas seeking declaratory and injunctive relief from the Public Company Accounting Oversight Board’s secret, unaccountable, and inherently biased prosecutorial processes. With no meaningful supervision by any government official appointed or directly removable by the President, and using funds raised by private taxes with no Congressional appropriation or oversight, PCAOB has investigated and brought a secret prosecution seeking to strip NCLA’s client of his livelihood and impose quasi-criminal monetary penalties—without a jury trial, due process of law, an impartial adjudicator, or any constitutional accountability.

Plaintiff John Doe (a pseudonym used to protect his anonymity) seeks to stop PCAOB from continuing its unlawful and unconstitutional disciplinary proceedings. The Board’s massive investigative, prosecutorial, and pseudo-judicial powers are largely unchecked. After years of intrusive investigation, PCAOB can impose severe punitive sanctions against individual accountants and accounting firms in its regulatory ambit, up to the permanent ban on an individual’s associating with any registered firm, revocation of a firm’s registration, and civil monetary penalties of up to \$1.1 million for individuals and \$22 million for firms—per violation. These potential penalty amounts are *20 times higher* for firms than penalties the Securities and Exchange Commission (SEC) may impose.

Worse yet, PCAOB’s core executive and pseudo-judicial activity is performed and superintended by private citizens, none of whom is constitutionally appointed as an officer of the United States. PCAOB hearing officers are inferior constitutional officers who have not been lawfully appointed under the Appointments Clause of the Constitution and are unconstitutionally protected by multiple layers of protection from removal by the President.

NCLA argues that (1) PCAOB’s prosecution is being funded by money raised and spent in violation of the Appropriations, Taxing, and Spending Clauses of the Constitution and the separation of powers principles enshrined in those clauses; (2) PCAOB’s disciplinary proceedings deprive Plaintiff of his right to a jury trial in violation of the Seventh Amendment; and (3) PCAOB’s disciplinary process is systemically biased, secretive, and unfair in violation of the Due Process Clause of the Fifth Amendment and the Sarbanes-Oxley Act of 2002.

Increasingly, Congress outsources vast governmental powers to private actors who are not elected by the citizenry nor appointed by the President. This pernicious trend has elicited understandable scorn from several

Supreme Court justices, who [describe](#) PCAOB as “highly unusual” and as an “unprecedented extra-constitutional stew.”

Plaintiff John Doe is represented by a team of experienced securities law attorneys, including NCLA’s Russ Ryan, who served as Assistant Director of Enforcement at SEC and as Deputy Chief of Enforcement at the Financial Industry Regulatory Authority (FINRA), Ian Roffman of Nutter McClennen & Fish, who served as senior trial counsel at SEC, and Kit Addleman of Haynes Boone, a former Director of SEC’s Atlanta Regional Office.

NCLA released the following statement:

“We’re asking the Court to stop this outrageous example of ‘peekaboo prosecution’—private, unaccountable actors using secret proceedings to prosecute and punish people without meaningful government oversight, no jury trial, inherently biased adjudicators, and woefully deficient due process protections. The Sarbanes-Oxley Act created this uniquely extra-constitutional machinery 20 years ago, and it’s past time for the courts to shut it down.”

— **Russ Ryan, Senior Litigation Counsel, 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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