5TH ANNIVERSARY

NCLA

NEW CIVIL LIBERTIES ALLIANCE

ANNUAL REPORT 2022






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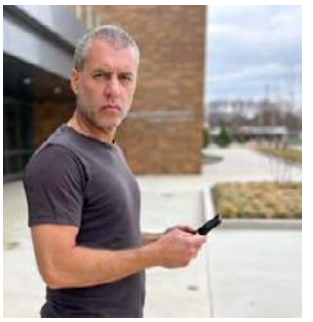





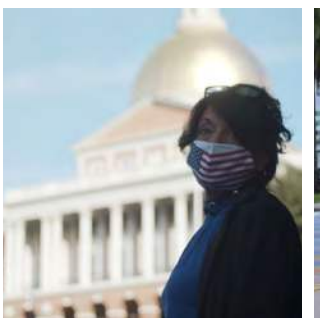







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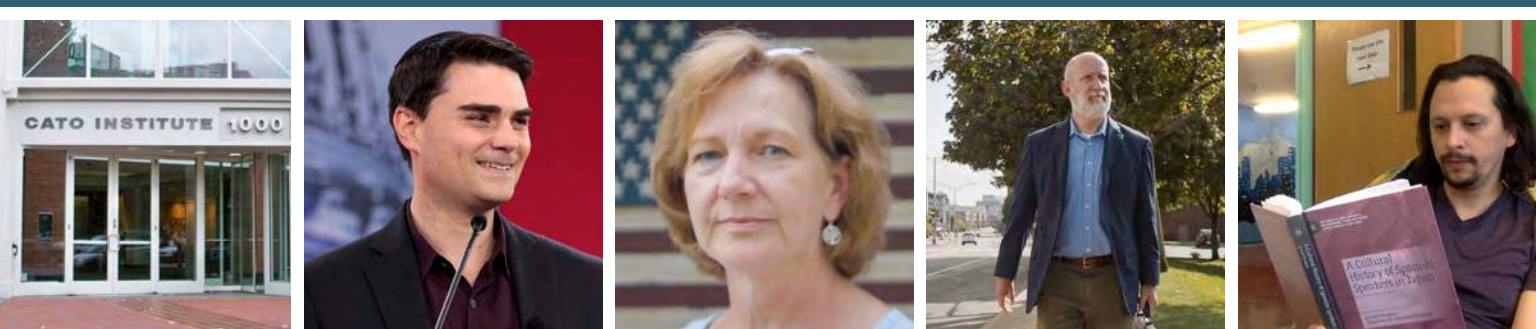


OUR MISSION

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.

Celebrating Five Years in the Fray

As I sat listening to last November's Supreme Court oral argument in *SEC v. Cochran*, it occurred to me that NCLA had been litigating cases for barely four years. This unheard-of timeline for a new public-interest firm to reach the legal world's commanding heights attests to NCLA's dynamism, so our team is justifiably proud of the progress we have made toward dismantling unlawful administrative power.

Five years in, NCLA has played a leading role in calling out unconstitutional administrative law judges, unwinding the CDC's nationwide eviction moratorium, vindicating natural immunity to Covid, stopping experimental vaccine mandates, reversing ATF's criminal bump stock ban, and now opposing Biden's lawless student loan debt cancellation. Before NCLA arrived on the scene, other groups were not pursuing the kinds of cases and arguments NCLA uses to prevail. Now they are. That's fantastic because our Alliance needs all the help we can muster against the Administrative State, and our combined efforts will bring down Leviathan sooner.

Our own successes have accelerated NCLA past the proof-of-concept stage, beyond the prototype phase, and right into full-scale production of original lawsuits. In fact, one media detractor this past year labeled NCLA a "right-wing litigation factory." Our nonpartisanship aside, we don't take that as a criticism. After all, despite a smaller budget and fewer attorneys, NCLA surpasses even long-established rivals in identifying, filing, and ultimately winning strategically important cases.

Like any good organization though, we test and learn as we go, constantly looking for ways to improve our case selection, enhance our litigating efficiency, scale our efforts, better message our ideas, and grow our base of support. This past year's successes taught us that, despite losses in lower courts, our arguments frequently will prevail as we appeal to higher ones. Confirmation of that working theory engenders optimism about our docket and emboldens belief in our entire strategic litigation approach.

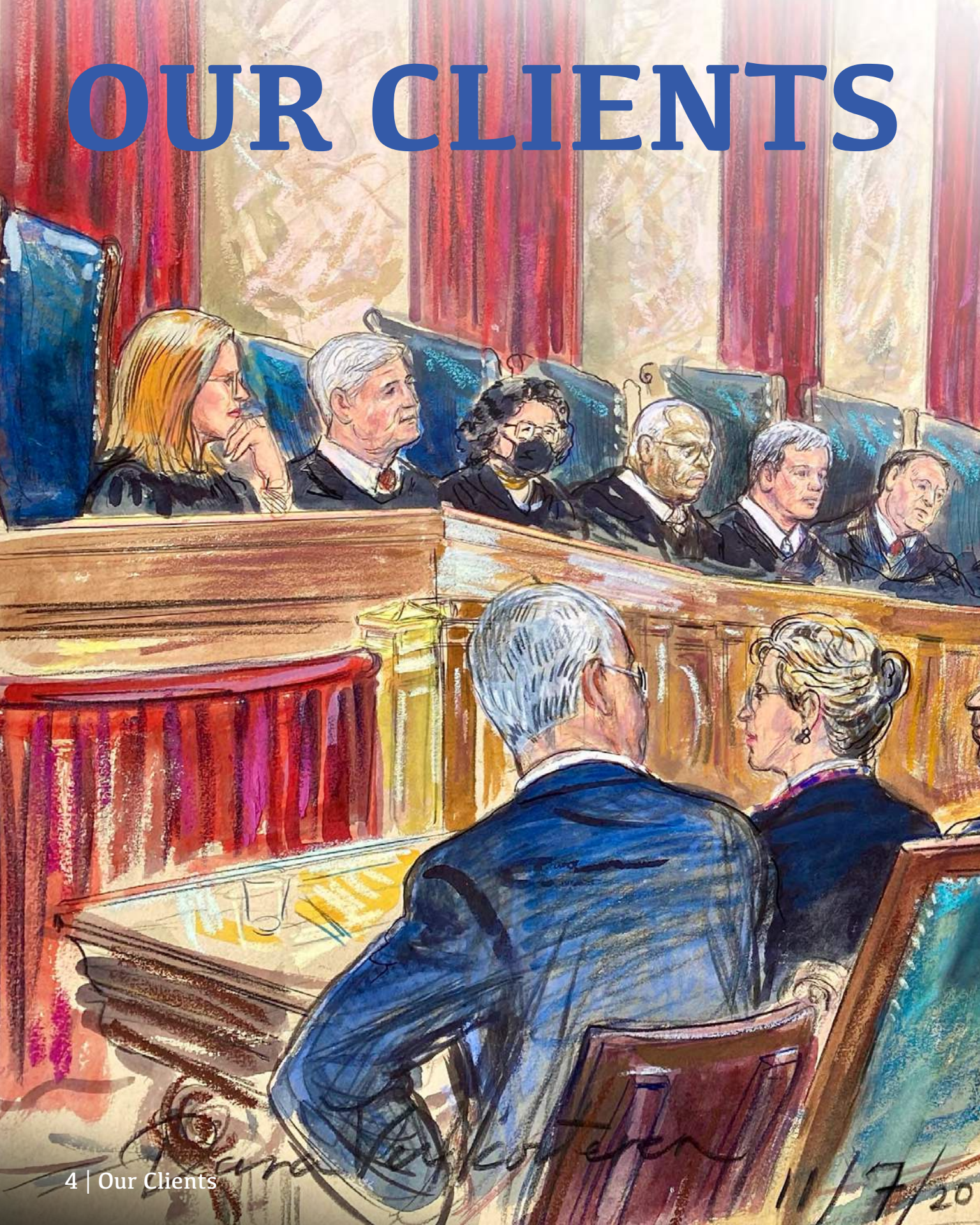
NCLA's most consequential act has been to shine a bright spotlight on the depredations of the Administrative State.

Exposing the lack of due process of law and other pathologies of administrative rule has allowed NCLA to hold the "administrative statists" at bay. By insisting that judges judge, legislators legislate, and—crucially—that bureaucrats do neither, NCLA is leading the long march to take back the institutions of American self-government.

None of the accolades NCLA has enjoyed since our founding in 2017 would have been possible without numerous brave clients and generous supporters. These farsighted friends of freedom—some of whom received richly deserved recognition at our Fifth Anniversary Gala—have enabled NCLA to stop the government from violating many people's civil liberties. Philip Hamburger and I hope you enjoy reading about the achievements this annual report chronicles and will pass it along to others who might join the new civil liberties movement. Much work remains to be done!

President and General Counsel
Mark Chenoweth

OUR CLIENTS



NCLA represents brave clients across America who are willing to take on bureaucratic agencies at the local, state, and federal level that abuse their power.

We are committed to cutting the Administrative State down to size by focusing our legal impact on seven areas in which the government denies civil liberties.

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Due Process of Law

The due process of law guarantees a right to be held to account only through the processes of an impartial court—something administrative tribunals violate every day.

Michelle Cochran and family
SEC v. Cochran

Due Process of Law

Taking the Fight to the U.S. SUPREME COURT

The U.S. Supreme Court heard oral arguments in the case of Texas accountant Michelle Cochran on November 7, 2022. Ms. Cochran is seeking to have her challenge to the Securities and Exchange Commission's in-house adjudication scheme heard by an Article III federal judge rather than an SEC administrative law judge. The High Court is reviewing a Fifth Circuit en banc ruling that district courts have jurisdiction to hear structural constitutional challenges to SEC's administrative proceedings—before those proceedings take place.

The Process Is the Punishment

Former Solicitor General Greg Garre of Latham & Watkins, advocating for Ms. Cochran, asked the Justices to uphold district court jurisdiction, an important bulwark for individual liberty and a vital check on administrative power. The availability of federal district courts to hear structural constitutional claims is an important safeguard for individuals seeking to assert their constitutional rights.

NCLA represents Ms. Cochran in her original lawsuit against SEC filed in January 2019 to challenge the Commission's system of adjudicating enforcement actions with tenure-protected administrative law judges (ALJs) employed by the prosecuting agency.

SEC ALJs are insulated by multiple layers of protection from removal by the President, which prevents accountability and violates the President's constitutional duty to "take Care" that laws are faithfully executed.

Watch the case video:
https://bit.ly/422eAeq

"Thank you so much to Mark and Peggy and the whole NCLA crew. They literally saved my life when they took me on as a client many years ago."

– Michelle Cochran, *SEC v. Cochran*

90+%

PERCENTAGE OF CASES SEC WINS BEFORE ITS ALJs

SEC's home-court advantage can—and does—tie individuals up in yearslong administrative proceedings, exhausting their fortitude and financial wherewithal to fight.

GETTING BACK TO SERVING HIS COMMUNITY

NCLA's Swift Action Stopped RI's Irrational Covid-19 Vaccine Mandates

Skoly v. RIDOH

The Rhode Island Department of Health shut down Dr. Stephen Skoly's oral surgery practice for refusing to take the Covid-19 vaccine due to a medical condition. A staple in Cranston, he takes care of over 800 patients per month including state psychiatric hospital patients and state prison inmates.

NCLA fought for Dr. Skoly, who also has natural immunity from a previous Covid-19 infection, against Rhode Island to allow him to resume practice. By excluding unvaccinated healthcare providers with natural immunity from practicing, the State created an artificial hospital staffing shortage. To cope with that problem of its own making, RIDOH allowed healthcare providers with active Covid infections to treat patients so long as they wore N95 masks.

In March 2022, after over five months of suspension, Rhode Island finally relented and agreed to treat the N95-masked Dr. Skoly the same as vaccinated N95-masked workers. Dr. Skoly was permitted to re-assemble his ten-person dental team and get back to serving his community.

Watch Case Video:
https://bit.ly/3TaWJOI

COLLEGE KANGAROO COURTS RUIN LIVES

NCLA Takes on Misguided Title IX Guidance

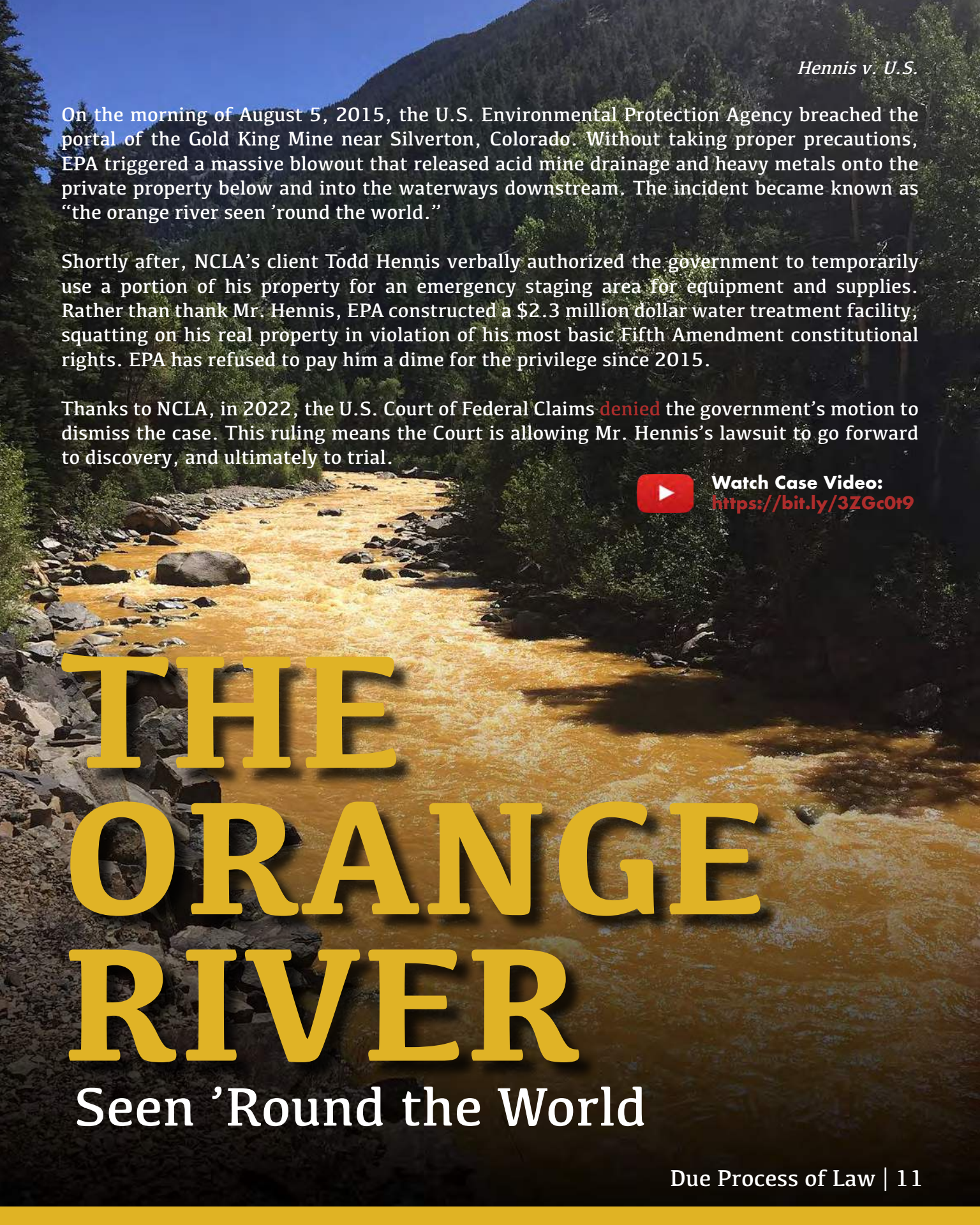
If you study or work at a government-funded college and you are on the receiving end of a Title IX complaint, don't expect justice to be served. Especially if you've been wrongfully accused.

NCLA is suing Cornell University in Ithaca, NY for violations of due process in its Title IX hearings. NCLA represents former faculty member Dr. Mukund Vengalattore against Cornell, who unable to prove his innocence in these kangaroo courts, was denied tenure, disciplined by Cornell, and faced the loss of his promising career.

Thanks to NCLA, on June 2, 2022, the U.S. Court of Appeals for the Second Circuit held that university discrimination against faculty on the basis of sex is subject to suit under Title IX. The majority and concurring opinions expressed shock at the lack of due process and general treatment of Dr. Vengalattore by Cornell University. Everyone is entitled to a full and fair hearing.

Watch Case Video:
https://bit.ly/3ZPEn7K

Vengalattore v. Cornell



Hennis v. U.S.

On the morning of August 5, 2015, the U.S. Environmental Protection Agency breached the portal of the Gold King Mine near Silverton, Colorado. Without taking proper precautions, EPA triggered a massive blowout that released acid mine drainage and heavy metals onto the private property below and into the waterways downstream. The incident became known as "the orange river seen 'round the world."

Shortly after, NCLA's client Todd Hennis verbally authorized the government to temporarily use a portion of his property for an emergency staging area for equipment and supplies. Rather than thank Mr. Hennis, EPA constructed a $2.3 million dollar water treatment facility, squatting on his real property in violation of his most basic Fifth Amendment constitutional rights. EPA has refused to pay him a dime for the privilege since 2015.

Thanks to NCLA, in 2022, the U.S. Court of Federal Claims denied the government's motion to dismiss the case. This ruling means the Court is allowing Mr. Hennis's lawsuit to go forward to discovery, and ultimately to trial.

Watch Case Video:
https://bit.ly/3ZGc0t9

THE ORANGE RIVER

Seen 'Round the World

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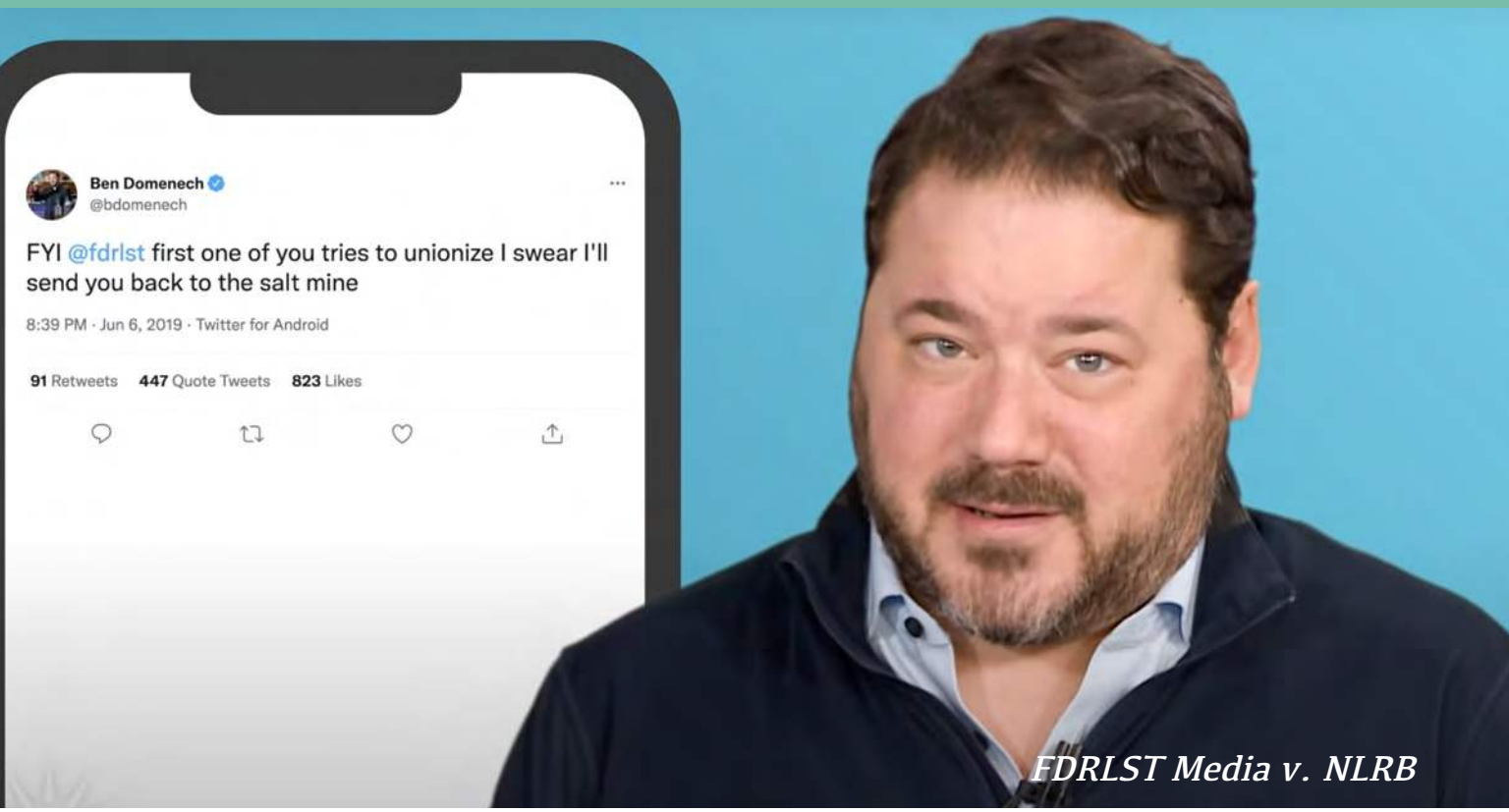
Free Speech

The Administrative State tries to squelch speech, especially through licensing, speech bans, and speech mandates. Licensing requires one to get the government's permission prior to speaking. Nothing was more clearly forbidden by the First Amendment than prior restraint, but such controls are now commonplace.

Dr. Azadeh Khatibi
Høeg v. Newsom

Free Speech



FDRLST Media v. NLRB

NCLA Clinches First Amendment Victory in Lawsuit over Satirical Tweet

The U.S. Court of Appeals for the Third Circuit sided with NCLA in its ruling to vacate the National Labor Relations Board's flawed decision to charge FDRLST Media, LLC with committing an "unfair labor practice" over a satirical tweet posted by former co-founder and publisher of FDRLST Media, LLC, Ben Domenech, on his personal account. The Third Circuit held that FDRLST did not violate the National Labor Relations Act. Judge Thomas Hardiman wrote the majority opinion, concluding that NLRB's "finding is not supported by substantial evidence," and that the Board's "failure to consider the tweet's context dooms its finding of a veritable threat."

Watch Case Video:
https://bit.ly/3Zs2ERH

"My thanks to the Third Circuit for this decision, which honors and defends free speech and the right to tell a joke even if a humorless Twitter troll doesn't get it. The decision and concurrence also raise key questions about the scope of the NLRA."

Ben Domenech, *FDRLST Media, LLC v. NLRB*

NCLA Holds Bureaucrats Accountable for Censoring Americans on Social Media

NCLA, the Attorney General of Missouri, and the Attorney General of Louisiana filed a lawsuit in which NCLA represents renowned epidemiologists and co-authors of the Great Barrington Declaration, Drs. Jayanta Bhattacharya and Martin Kulldorff, as well as Dr. Aaron Kheriaty and Jill Hines, all of whom were censored on social media for articulating views on those platforms in opposition to government-approved views on Covid-19 restrictions. Recent depositions of high-profile government actors, including Dr. Fauci, as well as disclosures from the "Twitter Files" have further vindicated our clients in this fight. Under the First Amendment, the federal government may not police private speech nor pick winners and losers in the marketplace of ideas. But that is precisely what the government has done—and is still doing—on a massive scale not previously divulged.

Watch Case Video:
https://bit.ly/3FdCUQO

Missouri ex rel. Schmitt v. Biden

NCLA Protects Doctors' Rights to Their Professional Opinions

NCLA represents five physicians—Drs. Hoeg, Duriseti, Kheriaty, Mazolewski, and Khatibi—who allege Assembly Bill (AB) 2098, signed into law on September 30, 2022, violates their First Amendment rights to free speech and their Fourteenth Amendment rights to due process of law.

The law not only interferes with the ability of doctors and their patients to freely communicate, but it has already been used as a weapon to intimidate and punish doctors who dissent from mainstream views. Several Plaintiffs have experienced threats from other doctors and individuals on social media to use AB 2098 to have their licenses taken away, an obvious attempt to suppress the doctors' speech.

They are being put between a rock and a hard place, fearing repercussions for acting in their patients' best interests by honestly giving them the information they believe their patients need in order to make informed care decisions. In safeguarding Americans' rights to free speech and expression, the First Amendment applies not only to the expression of majority opinions but to minority views as well.

Høeg v. Newsom

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Judicial Deference

Deference doctrines require judges to defer to an administrative agency's factfinding, or its interpretation of statutes and regulations. Thus, judges surrender their independent judgment and, where the government is a party, must exhibit systematic bias in the government's favor, which denies due process of law to the other litigant.

Michael Cargill
Cargill v. Garland

Judicial Deference

Gorsuch Dissent Condemns *Chevron* Doctrine in U.S. Veteran's Disability Benefits Case

Thomas Buffington served with distinction in the U.S. Air Force for over nine years and became disabled in the course of that service. He was denied benefits based on the U.S. Department of Veterans Affairs' arbitrary decision to create a one-year forfeiture rule with no grounding in the statutory text. NCLA filed a petition for a writ of certiorari in the U.S. Supreme Court on behalf of Mr. Buffington, seeking to overturn the Federal Circuit's disregard of the pro-veteran canon of statutory construction in determining his benefits.

Although the Supreme Court denied NCLA's petition to hear his claims, none of the Justices took issue with Justice Gorsuch's charge—in his dissenting opinion—that "those who have served in the Nation's Armed Forces deserve better from our agencies and courts alike."

The Department of Veterans Affairs denied disability benefits to Mr. Buffington based on one of its own regulations, even though that regulation is inconsistent with the statute adopted by Congress and even though the VA admits that Mr. Buffington is disabled and entitled to benefits.

Buffington v. Department of Veterans Affairs

*"At this late hour, the whole [*Chevron *deference] project deserves a tombstone no one can miss. We should acknowledge forthrightly that* Chevron *did not undo, and could not have undone, the judicial duty to provide an independent judgment of the law's meaning in the cases that come before the Nation's courts. Someday soon I hope we might."*

Justice Gorsuch, dissenting from the denial of *certiorari* in *Buffington v. Department of Veterans Affairs*

NCLA Notches Major Fifth Circuit en Banc Victory Tossing ATF's Bump Stock Ban

The full Fifth Circuit bench ruled in January 2023 that a bump stock does not fall within the definition of "machinegun" as set forth in federal law. Thus, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) lacked the statutory authority to issue the Final Rule banning bump stocks. NCLA represents gun shop owner, Army veteran, and firearms instructor Michael Cargill in *Cargill v. Garland*. This ruling not only allows our client to keep his property, but also prevents ATF's unlawful attempt to rewrite a criminal law.

The en banc court addressed which branch of government has the constitutional authority to change the criminal law if changes are warranted. NCLA argued that: (1) the Final Rule conflicts with the statutory definition of a machinegun and thus exceeds ATF's authority; (2) ATF's construction is not entitled to *Chevron* deference; (3) to the extent that the courts determine that the definition of machinegun is ambiguous with respect to bump stocks, they should apply the rule of lenity to determine that bump stocks are not machineguns; and (4) if the statute were interpreted as authorizing ATF's declaration that bump stocks are prohibited machineguns, then the statute would be an unconstitutional delegation of Congress's legislative powers.

The Fifth Circuit agreed with NCLA on every one of these points.

Watch Case Video:
https://bit.ly/3GBrWWh

Cargill v. Garland

"The ATF abused its power when it changed criminal law without authorization from Congress, turning bump stock owners into criminals overnight."

Michael Cargill, Plaintiff in *Cargill v. Garland*

Cert. Petition Addresses *Chevron* Deference Questions in ATF's Bump Stock Ban

NCLA filed a petition for a writ of certiorari in the U.S. Supreme Court in *Aposhian v. Garland*. The cert. petition asked the Justices to review a flawed ruling of the U.S. Court of Appeals for the Tenth Circuit, which invoked the *Chevron* doctrine in at least three improper ways: (1) The majority below applied *Chevron* deference even though the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and other federal defendants waived it below; (2) The court of appeals also improperly applied *Chevron* deference to interpret a criminal statute; and (3) it refused to let the rule of lenity resolve statutory ambiguity instead of *Chevron*.

Twenty states, fifteen organizations across the political spectrum, and six private citizens filed amici curiae briefs in support of NCLA's petition. On October 3, 2022, the Supreme Court denied cert. The case now returns to the trial court for a trial on the merits. We look forward to arguing in the trial court that the bump stock ban is inconsistent with the statutory definition of a "machinegun" and that the courts should not grant *Chevron* deference to the Executive Branch's interpretation of the statute.

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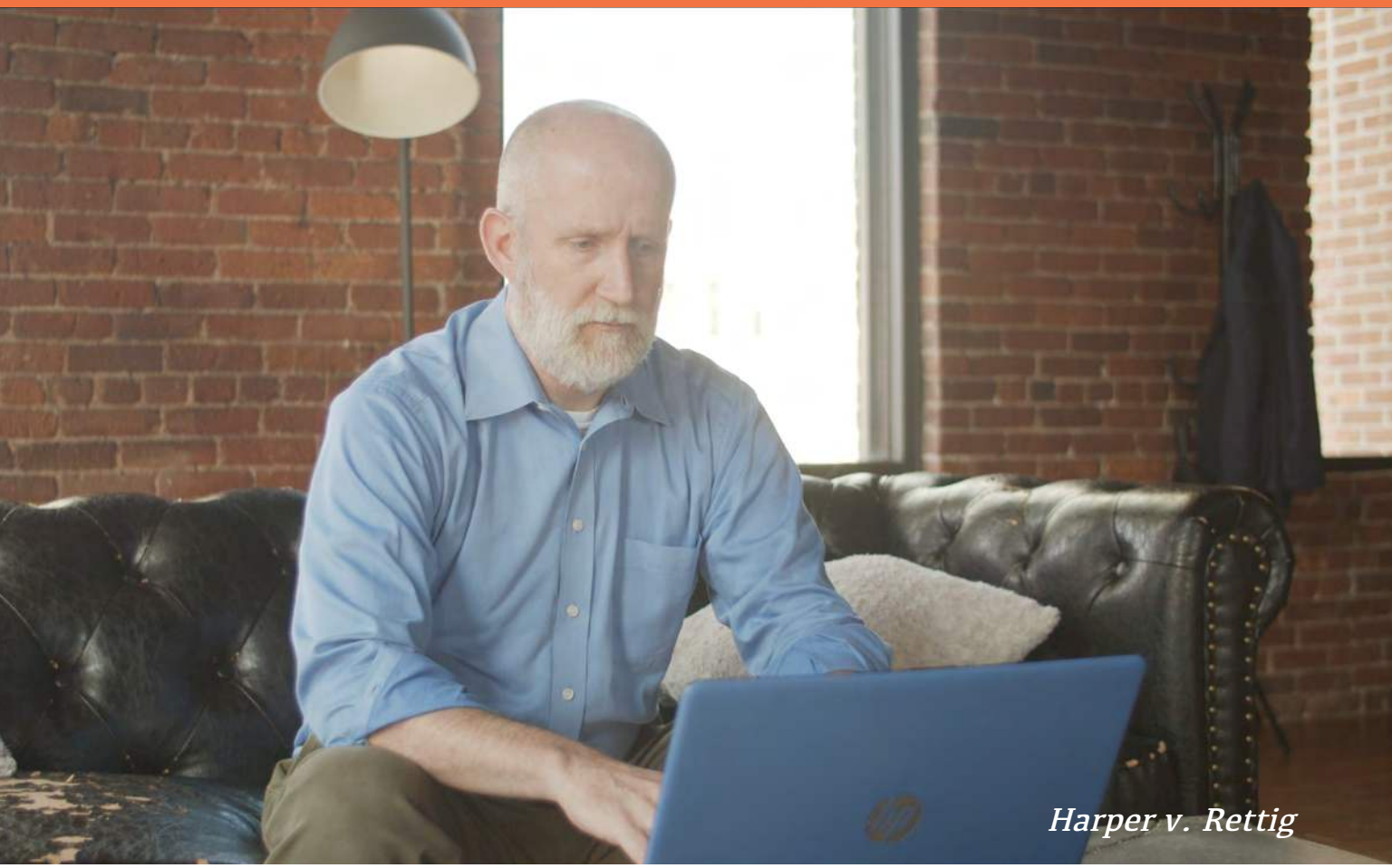
Administrative Searches

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.

James Harper
Harper v. Rettig

Administrative Searches



NCLA Beats IRS at Its Own Game

A three-judge panel of the U.S. Court of Appeals for the First Circuit unanimously ruled in August 2022 that NCLA client Mr. James Harper can indeed take the Internal Revenue Service to federal court for gathering private financial information about his use of virtual currency from third-party exchanges without a lawful subpoena. IRS has, until now, successfully prevented federal courts from asserting jurisdiction over a significant constitutional challenge to the agency's unlawful data-collection practices.

The IRS took the financial data from Mr. Harper without reasonable suspicion and without a judicial warrant. NCLA represents Mr. Harper in a lawsuit against the IRS for violation of his Fourth and Fifth Amendment constitutional rights by obtaining his private financial information from virtual currency exchanges without following statutory limitations on its power to issue subpoenas.

Watch Case Video:
https://bit.ly/3YyX6DO

24/7 Tracking Charter Boats Is Unlawful, So NCLA Is Challenging NOAA to Stop It

Mexican Gulf v. NOAA

NCLA represents a class of more than 1,300 federally permitted charter boat owners operating off the coasts of Alabama, Florida, Louisiana, Mississippi, and Texas, who are seeking relief against an unlawful and unconstitutional 24-hour GPS surveillance regime.

The U.S. government is trying to force charter boats and companies that take customers fishing and sightseeing in the Gulf of Mexico to purchase and "permanently affix" a Vessel Monitoring System that tracks, relays, and stores information for government use. Federal agencies use these devices to monitor boats' movements and whereabouts on the water, even when they are not using their permits to fish.

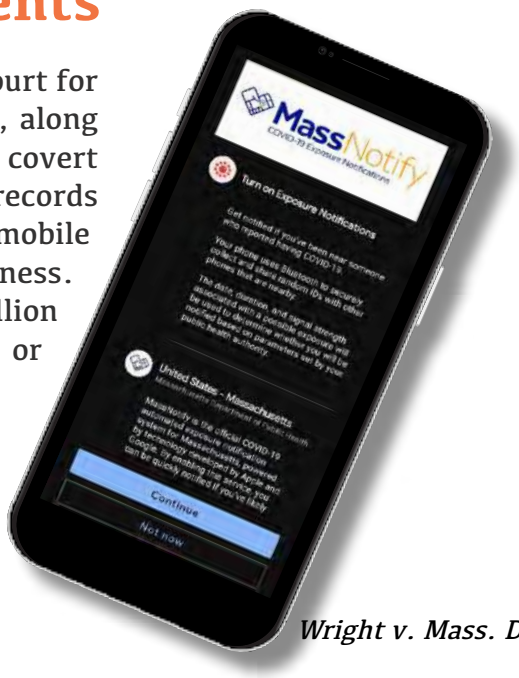
The Court of Appeals for the 5th Circuit heard argument in this case on October 5, 2022. The argument went very well for NCLA's position, so we expect a favorable result in 2023.

Watch Case Video:
https://bit.ly/3yxHndj

Class-Action Lawsuit Goes After Massachusetts for Auto-Installing Covid Spyware on 1 Million Phones of Unknowing Residents

NCLA filed a class-action lawsuit in the U.S. District Court for the District of Massachusetts seeking injunctive relief, along with nominal damages, for the class challenging DPH's covert installation of a Covid-tracing app that tracks and records the movement and personal contacts of Android mobile device users without owners' permission or awareness. The MassNotify tool tracked more than one million Commonwealth residents, without their knowledge or consent, in a misguided effort to combat Covid-19.

Plaintiffs have constitutionally protected liberty interests in not having their whereabouts and contacts surveilled, recorded, and broadcasted, and in preventing unauthorized and unconsented access to their personal smartphones by government agencies.



Wright v. Mass. DPH

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Scope of Authority

The structure of 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 avenues of governance when executive agencies issue regulations without statutory authorization from Congress.

Scott Shepard, Director of the Free Enterprise Project, National Center for Public Policy Research

NCPPR v. SEC

Scope of Authority

Supreme Court Empowers Major Questions Doctrine

In a blockbuster 6-3 decision, the U.S. Supreme Court rejected EPA's sweeping claim of regulatory authority under the Clean Air Act (CAA). The Court stated that EPA could not satisfy the Major Questions Doctrine nor "point to 'clear congressional authorization'" to devise carbon emissions limits. NCLA filed an amicus brief in *West Virginia v. Environmental Protection Agency*, supporting the Petitioner States' challenge against EPA.

EPA argued that its statutory authority should be read broadly, and that the CAA grants the agency a license to order the wholesale restructuring of the power industry in order to address climate-change concerns. But the Court held that any such major restructuring implicates the Major Questions Doctrine—under which Congress is presumed not to have authorized major regulatory activity unless it has issued a clear statement to that effect. The Court noted that the CAA includes no such clear statement.

NCLA's amicus brief argued that the essence of the American Republic is that the people are bound only by laws enacted by their representatives. The Major Questions Doctrine, a canon of statutory interpretation that secures this fundamental freedom, holds that Congress must make major national policy decisions, not administrative agencies. The Court correctly held that decarbonization of the energy industry is a major policy decision that Congress has not expressly made.

NCLA Challenges SEC Rules Asking Nasdaq Boards to Comply with Its Woke Diversity Mandates


NCPPR v. SEC

The U.S. Securities and Exchange Commission is receiving pushback over its recent approval of Nasdaq's Board Diversity Rules, which require all companies listed on the exchange to not only publicly disclose board diversity statistics but also explain failures to meet new diversity requirements. NCLA filed an opening brief in the U.S. Court of Appeals for the Fifth Circuit on behalf of the National Center for Public Policy Research. NCLA's client, which owns shares in many Nasdaq companies, argues that SEC has no power to regulate in this field because the rules have nothing to do with fraud or honest markets.

The diversity rules fall outside of SEC's regulatory authority under the 1934 Securities Exchange Act, which empowered SEC to regulate securities to ensure honest markets and enforce federal laws that punish fraud. These longstanding laws are being misinterpreted today by SEC to allow the agency, working with Nasdaq, to impose a "meet quota, explain why, or get delisted" regime.

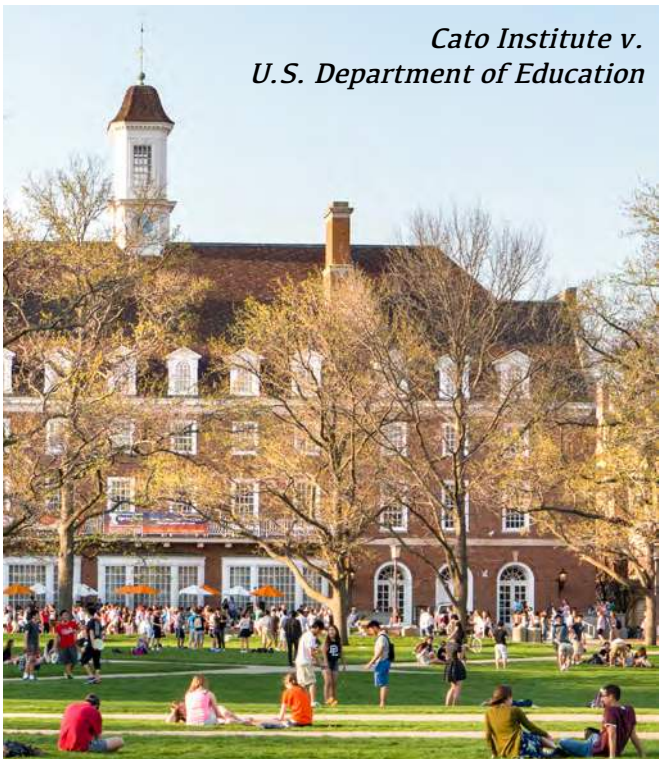
Watch Case Video:
https://bit.ly/3ZC7dsz

Biden's Loan Cancellation Program Undermines Nonprofits

NCLA and the Cato Institute are urging the U.S. District Court for the District of Kansas to stop the Biden Administration's student-loan-debt-cancellation plan.

We argue the unilateral plan issued by the U.S. Department of Education to cancel student loan debt is supported by no legitimate claim of statutory authority and effectively strips away a significant competitive advantage to recruit and retain talented borrower-employees from nonprofits, thereby frustrating the primary purpose of the pre-existing Public Service Loan Forgiveness program.

The Department of Education has no authority to cancel some half a trillion dollars owed to the U.S. Treasury. Such cancellation entails an appropriation, which the Constitution makes clear only Congress may authorize.


Cato Institute v. U.S. Department of Education

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Conditions on Spending

Administrative agencies use unconstitutional conditions on spending to regulate the conduct of grantees. Rather than rule through law, the government simply purchases submission.

Conditions on Spending

NCLA Amicus Briefs Challenge Unconstitutional Federal Control over State Taxes

The "Tax Cut Ban" provision of the American Rescue Plan Act of 2021 (ARPA) encroaches in an unprecedented way on a core power exclusively assigned to the states—the power to change or reduce a state's taxation of its own citizens. Congress has imposed this novel condition on spending through ambiguous legislation and an unconstitutional delegation to the U.S. Department of Treasury, which in turn published a Final Rule that only makes the constitutional violations worse. NCLA filed amicus briefs in four separate lawsuits to support 19 petitioner states against the unprecedented attempt by Congress to usurp state taxing authority.

NCLA Filed Amicus Briefs in Four Separate Lawsuits to Support 19 Petitioner States Against the Unprecedented Attempt by Congress to Usurp State Taxing Authority

ARPA authorizes distributing roughly $195 billion directly to states, but bars states from enacting tax cuts or using those funds to "directly or indirectly offset a reduction in [their] net tax revenue." Because money is fungible, enacting any tax cut and then spending ARPA funds could be construed as an impermissible indirect offset. This vague condition upends the Constitution's structure by prohibiting states that accept ARPA funds from reducing their own taxes. The federal government cannot rely on unclear language to purchase the submission (or consent) of any lesser body, in this case, the sovereign states. State taxation must remain firmly and exclusively in the hands of locally elected legislatures. NCLA argues that it is both unconstitutional and dangerous to centralize control over state taxes in the hands of federal officials.

Federal courts across the country have enjoined the Secretary of the Treasury from enforcing the "Tax Cut Ban" against the petitioner states. Most recently, in November 2022, the U.S. Court of Appeals for the Sixth Circuit affirmed a lower court decision prohibiting the federal government from usurping the taxing power of Tennessee.

Judge John K. Bush, delivering the opinion of the court, found that the Tax Cut Ban "is impermissibly vague under the Spending Clause." NCLA contends that the Tax Cut Ban not only unconstitutionally uses vague language to commandeer state tax policy, but Treasury's Final Rule compounds this violation by forcing state officials to establish an unwanted and convoluted accounting-and-reporting bureaucracy. Judge Bush wrote that the three-judge panel was particularly concerned with these related compliance costs, specifically the additional labor and other expenses that Tennessee would incur to ensure that its recent and proposed tax cuts do not violate the Tax Cut Ban. Judge Bush concluded that "Treasury cannot use its Rule to impose compliance requirements upon Tennessee that are not clearly authorized by the [Tax Cut Ban] itself."

ARPA's enforcement provisions, along with the broad and ambiguous scope of the Tax Cut Ban, effectively freeze state tax law and policy for over three years, against the will of the state legislatures. This Ban takes away Americans' rights to govern themselves under the clause of the Constitution that guarantees the states a Republican form of state government. Congress instead has arrogated to itself the power to determine a national taxation response. Congress can't do that, so the Tax Cut Ban cannot stand.

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Guidance Abuse

Agency guidance is easier to promulgate than formal rules and regulations, so agencies prefer to issue it. Such "guidance" supplies relatively informal indications of how an agency interprets rules and statutes. Although guidance is not permitted to bind Americans (unlike laws made by elected legislators), agencies treat guidance as binding and courts often fail to stop them.

Bill Bullard, CEO,
Ranchers-Cattlemen Action Legal Fund
United Stockgrowers of America
R-CALF USA v. USDA

Guidance Abuse

CDC Forced to Validate NCLA's Position on Natural Immunity

Robert Fellner, a student at GMU's Antonin Scalia Law School

NCLA filed its first lawsuit challenging vaccine mandates in August 2021 on behalf of George Mason University law professor Todd Zywicki. A year later, the Centers for Disease Control and Prevention (CDC) finally followed the science and acknowledged the scientific fact that NCLA defended all along—it makes no sense to treat people who are naturally immune to Covid-19 differently from those who have been vaccinated against the virus.

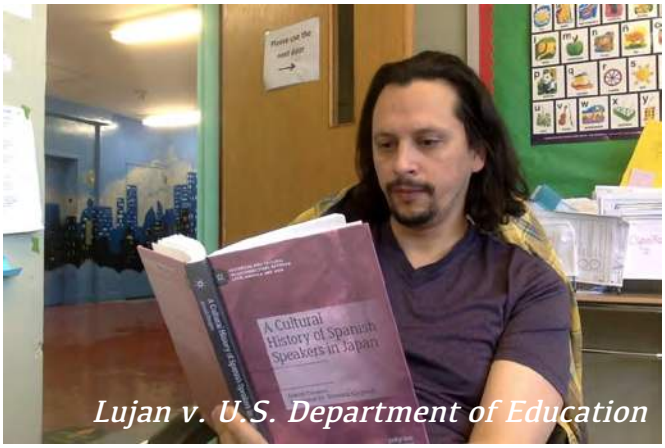
CDC eased its Covid-19 guidance on August 19, 2022, stating that "Covid-19 prevention recommendations no longer differentiate based on a person's vaccination status." Despite being comprised of unelected bureaucrats and lacking rule-making power from Congress, CDC has issued edicts during the entirety of the pandemic that have disrupted American life. Governments and employers alike have followed this "guidance" uncritically—which was hard to challenge in court since it was not final agency action—treating it as though it carries the force of law. CDC chose to ignore or discount the voluminous proof, available for well over a year, that naturally acquired immunity was as or more protective than that achieved through vaccination. The agency chose to promote politically-motivated, flawed studies that reached unwarranted conclusions.

NCLA has advocated for recognition of natural immunity in numerous lawsuits, demand letters on behalf of students, op-eds, and on radio and television since 2021. We have sued over government-mandated vaccines or quarantine policies based on CDC's flawed guidance—*Norris v. Michigan State University*, *Rodden v. Fauci*, *Skoly v. McKee*, *Vanderstelt v. Biden*, *Zywicki v. George Mason University*, and *McArthur v. Brabrand*. In each lawsuit, Plaintiffs argued that given their demonstrated natural immunity, the government cannot claim a compelling interest in overriding their long-recognized constitutional rights to bodily autonomy and to decline medical treatment by forcing them to be vaccinated or punishing them for refusing.

NCLA Calls out Department of Education for Discriminating Against Fulbright-Hays Applicants' Nation of Origin

Kuwaiti-born Samar Ahmad can breathe a sigh of relief after learning that her national origin will not be used against her in the application process for a Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship. NCLA's lawsuit, *Edgar Ulloa Lujan, Samar Ahmad, and Veronica Gonzalez v. U.S. Department of Education, et al.*, challenges the U.S. Department of Education's 1998 rule and its decision to reject Ms. Ahmad's 2021 application on the basis of her Arabic-speaking heritage. The Department of Education has agreed not to apply the rule to her and other similarly situated applicants in 2022.

Ms. Ahmad and all other "heritage" speakers of foreign languages in the 2022 application cycle were eligible for up to the full points on the criterion that evaluates an applicant's language proficiency. While NCLA and Ms. Ahmad are gratified by the Department's agreement not to penalize "heritage" speakers for the ongoing application cycle, the Department has not yet agreed to permanently revise the regulation that imposes the native-language penalty. NCLA will continue pursuing this lawsuit so no applicant will face discrimination based on his or her national origin.



Lujan v. U.S. Department of Education

NCLA Files Amicus Briefs Challenging Biden's Vaccine Mandates

Last year, the Occupational Safety and Health Administration (OSHA) at the U.S. Department of Labor withdrew the mandate requiring employers with 100 or more employees to either implement a Covid-19 vaccination policy or force employees to present a weekly negative Covid-19 test. The withdrawal of the Biden Administration's Emergency Temporary Standard (ETS) came after the Supreme Court ruled in a January 2022 6-3 decision that the ETS was unprecedently broad, invasive, and extended beyond OSHA's legitimate statutory authority.

NCLA filed amicus briefs at earlier stages of the OSHA litigation arguing that an executive agency unconstitutionally exercises legislative power when it issues regulations like the ETS to resolve "major questions" of economic and political significance. Congress must act in such cases, and courts must not lightly read such power into general provisions. Even if Congress had sought to specifically delegate such authority to OSHA, which it did not, Congress still may not divest its legislative power to OSHA.

2022
NCLA'S MOST IMPACTFUL YEAR


COMMUNICATIONS


WOMEN'S SPORTS
FREE SPEECH
STOP THE
WEAPONIZATION
OF TITLE IX
STOP THE
TITLE IX
TAKE-OVER
US DUE PROCESS
ENGAGEMENT


DEVELOPMENT

Increasing Our Bandwidth

In 2022 NCLA achieved a greater level of influence in the media surpassing previous years in mentions, interviews and audience reach across multiple media platforms, including syndicated podcasts.

12K+
Online Mentions

2000+
Radio Mentions

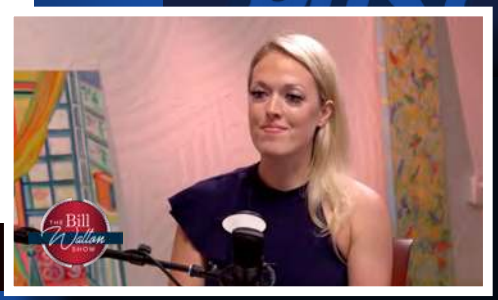
200+
TV Mentions

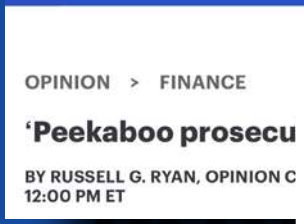
130+
Podcast Mentions

Photo: NCLA President Mark Chenoweth preps for an interview with TBN in their studio van

NCLA Is the Go-to Resource

Our legal experts are sought after to offer analysis on the most complex current affairs issues about administrative power.





NCLA's Administrative Static podcast grows organic reach

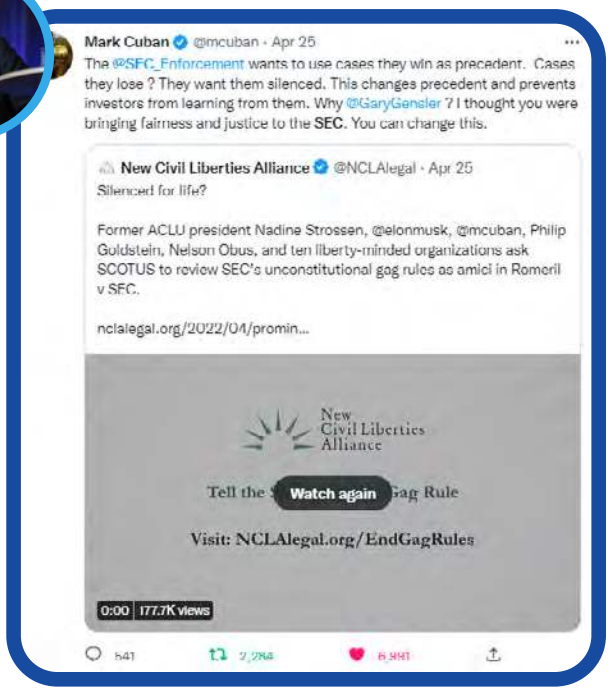
200+ Episodes | 24K+ Downloads

Making an Impression

Randy Barnett

NCLA was retweeted by influencers like Mark Cuban, Ilya Shapiro, and Randy Barnett who helped spread our message to thousands across multiple platforms.

Mark Cuban



Ilya Shapiro

38K Followers

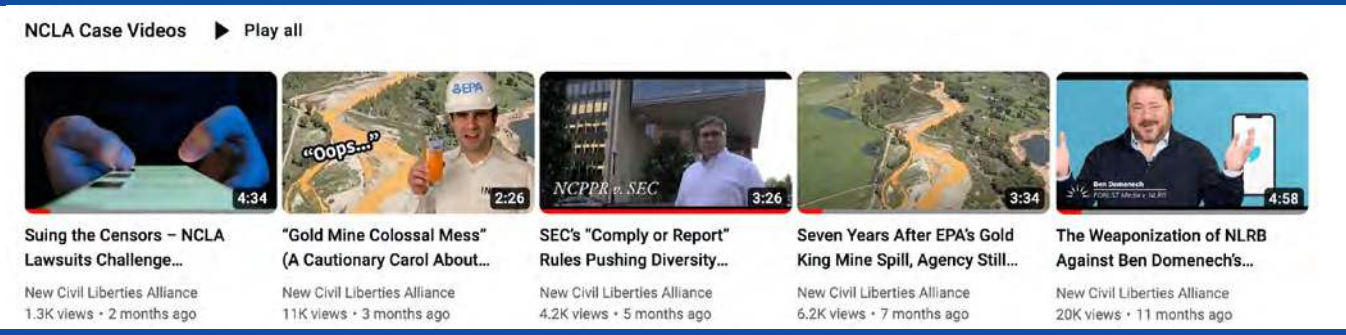
200K Engagements

3.4M Impressions

Our following, engagements, and impressions on social media took off in 2022 as interest in our cases and our mission continued to garner interest and provide fodder for conversation—specifically our cases against the Biden Administration for its role in collaborating with Big Tech to censor Americans on social media.

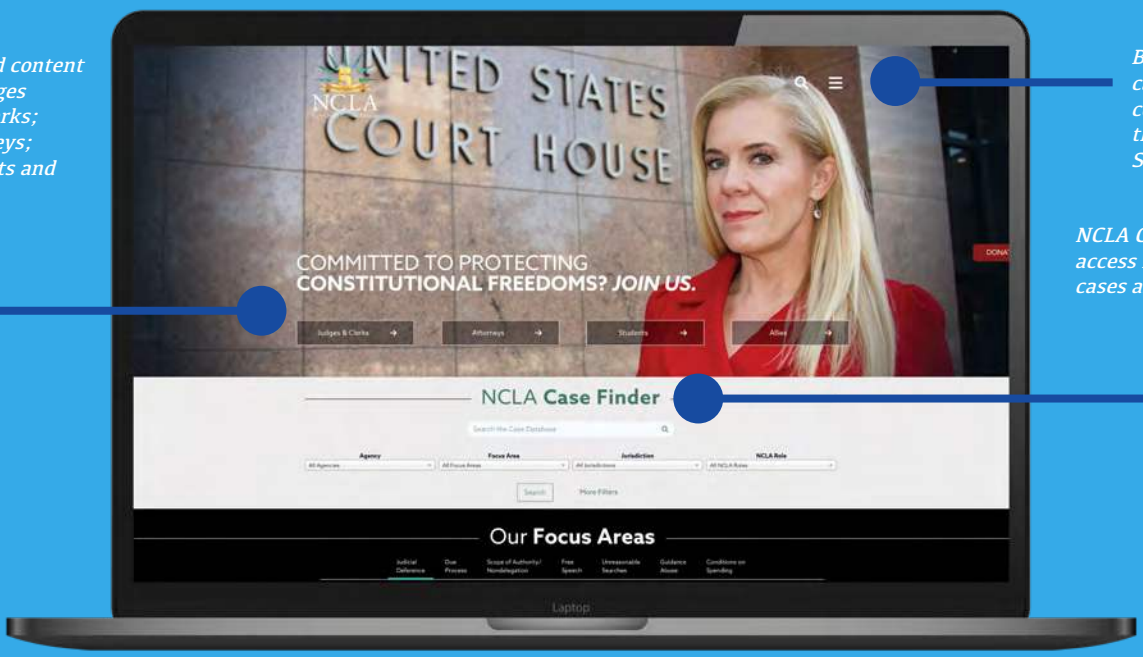
Telling Their Stories

The injustice that our clients face at the hands of the Administrative State is sometimes so gut-wrenching you must see it to believe it. NCLA curates case videos that capture the bravery of our clients who take on government agencies. Collectively, the videos received over 65K views in 2022.



New Website, Same Mission

Curated content for Judges and Clerks; Attorneys; Students and Allies.



Brief Bank of cases across the country fighting the Administrative State.

NCLA Case Finder to access NCLA's legal cases and more!

More than 680K people visited **nclalegal.org** in 2022 to learn more about administrative abuse of power from government agencies. In 2023 NCLA will launch our new interactive website!

Bringing Together Law Students from Across the Judicial Spectrum

Ginsburg-Scalia Fellowship

In summer 2022 NCLA instituted the prestigious Ginsburg-Scalia Fellowship to foster a culture of civility and open debate. The Fellowship honors the justices' legendary friendship as a beacon of collegiality in a world increasingly clouded by partisan rancor. The Fellowship convened 18 top law students from both sides of the political aisle for a nine-week program exploring the Administrative State's denial of our core constitutional rights such as freedom of expression, freedom of association, religious liberty, due process, jury trial, and freedom from unreasonable search.

Photo: Class of 2022 Ginsburg-Scalia Fellows with Judge Neomi Rao of the U.S. Court of Appeals for the District of Columbia Circuit

Oh, the Places They'll Go!

Summer Clerkship Program

NCLA hosted more law students for its intensive 10-week Summer Clerkship Program than ever before. Fifteen students from top law schools like Chicago, UVA, Northwestern, Columbia, Stanford, Cornell, and others comprised this year's cohort including an unprecedented number of fellows from prestigious programs such as The Bradley Summer Associate Legal Fellowship, The Fund for American Studies Fellowship, and Alliance Defending Freedom's Blackstone Fellowship. Our clerks have gone on to serve in courtrooms across the country, in government, and at top-notch law firms.

Helping Attorneys Meet CLE Goals

Continuing Legal Education

NCLA launched our Continuing Legal Education (CLE) program. Taken for full credit and free of charge, our courses focus on administrative law issues taught by subject matter experts.

Photo: Hon. James Danly (Federal Energy Regulatory Commission); Hon. Nancy Nord (Consumer Product Safety Commission); Hon. Ajit Pai (Federal Communications Commission)

Photo: NCLA President Mark Chenoweth presents Student Note Contest award to Avi Weiss at NCLA's 5th Anniversary Gala in Washington, DC

Prized Scholarship

Student Note Contest

The NCLA Student Note Contest is designed to encourage scholarship on key administrative topics. Avi Weiss, a student at Columbia Law School was the winner of this year's $5,000 scholarship for his stimulating note on the misuse of emergency powers by governors during the pandemic.

NCLA Challenges Title IX Kangaroo Courts on College Campuses

NCLA organized grassroots protest-style events at two universities to bring awareness to our cases against kangaroo courts at Cornell University in Ithaca, NY and James Madison University in Harrisonburg, VA. NCLA staff were on campus during move-in day talking to students and parents about the due process violations in Title IX adjudications at publicly funded colleges across the country while a digital truck ran our ads prompting people to learn more.

Lawyers Who Lunch

Photo: NCLA Senior Litigation Counsel Harriet Hageman sits down with former Secretary of the Interior David Bernhardt

Lunch and Law Speaker Series

NCLA's Lunch and Law Speaker Series entered its fifth year in 2022, bringing together a dynamic mix of legal experts and clients to address the abuses of the Administrative State and the issues and cases arising out of its threat to our civil liberties. Lunch and Law is hosted at NCLA headquarters and is live-streamed on Facebook.

Photo: NCLA President and General Counsel Mark Chenoweth with Ilya Shapiro, Director of Constitutional Studies at the Manhattan Institute

Wine and Cheesed

NCLA's Wine & Cheesed speaker series entered its second year in 2022 with formidable guests who were deplatformed, disciplined and even terminated for expressing the wrong opinion. NCLA President Mark Chenoweth moderated the discussion with prestigious speakers including: Joshua Katz, formerly of Princeton University; Ilya Shapiro formerly of Georgetown University; and Dr. Jay Bhattacharya of Stanford University.

The Good, the Bad, and the "Georgies"

The King George III Prize chastises the most egregious civil rights abusers, while the NCLA George Washington Award honors those who fight the Administrative State. NCLA announced the winners at our Fifth Anniversary Gala, hosted at the Hay-Adams.

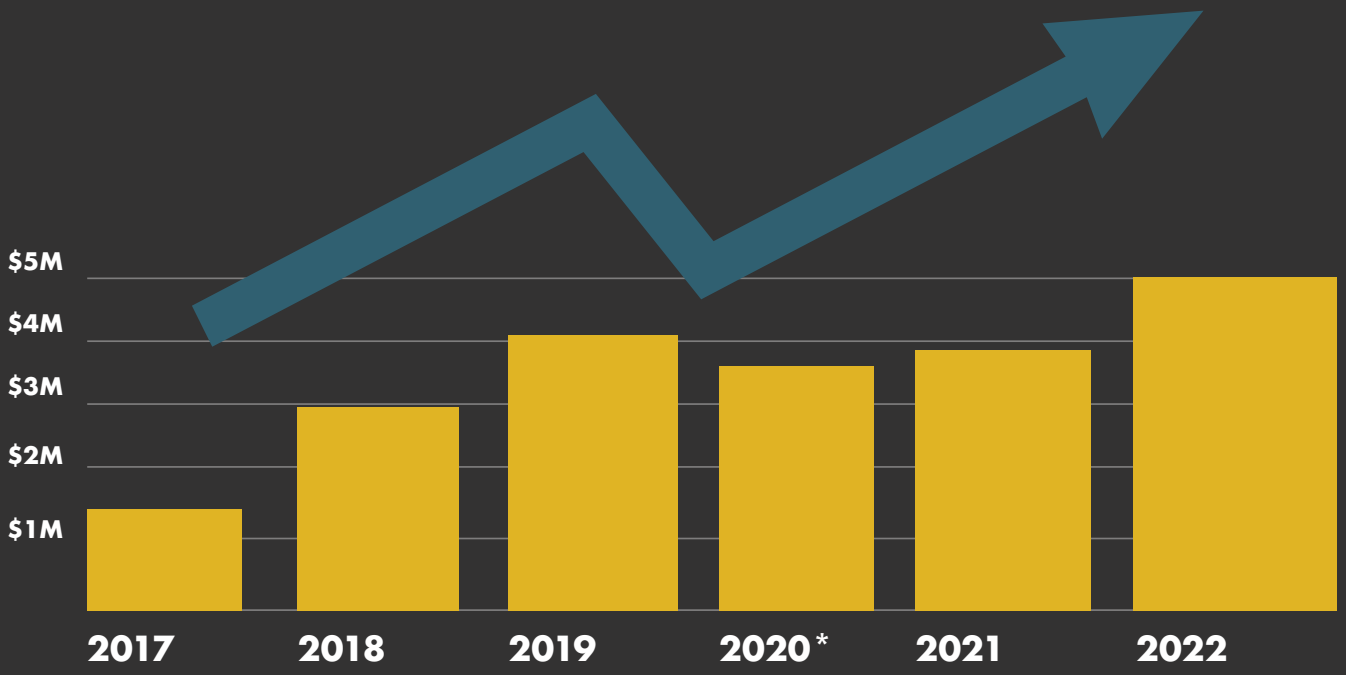
Anthony Fauci "won" last year's King George III Prize, after having received thousands of votes on NCLA's website and social media accounts. The George Washington awards were presented to our first client Ray Lucia, Sr.; Latham & Watkins LLP and Cooper & Kirk PLLC for outstanding pro bono service; Allyson N. Ho and her team at Gibson, Dunn & Crutcher LLP for best amicus curiae brief. Karen Cook and Michael McColloch won the Cincinnatus Award for their selfless service as outside counsel.

Administrative State Satire

We collaborated with internet sensation **Remy** to parody EPA's deliberate role in the Gold King Mine spill with a holiday video.

Political cartoonist **Tom Stiglich** curated a series of satirical cartoons to bolster key arguments of NCLA's lawsuits.

>300% INCREASE IN CONTRIBUTIONS OVER FIVE YEARS



** NCLA did not accept any PPP funds for Covid-19 relief*

"NCLA wrapped up a banner year in 2022, racking up more than 20 victories against the Administrative State at various stages of litigation, and our press visibility skyrocketed as a result! NCLA also earned our first trip to the U.S. Supreme Court last year and advanced civil liberties all around the country with original litigation wins at the U.S. Courts of Appeals for the First, Second, Third and Fifth Circuits. These impressive results, which validate NCLA's ability to select cases that matter and litigate them successfully, are attracting new supporters like never before."

Holly Pitt Young
Director of Development

Where does our support come from?

41%
Giving by individuals

59%
Giving by foundations

And where does it go?

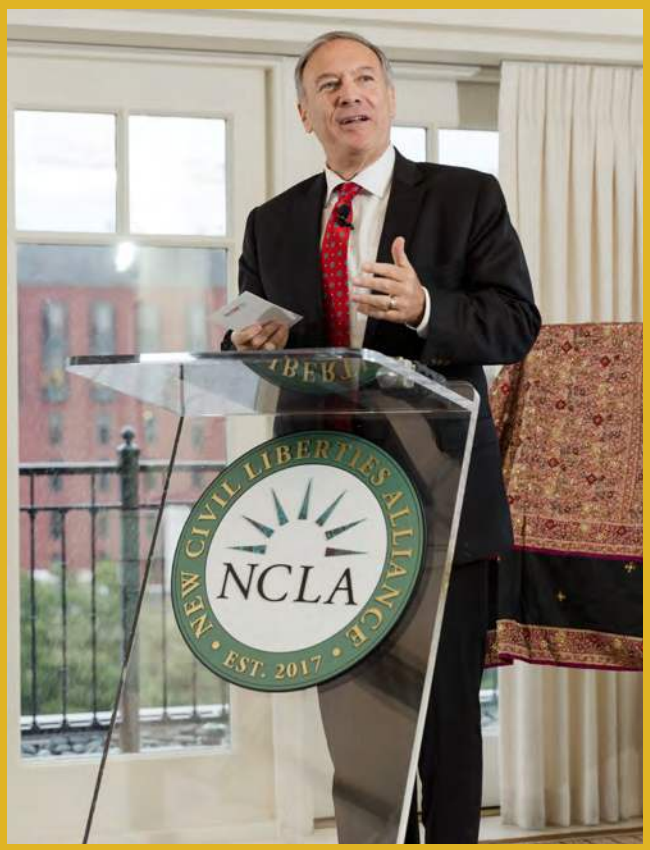
92%
goes toward legal representation, communications, and field operations

8%
goes toward administration and development

NCLA's 5th Anniversary Gala

Forging a United Front Against the Administrative State

What began as an "idealistic and odd idea" according to NCLA founder Philip Hamburger has turned into a litigation powerhouse against the Administrative State. We celebrated our 5th Anniversary Gala in Washington, DC on June 7, 2022, featuring 70th Secretary of State Mike Pompeo. The event showcased all that has been accomplished in just a few short years and affirmed the importance of our mission and our supporters who make it all happen.


NEW CIVIL LIBERTIES ALLIANCE
NCLA
EST. 2017


THE KING GEORGE III PRIZE

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