2021 ANNUAL REPORT

New Civil Liberties Alliance

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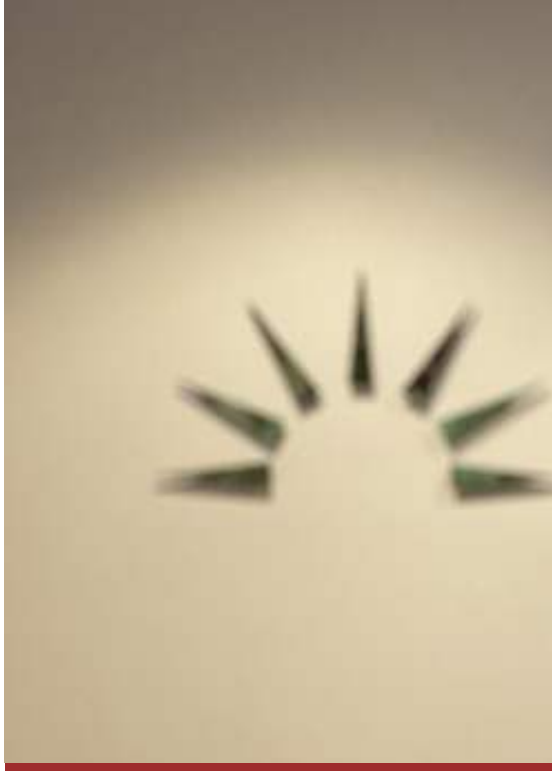


Letter from Executive Director Mark Chenoweth

Dear Friends and Allies,

When Philip Hamburger asked me to helm NCLA four years ago, I knew this group would make waves, so I fully expected to navigate ups and downs along the way. But I never dreamed the Administrative State would attempt the jaw-dropping power grabs we have encountered this year.

Nina Witkofsky of the Centers for Disease Control and Prevention richly deserved the ignominy of getting named NCLA's inaugural King George III prize winner for the bureaucrat who violated the most civil liberties. Unfortunately, the bureaucrats at CDC are either slow learners or else they are striving to keep the crown. Witkofsky earned her 'prize' by claiming power CDC does not possess to order a nationwide eviction moratorium against law-abiding landlords.

The US Supreme Court belatedly shot down this scheme in August, thanks in no small part to NCLA's staunch efforts. Now, CDC's Director, Rochelle Walensky, is claiming the power—which CDC also lacks—to command widespread vaccination via guidance despite a statute guaranteeing the right to informed consent and numerous scientific studies showing those with naturally acquired immunity do not need the vaccine and rarely, if ever, pass Covid on to others (unlike vaccinated people).

NCLA is championing natural immunity against bureaucratic aggrandizement that denies science, ignores law, and robs people's civil liberties. We expect courts will act with greater alacrity to arrest CDC's unlawful edicts this time.

These power grabs and President Biden's avalanche of executive orders should remind everyone that administrative tyranny lurks wherever a crisis occurs. On the positive side, all this adventurism has showcased NCLA's ability to win—in and out of court—and thereby put constitutional constraints on administrative power.

I hope you enjoy reviewing our annual report. It reflects the tremendous volume of litigation NCLA has been pursuing as well as our communications team's ingenuity. Indeed, our attorneys' incredible output exceeds other organizations twice our size. Of course our legal team could not do what it does without our dedicated professional team's fantastic talent and work ethic, a set of clients with resolve and principle, and a roster of supporters who are enthusiastic and far-sighted. Whatever headwinds NCLA encounters in the coming year, I am confident that our crew is prepared to change tack as necessary to prevail.

Thanks to all of you for helping us cut the Administrative State down to size!

A YEAR OF VICTORIES

January brought a favorable settlement to the *Gubbels v. USDA* case. After finally being forced (a year late) to give our client due process of law around allegations over selling crop insurance improperly, the Dept. of Agriculture backed down on the cusp of his administrative hearing. January and **February** also witnessed back-to-back months with oral arguments in front of *en banc* courts of appeals (*Cochran v. SEC* in the Fifth and *Aposhian v. Garland* in the Tenth). The Wyoming Supreme Court also overturned a lower court in February to hold that guidance in the form of a vision planning document could not be treated like zoning rules to block lawful development. The state legislature even codified the decision into state law several weeks later.

March included another showdown with USDA. This time we reversed their attempts to force RFID ear tags on cattle ranchers via guidance. The month also brought early *amicus* wins against the eviction moratorium in WD Tenn. (*Tiger Lily*) and ND Ohio (*Skyworks*). Notably, NCLA also prevailed in *Donahue Francis v. Kings Park Manor* before the *en banc* Second Circuit. NCLA had filed the only *amicus* brief on our side (opposite a raft of left-wing groups who were seeking to make property managers liable for tenant-on-tenant discrimination).

A pair of US Supreme Court victories graced **April**. *Carr v. Saul* followed NCLA's *amicus* brief in rejecting an issue-exhaustion requirement for administrative hearing litigants. On the same day *AMG Capital Mgmt. v. FTC* likewise agreed with NCLA's *amicus*, unanimously, that the Federal Trade Commission is not authorized by statute to pursue 'equitable monetary relief' such as restitution or disgorgement. NCLA's string of successes continued in **May** when the National Labor Relations Board (NLRB) decided after a months-long battle with NCLA not to pursue unfair labor practice charges against *The Daily Wire* over a tweet sent by radio talk show host Ben Shapiro. The MD Tenn. also ruled that a bogus rule from the Consumer Financial Protection Bureau (CFPB) requiring property owners to alert tenants to the eviction moratorium did not apply in the Sixth Circuit.

June brought three more Supreme Court victories in *Fulton*, *Collins*, and *Arthrex*, and **July** another in *AFPF v. Bonta*, as NCLA amassed a perfect 6-0 *amicus* record at the Supreme Court this year. In *SEC v. Spartan Securities* three NCLA attorneys tried a case to a jury for three weeks and won a verdict against the Securities & Exchange Commission on 13 of 14 charges, leaving one issue for appeal. NCLA also earned an *amicus* victory from the DC Circuit Court of Appeals in the *Rotenberg Educational Center v. FDA* case, holding that the Food and Drug Admin. has no power to ban an approved medical device for one particular use. Another *amicus* win came in SD Ohio, where the court enjoined the state tax cut ban in Congress' American Rescue Plan Act as hopelessly vague and incurable by a Treasury Dept. regulation. Finally, Education Secretary Cardona rescinded proposed Critical Race Theory (CRT) curricular priorities via a blog post after NCLA submitted

comments pointing out that federal law prohibits such curricular meddling.

In some ways **August** brought NCLA's biggest pair of victories. The Supreme Court finally decided that CDC's lawless nationwide eviction moratorium had to go. NCLA filed the first case against the moratorium, and most subsequent cases—including the one decided by the Supreme Court—copied NCLA's arguments. Antonin Scalia Law School backed down that same month when we represented Prof. Todd Zywicki in his request for a medical exemption based on natural immunity. George Mason U. granted it on other grounds, so this case never made it past the complaint stage, but it led to a flood of similar plaintiffs beseeching NCLA for assistance.

In **September**, NCLA won the support of 20 states and 15 organizations for the petition for certiorari we filed at the US Supreme Court in *Aposhian v. Garland*. These *amici* agreed that our *Chevron* deference questions on waiver and the rule of lenity deserve the Court's attention. In **October** the Arizona Supreme Court handed down a favorable decision in *Sun City Home Owners Ass'n v. Ariz. Corp. Comm'n*, vindicating NCLA's *amicus* argument that the Commission is not entitled to extreme deference to its utility ratemaking determinations.

November has seen NCLA prevail on our lightning quick *amicus* brief in the Fifth Circuit to enjoin the Occupational Safety and Health Administration's (OSHA) vaccine mandate, as well as one in support of 13 other states fighting the unlawful federal ban on state tax cuts. Hmm … 13 American states fighting oppressive taxation rules? How revolutionary! We also successfully persuaded NOAA (the Nat'l Oceanic and Atmospheric Admin.) to push back the compliance deadline for the Vessel Monitoring System mandate we are suing to enjoin.

November also marks the one-year anniversary of our Administrative Static podcast. Mark Chenoweth, John Vecchione, and guest host Harriet Hageman have now recorded over 100 podcasts seriously poking fun at abuses of administrative power.

Finally, **December** brought **NCLA's biggest win to date**! The full Fifth Circuit created a circuit split by ruling in *Cochran v. SEC* that accountant Michelle Cochran has the right to challenge her Administrative Law Judge's removal protections in federal court before enduring another unconstitutional agency hearing. That ruling protects the liberty of citizens threatened by agency actions that violate the separation of powers.

NCLA also notched a victory for Dianthe Martinez-Brooks, a nonviolent first-time offender, who was released to home confinement from federal prison during Covid. In November, DOJ had told the federal court in *Martinez-Brooks v. Garland* that she had to return to prison at the end of the Covid emergency. NCLA's suit prompted Attorney General Garland to reverse course, and DOJ announced prisoners on home confinement will not automatically return to prison but will be eligible to remain at home.

NCLA is hard at work on other important cases pending that are featured in the pages to follow.

LITIGATION BY THE NUMBERS

NCLA asserted constitutional constraints on the Administrative State in 42 original lawsuits this year.

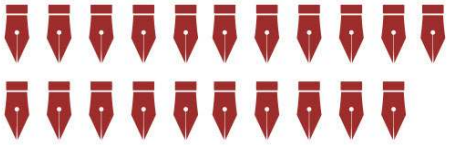
42

Since its founding, NCLA has represented 158 brave Americans and businesses, taking a stand against unlawful administrative power.

158

NCLA wrote 21 *amicus* briefs to defend civil liberties in key legal cases this year.

21



NCLA filed 8 comments in response to agencies' proposed rules this year.

8

NCLA challenged the unlawful actions of 39 government agencies and government actors.

39

LITIGATION FOCUS AREAS

NCLA's litigation focuses on the major problem areas where administrative power tends to evade the U.S. Constitution's permitted avenues of governance:

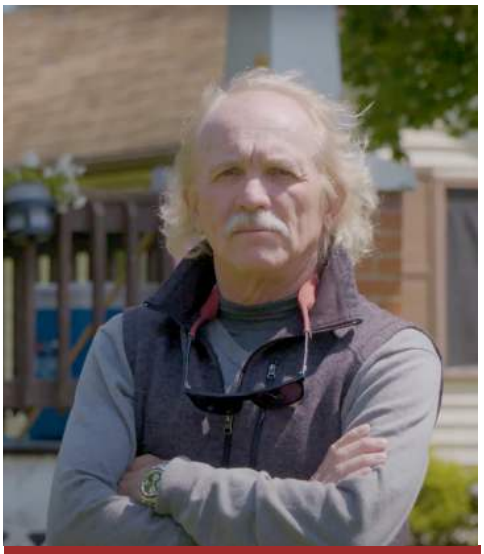
- Scope of Statutory Authority/Nondelegation
- Administrative Controls on Free Speech
- Administrative Adjudication/ Due Process Violations
- Administrative Searches
- Judicial Deference
- Guidance Abuse
- Conditions on Spending

SCOPE OF STATUTORY AUTHORITY/NONDELEGATION

The Constitution Allows Only Congress to Legislate, Only the Executive to Enforce Laws, and Only the Judiciary to Decide Cases. But the Administrative State Evades the Constitution's Authorized Avenues of Governance.

In a 6-3 decision in a case based on the legal arguments NCLA first advanced, the U.S. Supreme Court agreed with the merits of our arguments and lifted the stay on a federal district judge's decision setting aside CDC's unlawful nationwide eviction moratorium order. NCLA represented the very first plaintiffs to file a complaint against the CDC over the moratorium. In *Brown v. CDC*, NCLA argued that agencies have no inherent power to make law and that CDC has no statutory authority to order an eviction moratorium. In light of the Supreme Court's ruling, NCLA is moving to advance our clients' interests in *Brown* and *Mossman v. CDC*.

NCLA seeks to halt the Bureau of Prisons effort to disregard prior court decisions on prison alternatives for nonviolent and medically vulnerable people. Following direction from Congress under the CARES Act, BOP released thousands of medically vulnerable prisoners to home confinement during the coronavirus pandemic. Neither current statutes nor the CARES Act requires BOP to revoke home confinement for medically vulnerable people after six months. Yet, BOP has ordered the return of more than 4,000 inmates after the COVID-19 emergency ends. During his testimony before the Senate Judiciary Committee in October 2021, Attorney General Garland agreed with NCLA's position and said DOJ would review the policy in question.



"Evicting people is a very painful situation for the landlord because you do not want to put anybody on the street. You want to try to work with these people. These are human beings. But we are running a business here. I don't think I'll get my money back. I might get some of it, but a very small amount of it. I want my day in court."

NCLA client Rick Brown, *Brown v. CDC*

NATIONAL CENTER
FOR PUBLIC POLICY RESEARCH

NATIONAL CENTER FOR PUBLIC POLICY RESEARCH v. SEC

NCLA filed a lawsuit on behalf of the National Center for Public Policy Research, after SEC issued new rules threatening to delist companies from the Nasdaq exchange if the government doesn't like the self-identified, gender, race, and sexual composition of their boards of directors. In 1934, Congress gave SEC the power to regulate securities to ensure honest markets and punish fraud. Working with Nasdaq, the SEC is interpreting these laws to allow it to impose board diversity, equity and inclusion requirements to fill boards of directors seats. SEC possesses no such power and Congress has not and cannot divest its lawmaking power to an administrative agency working with a quasi-public exchange to exercise such power.

Although Forbidden by the First Amendment, the Administrative State Tries to Squelch Speech Through Licensing, Bans, and Mandates.

NCLA helped protect our freedom to associate and our right to privacy in our associations for generations to come in *AFPF v. Bonta*. NCLA filed three *amicus* briefs along the way in support of the petitioners in this case to defend the associational freedom and anonymity principles laid out in *NAACP v. Alabama ex rel. Patterson*. Chief Justice Roberts, writing for a 6-3 Court divided along ideological lines, held that the California Attorney General's donor-disclosure policy for nonprofits is facially unconstitutional because it burdens donors' First Amendment rights and is not narrowly tailored to an important government interest. The Supreme Court's rebuke of California's state-sponsored cancel culture echoed NCLA's argument: the state may not expose anonymous supporters in order to chill their speech.

NCLA participated in oral argument in the Third Circuit in November to oppose NLRB's pursuit of charges filed by a non-aggrieved charging party in *FDRLST v. NLRB*. Following a tweet in jest by Ben Domenech, a co-founder and publisher of The Federalist, a Twitter user who saw the post filed a formal complaint with NLRB claiming the tweet constituted an "unfair labor practice." NCLA is insisting that NLRB limit its enforcement jurisdiction to complaints of people aggrieved by an allegedly unfair labor practice and to protect the First Amendment right to make jokes. Eighteen *amici curiae* filed six *amicus* briefs in support of NCLA's client, including the Cato Institute, Reason Foundation, Tech Freedom, former ACLU President Nadine Strossen, P.J. O'Rourke, and prominent entertainers, Penn and Teller.

> "It's understandable that those who can't afford the fight often bend the knee, but in that America, the bureaucrats and the trolls who weaponize them to silence speech they don't particularly like will keep rolling on until someone stands up and says no. In this case, that someone is me."
>
> **Ben Domenech, co-founder and publisher of NCLA client FDRLST, Media, LLC**

BEN SHAPIRO, THE DAILY WIRE

FLEMING v. THE DAILY WIRE

NCLA celebrated a victory for social media users everywhere, when the National Labor Relations Board (NLRB) stopped pursuing Ben Shapiro, Co-Founder and Editor Emeritus of The Daily Wire, on a meritless charge. A random Twitter user had claimed that Mr. Shapiro violated the National Labor Relations Act (NLRA) when he posted a tweet. In the case, *Joel Fleming v. Daily Wire*, NCLA successfully defended The Daily Wire, LLC during pre-complaint investigations conducted by NLRB, resulting in a dismissal of the charge. NCLA commends NLRB for refusing to validate claims of wrongdoing by random individuals who were not "aggrieved" by the alleged unfair labor practice. NCLA hopes the outcome of this case marks a shift away from NLRB's standard aggressive enforcement policy against individuals expressing personal opinions on social media.

Due Process of Law Guarantees a Right to Be Held to Account Only Through a Real and Impartial Court, with All of Its Processes and Procedural Protections, but Administrative Tribunals Violate This Every Day.

NCLA's resolute legal action in *Kevin Gubbels and Insure My Honey v. USDA* forced USDA to settle a case rife with due process violations. The agency dismally failed to impartially investigate wrongdoing, instead choosing to wreck Insure My Honey, costing the company more than $1 million in business and putting 60 of its insurance agents out of work, based on a mere accusation. It is impossible to predict how long it would have taken Mr. Gubbels to secure the hearing to which he was entitled without the representation of NCLA.

NCLA pushed back after Biden rescinded safeguards and due process guarantees in the Department of Transportation's investigative process upon his first day in office. The lawsuit on behalf of the Institute for Hazardous Materials Packaging and Certification Testing, Inc. (IHMPACT), a charitable and educational association, will guarantee American citizens and small businesses are free from endless federal investigations and abusive enforcement actions that disregard their constitutional rights. In a separate lawsuit dealing with the same issue, *Polyweave v. Buttigieg*, NCLA has appealed the case to the Sixth Circuit.

"At least two factors appear to be causing this diminishing ALJ workload. First and most importantly, the SEC now appears to be doing whatever it can to avoid filing contested enforcement cases administratively. This is almost certainly in belated recognition that the system has irremediable constitutional defects, including … one still percolating its way through the appellate courts on what is likely an inevitable path to Supreme Court review: The multiple layers of protection from presidential removal enjoyed by the agency's ALJs."

Russ Ryan, Former SEC Assistant Director, referring to NCLA's *Cochran v. SEC*

MICHELLE COCHRAN, PLAINTIFF

COCHRAN v. SEC

NCLA won a milestone victory in our campaign against unconstitutional Administrative Law Judges. In December, the Fifth Circuit issued an *en banc* decision in *Cochran v. SEC*. By a 9-7 vote, the full Court reversed the panel decision. It held that the district court has jurisdiction to hear the merits of a structural constitutional challenge to an administrative tribunal. Specifically, the lower court may hear Cochran's objection that the ALJ enjoys multiple layers of protection from removal, which violate the President's authority to "take Care that the Laws be faithfully executed" under Article II of the Constitution. The panel decision would have forced her to go through a second unconstitutional ALJ proceeding before she could raise any constitutional objections. SEC must now decide whether to seek *certiorari* at the U.S. Supreme Court.

The Fourth Amendment Forbids Warrantless Searches and Seizures of Information, yet the Administrative State Violates This Right to Privacy Through Administrative Subpoenas and Warrants, Automated Information Collection Devices, Civil Investigative Demands, and 'Voluntary' Requests for Information.

NCLA appealed *Harper v. Rettig* to the First Circuit over the agency's unlawful seizure of the cryptocurrency data of thousands without judicial process, after the District Court of New Hampshire granted IRS's motion to dismiss in March. The district court dismissed the case relying on the Anti-Injunction Act (AIA), but the Supreme Court subsequently ruled that the IRS cannot block lawsuits challenging the constitutionality of its behavior by hiding behind the AIA. NCLA has urged the court to restore the Fourth and Fifth Amendment rights of Mr. Harper and the 10,000 others whose private financial data was seized by the IRS.

NCLA filed a notice of appeal in September after a judge in Florida's 11th Judicial Circuit refused to stop Coral Gables from using Automated License Plate Readers to violate drivers' privacy interests. *Canosa v. City of Coral Gables* is one of NCLA's very first lawsuits and seeks to stop the indiscriminate surveillance of law-abiding people. The police constantly monitor all drivers who enter the city limits, track their movements for years on end, and store that information in a database just in case it might help solve a crime. This police state is unlawful, and NCLA will continue to press the issue until the judiciary stops Coral Gables from violating every driver's civil liberties. NCLA has taken up a similar case on behalf of residents of Marco Island, Florida as well.

"I'm hopeful that this case will show not only that the IRS was wrongful in gathering information about cryptocurrency users for no reason, but also that it may establish good law that shows that agencies can't just dip into any warehouse of information when they feel like it. They have to follow the rules just like you and I do."

NCLA client James Harper, *Harper v. Rettig*

CAPTAIN ALLEN WALBURN, PLAINTIFF

MEXICAN GULF FISHING COMPANY v. NOAA

NCLA successfully petitioned the National Oceanic and Atmospheric Association (NOAA) to delay a Final Rule subjecting charter boats in the Gulf of Mexico to warrantless 24/7 surveillance. The rule, requiring for-hire charter vessel owners to install hardware and software on their boats that provides GPS tracking information to the government, has been put on hold until March 2022. NCLA filed a motion for summary judgment requesting relief on behalf of more than 1,000 charter boat captains and arguing this 24-hour GPS tracking without any suspicion of wrongdoing is a violation of the Fourth Amendment's prohibition against unreasonable searches. In addition to the *Mexican Gulf Fishing Co.* case, NCLA represents Atlantic fishermen challenging NOAA's at-sea monitor mandate in *Relentless LLC v. Department of Commerce*.

PLAINTIFF CLARK APOSHIAN

APOSHIAN V. GARLAND

NCLA asked the U.S. Supreme Court to decide three *Chevron* deference questions in *Aposhian v. Garland* on August 2. The cert petition asks the Justices to review a flawed ruling of the Tenth Circuit, which invoked the *Chevron* doctrine even though ATF and other federal defendants waived it below.

The court of appeals also improperly applied *Chevron* to interpret a criminal statute and refused to let the rule of lenity resolve statutory ambiguity instead of *Chevron*. NCLA hopes this case will begin to limit the damage this deference doctrine is doing to the rule of law.

JUDICIAL DEFERENCE

When the Government Is a Party to a Case, Judicial Deference to an Agency's Interpretation Requires Judges to Surrender Their Independent Judgment and Exhibit Systematic Bias in Favor of the Government and Against Other Litigants in the Case—in Violation of Due Process.

NCLA celebrated an *amicus* victory in *Sun City Home Owners Association v. Arizona Corporation Commission* after the Arizona Supreme Court rejected "extreme deference" granted to the Arizona Corporation Commission (ACC). NCLA argued that the Court should interpret the statutory or regulatory texts rather than deferring to the interpretation of an administrative agency in deciding whether the agency violated the Arizona Constitution's prohibition against discriminatory rates. NCLA applauds the Court for holding ACC accountable to the Arizona Constitution.

NCLA participated in oral argument at the Federal Circuit in *Taha v. US* and urged the court to reject deference to the IRS's flawed interpretation of the Internal Revenue Code. NCLA represents Mr. Taha, who is authorized to act on behalf of his deceased brother, and his brother's widow, Ms. Sanaa M. Yassin, in the lawsuit seeking refund of taxes overpaid in 2002, 2003, and 2004. The Tahas relied on long-established law and precedent when filing their original refund claim. The IRS now seeks the Court's deference to retroactively change the rules for proving a return was timely mailed and to deny American taxpayers a valid refund claim.

"The bump stock ban turned innocent law-abiding citizens into criminals overnight even though they were compliant with the statute. And you know that's not right."

NCLA client Michael Cargill, *Cargill v. Garland*

Although Expressions of Administrative Guidance (in Contrast to Laws Made by an Elected Legislature) Are Not a Constitutional Means of Binding Americans, Agencies Treat Their Guidance as Binding, and Courts Typically Do Not Stop Them.

NCLA celebrated victory at the Wyoming Supreme Court in *Asphalt Specialties Co., Inc. v. Laramie County Planning Commission*. For far too long and far too often, administrative agencies have been "legislating by guidance," imposing ever-increasing mandates and requirements on the regulated public. The win reinforces NCLA's point that regulators cannot restrict conduct based on nonbinding guidance documents. In this case, the Court reversed the Commission's decision which had prevented NCLA's client from using its unzoned property for a limited gravel operation. The decision sent a warning to other government agencies that they can no longer demand compliance with their "vision," "planning," or other guidance documents in violation of private property rights.

NCLA forced USDA to abandon efforts to mandate RFID Eartags for livestock via guidance. In March, USDA announced it will go through a full rule-making process pursuant to the APA to make any changes to the 2013 Final Rule governing animal identification and traceability. It will thus abandon the agency's prior attempt to replace the rule with guidance, which has been at the root of NCLA's lawsuit, *R-CALF USA v. USDA*. The agency tried to impose an RFID mandate on cattle and bison producers through a mere guidance document. USDA's announcement shows that NCLA is making progress in placing constitutional guardrails on executive branch agencies.

"ASCI looks forward to doing business in Wyoming, a state that understands the importance of the rule of law and protecting private property. We want to thank the folks at NCLA for their work on protecting our civil liberties and rights."

NCLA client Asphalt Specialties Co., Inc., *ASCI v. LCPC*

MICAH ELDRED, SPARTAN SECURITIES

SEC v. SPARTAN SECURITIES

NCLA sent a message to every executive agency—NCLA will not let them abuse their power and try to ruin the lives of innocent and hardworking Americans. In July, a federal jury in Florida resoundingly rejected the SEC's attempt to expand its own power, abuse the agency "guidance" process, and create new rules through enforcement. SEC had accused NCLA's clients David Lopez, Carl Dilley, and Micah Eldred of 14 different violations of the law, and tried to bankrupt them and permanently bar them from the industry. After the judge gave a jury instruction on non-binding guidance requested by NCLA, the jury in *Spartan v. SEC* unanimously rejected all but one charge.

CONDITIONS ON SPENDING

Congress and Administrative Agencies Use Unconstitutional Conditions on Spending to Regulate the Conduct of Grantees. Rather than Rule Through Law—as the Constitution Envisions—This Form of Governance Is Simply the Purchase of Submission.

NCLA successfully supported a challenge to a federal agency's interference in state tax cuts in *State of Ohio v. United States Department of Treasury*. In July, a federal court stopped the Treasury Department from enforcing the "Tax Mandate" provision of the American Rescue Plan Act of 2021 (ARPA) against the State of Ohio. ARPA offers approximately $195 billion to states, but it conditions the receipt of desperately needed COVID-19 fiscal recovery funds on the surrender of core sovereign taxing power. Under ARPA, Congress alone can provide tax relief to Americans for three or more years. State taxes are frozen. NCLA was delighted that Judge Cole prevented Congress from telling the states that they cannot cut state taxes as a condition of receiving federal funds. NCLA has also filed *amicus* briefs in support of West Virginia's and Texas's ARPA challenges.

In September, NCLA Founder Philip Hamburger published his fourth book, an important study of a powerful mode of government control: the offer of money and other privileges to secure submission to unconstitutional power. *Purchasing Submission: Conditions, Power, and Freedom* recognizes the federal government's use of conditions as a new mode of power. As the first book to call attention to this problem, it explores the danger in depth and suggests how it can be redressed with familiar and practicable legal tools.

"It is time for the public and federal judges to recognize the realities of how we are now governed. Not merely by law, nor merely administratively, but even more insidiously, through the purchase of submission."

Philip Hamburger,
NCLA Founder and President

RESIDENTS OF LOUDOUN COUNTY, VIRGINIA, RALLY IN LEESBURG TO PROTEST AGAINST THE TEACHING OF CRITICAL RACE THEORY IN THE COUNTY'S PUBLIC SCHOOLS (PHOTO: ANDREW CABALLERO-REYNOLDS/AFP/GETTY IMAGES)

COMMENTS IN RESPONSE TO THE DEPARTMENT OF EDUCATION'S PROPOSED PRIORITIES: AMERICAN HISTORY AND CIVICS EDUCATION

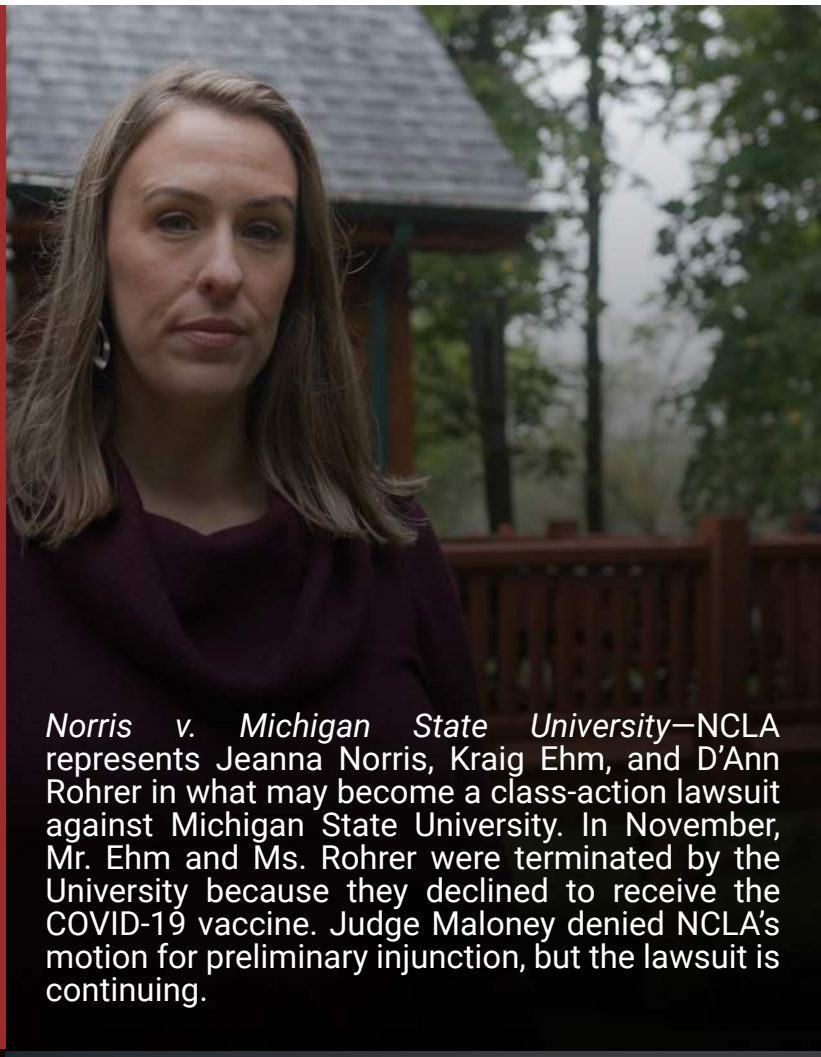
NCLA opposed the Department of Education's unlawful Critical Race Theory proposal. In a letter to ED officials, NCLA outlined how the proposal violates federal law, including the very statute under which ED was founded in 1979. Even before there was a federal department, federal law explicitly provided there shall be no federal control over public school curricula. The Department of Education's organic statute states in two separate sections that it "shall not increase the authority of the federal government over education or diminish the responsibility for education reserved to the states" and local authorities. If that were not enough, a 1989 statute prohibits tying receipt of federal funds to teaching of any curricula. After receiving NCLA's pointed comments, Secretary Cardona rescinded the Department's proposal.

NCLA IS LEADING THE FIGHT NATIONALLY TO RECOGNIZE NATURAL IMMUNITY

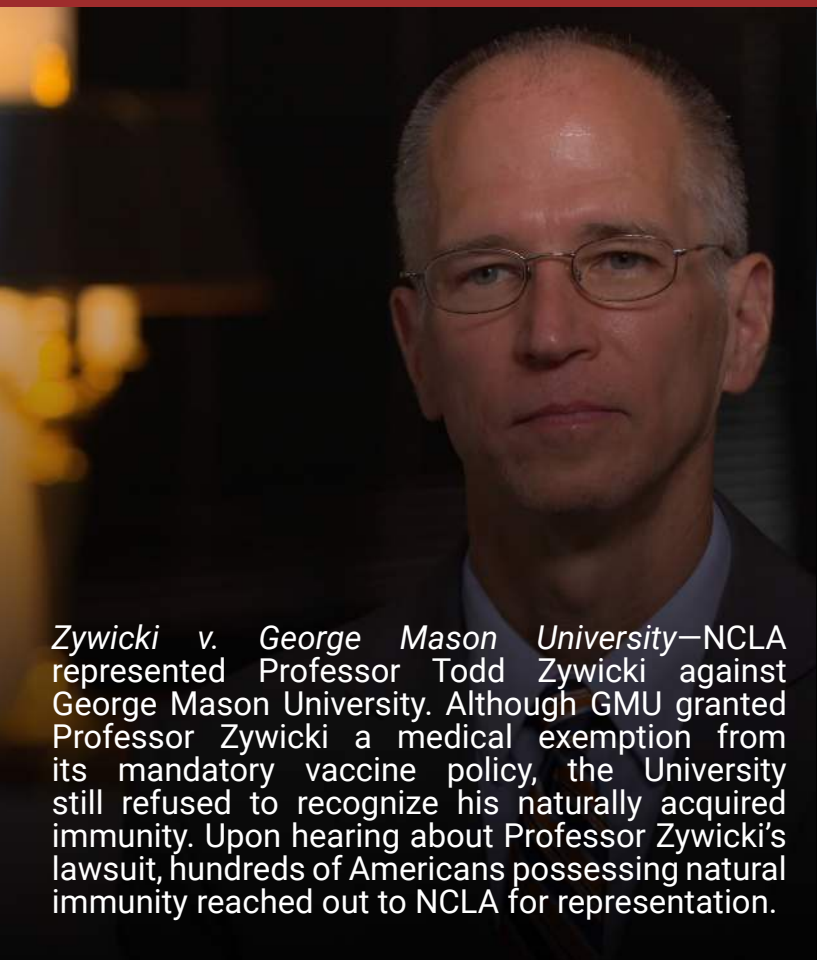
As more and more unelected government officials and public health bureaucrats imposed one-size-fits-all vaccine mandates across the country, NCLA took a stand for those with naturally acquired immunity due to previous COVID-19 infection.

Like all too many Americans, NCLA's clients face an impossible dilemma: lose their jobs (and health care, pensions, and other benefits) or receive a vaccine that is medically unnecessary for them, still poses a risk to them, and will not increase the safety of anyone around them.

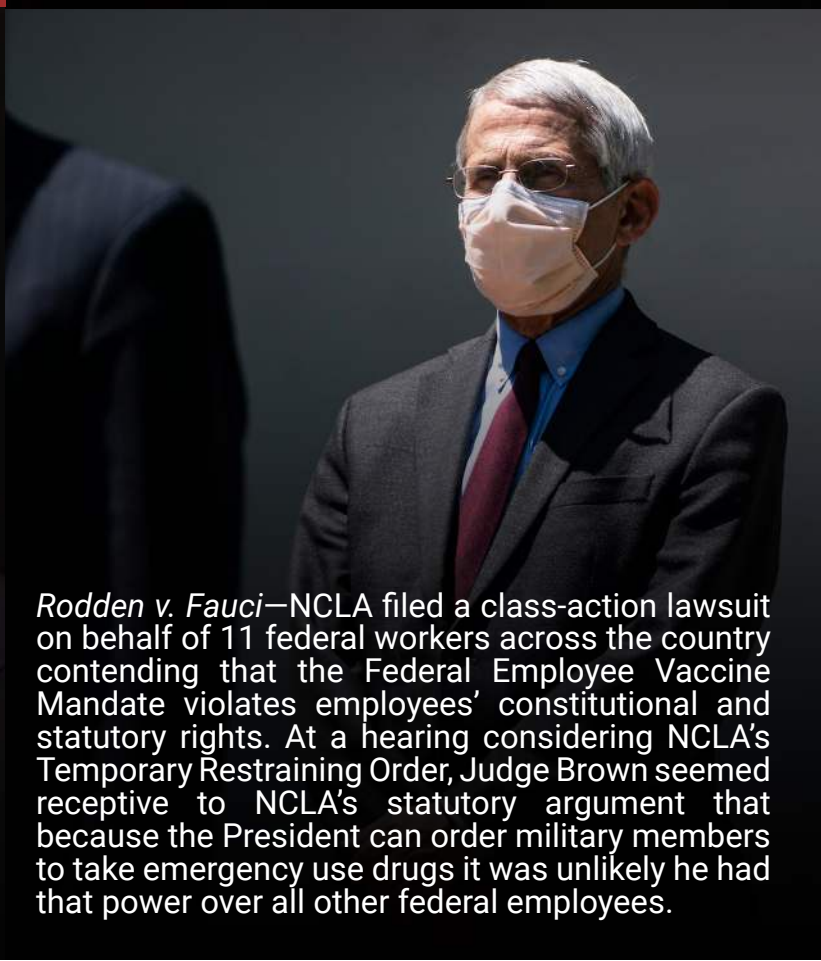
In pursuing this litigation, NCLA expects to uphold the scientific fact of natural immunity and establish it as an available defense to vaccine mandates. We also hope to clarify the misused *Jacobson v. Massachusetts* precedent and establish that any mandates like these must come from elected state legislatures—not unelected federal bureaucrats.



Norris v. Michigan State University—NCLA represents Jeanna Norris, Kraig Ehm, and D'Ann Rohrer in what may become a class-action lawsuit against Michigan State University. In November, Mr. Ehm and Ms. Rohrer were terminated by the University because they declined to receive the COVID-19 vaccine. Judge Maloney denied NCLA's motion for preliminary injunction, but the lawsuit is continuing.



Zywicki v. George Mason University—NCLA represented Professor Todd Zywicki against George Mason University. Although GMU granted Professor Zywicki a medical exemption from its mandatory vaccine policy, the University still refused to recognize his naturally acquired immunity. Upon hearing about Professor Zywicki's lawsuit, hundreds of Americans possessing natural immunity reached out to NCLA for representation.



Rodden v. Fauci—NCLA filed a class-action lawsuit on behalf of 11 federal workers across the country contending that the Federal Employee Vaccine Mandate violates employees' constitutional and statutory rights. At a hearing considering NCLA's Temporary Restraining Order, Judge Brown seemed receptive to NCLA's statutory argument that because the President can order military members to take emergency use drugs it was unlikely he had that power over all other federal employees.

SIX FOR SIX AMICUS VICTORIES AT THE U.S. SUPREME COURT

NCLA's *amicus curiae* briefs in the term ending July 2021 garnered the attention of the U.S. Supreme Court, culminating in a perfect 6-0 record for the term. In each case, the Court vindicated Americans' civil liberties after Congress, administrative agencies, or the lower courts neglected them. *The New York Sun* took notice of "the startling record NCLA is starting to rack up in the current court" in an editorial entitled "The Hamburger Court."

In ***U.S. v. Arthrex***, Justice Gorsuch's concurrence quoted NCLA's *amicus* brief arguing that administrative patent judges are "principal officers" of the United States, so according to the Constitution's Appointments Clause, the President must appoint them with advice and consent of the Senate. Instead, the Court demoted APJs from being principal officers by making their decisions reviewable and *sub silentio* overruled 1988's *Morrison v. Olson* case in the process.

In ***Fulton v. City of Philadelphia***, Justice Alito cited NCLA President Philip Hamburger's work eight times in his concurrence. The court unanimously ruled in favor of Catholic Social Services and three affiliated foster parents who had been excluded from a foster-care program based on their religious beliefs.

In ***Americans for Prosperity Foundation v. Bonta***, NCLA helped defend the associational freedom and anonymity principles laid out in the landmark 1958 *NAACP v. Alabama ex rel. Patterson* civil rights case. Chief Justice Roberts, writing for a 6-3 Court, held that the California Attorney General's donor-disclosure policy for nonprofits is facially unconstitutional because it burdens donors' First Amendment rights by casting a dragnet for sensitive donor information.

In ***Carr v. Saul***, NCLA steered the court toward ensuring that agency adjudicators at the Social Security Administration afford claimants their constitutionally guaranteed rights, and in ***Collins v. Yellen*** NCLA helped make clear the President has the power to remove the head of a federal agency. Finally, in ***AMG Capital Management v. FTC***, NCLA helped protect Americans' due process rights from FTC's unlawful application of its statutory relief provisions.

NCLA MEDIA

Smart strategies and investments in communications and marketing allowed NCLA to grow its brand and increase its presence through numerous channels.

150+ TV Mentions

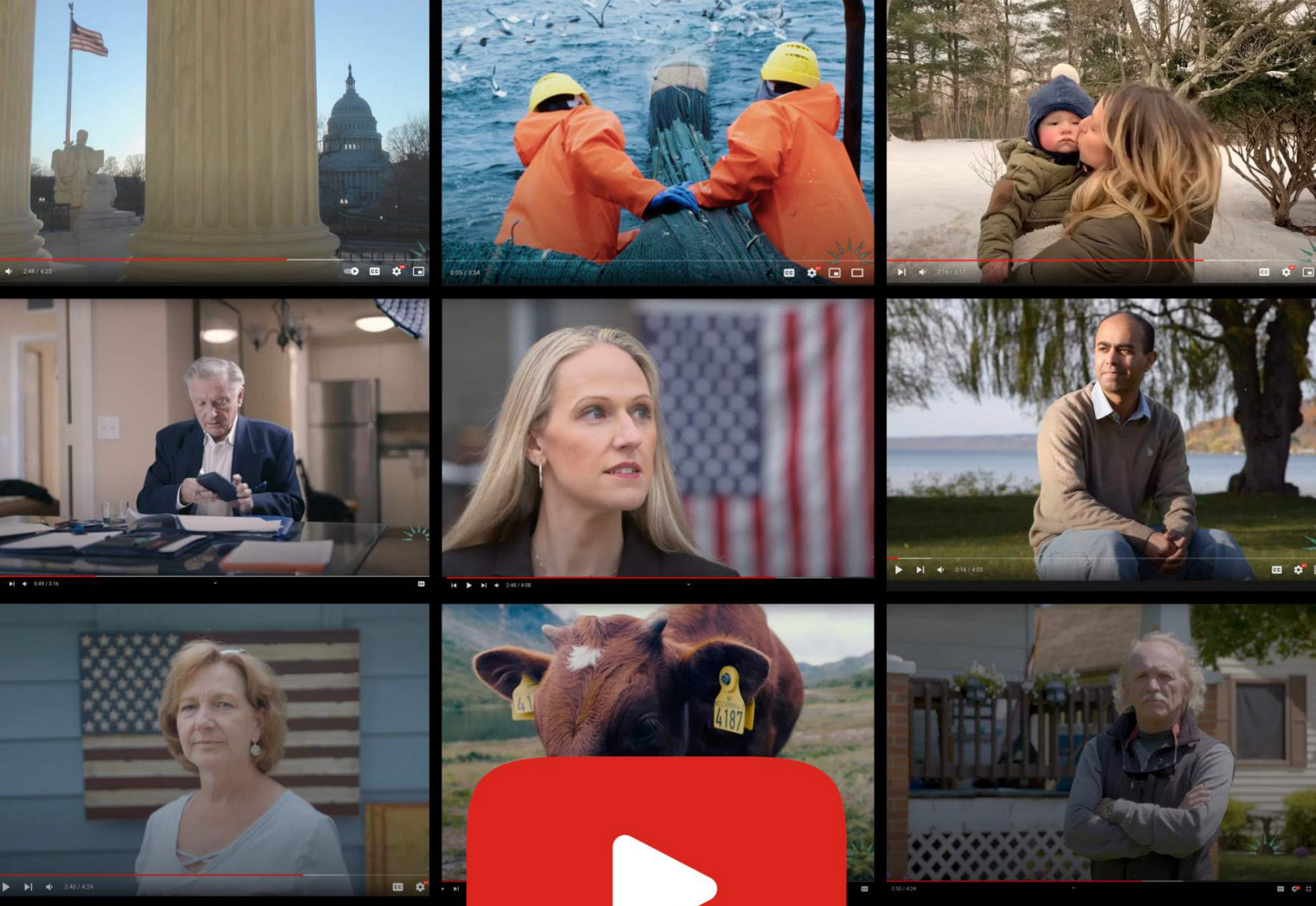
200+ Press Releases

4,600+ Online and Print Publications

600+ Radio Mentions

NCLA OPINION

NCLA published 13 op-eds in top-tier publications curated to reach specific target audiences.



1.5K YouTube Subscribers

NCLA engaged with thousands of viewers on frequented digital platforms. Our interviews, podcasts and original video productions hosted on YouTube introduced subscribers and visitors to the perils of the Administrative State and how they can challenge the status quo.

234.7K
VIEWS

11.3K
HOURS VIEWED

NCLA ON TV

NCLA cases, clients, and attorneys were featured by major networks and cable news outlets and appeared on ABC's Nightline, CBS Sunday Morning, and Fox's Tucker Carlson, Laura Ingraham, and Shannon Bream to discuss our cases against the CDC's national eviction moratorium, vaccine mandates, and to oppose courtpacking proposals.

8.9M Audience Reach

Administrative Static

Cutting through the noise to signal abuse of administrative power

Launched in November 2020, Administrative Static is an irreverent legal affairs podcast that exposes the unlawful side of administrative power. Hosts Mark Chenoweth and John Vecchione decry federal and state agency abuses, trot out legal arguments, grill expert guests, and bandy about the latest cases and controversies.

Less than one year later, Administrative Static has produced over 100 episodes that have been downloaded 5,860 times. The number of downloads has progressively increased.

A podcast of NCLA

STIMULATING ENGAGEMENT, CULTIVATING INFLUENCE

During Cornell's move-in day, over 15,000 incoming students and their parents had the opportunity to learn about the civil liberties violations inherent in Cornell University's Title IX disciplinary procedures through NCLA's advocacy campaign: Cornell Title IX Kangaroo Courts Ruin Lives!

NCLA launched the campaign to build awareness about the issues at the center of NCLA's lawsuit, *Vengalattore v. Cornell*. The campaign featured a kangaroo mascot, who engaged with students and parents while NCLA staff educated onlookers.

To accompany these efforts, NCLA pointed viewers and listeners to a landing page explaining the issue through social media, radio ads, and and a roving digital truck circling the University. NCLA estimates these media efforts reached approximately 31,241 people.

NCLA'S SPEAKER SERIES EXPANDS

This year NCLA hosted 11 virtual Lunch & Law events. Highlights included a debate between NCLA President Philip Hamburger and Professor Eugene Volokh of UCLA about Section 230 and the Constitution, moderated by FCC Commissioner Brendan Carr, and a rousing discussion about the legality of vaccine passports with NCLA litigation counsel Jenin Younes, Dr. Jay Bhattacharya, epidemiologist and professor of medicine at Stanford University, and Adam Creighton, Washington correspondent for The Australian.

In addition to the monthly Lunch & Law series, NCLA launched a new event called Wine & Cheesed in response to the recent spate of deplatformings and cancellations that have made it nearly impossible to have a free and open discussion of the issues facing our nation. Rather than whine about the problem, NCLA did something about it! Each event focuses exclusively on someone who has something important to say but has been denied the ability to do so.

The first event featured Devon Westhill, President and General Counsel at the Center for Equal Opportunity, who was disinvited from testifying before the U.S. Equal Employment Opportunity Commission because EEOC did not approve of the testimony he planned to give.

Pictured: (clockwise) NCLA President Philip Hamburger, FCC Commissioner Brendan Carr, Professor Eugene Volokh

Wine & Cheesed

Decanting with the Deplatformed

Uncorking the Cancelled

New Civil Liberties Alliance

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