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NCLA Suit Aims to Take Down Unconstitutional Enforcement Regime at the U.S. Dep’t of Transportation

gh Package Product Testing and Consulting, Inc. v. U.S. Department of Transportation, et al.

Washington, DC (June 28, 2023) – The Department of Transportation (DOT) is flexing its muscles against a small, family-owned and operated company, ignoring the federal law that only allows civil penalties when a company “knowingly violates” a regulation. So, the New Civil Liberties Alliance has filed a [Complaint](#) in the U.S. District Court for the Southern District of Ohio, challenging the legitimacy of DOT’s adjudicatory structure and the abusive enforcement effort that could end up unjustly costing the company \$24,000 in civil penalties.

DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA) launched an administrative enforcement proceeding in November against NCLA’s client, gh Package Product Testing and Consulting, Inc., which tests packages used to safely transport hazardous materials. PHMSA claims the company submitted test reports with minor inaccuracies that violate DOT regulations. PHMSA did not claim the company knew or should have known about the alleged inaccuracies, despite civil penalties only applying to “knowing” violations.

NCLA’s lawsuit exposes the fact that DOT’s in-house administrative adjudicators are illegitimate under the Constitution’s Article II, as they are civil servants not appointed by the President or DOT Secretary and shielded from presidential removal. Agency officials act as both judges and prosecutors in these tribunals and do not disclose evidence that would exonerate defendants, despite long-standing Supreme Court precedent mandating that the government disclose exculpatory evidence in criminal cases. DOT’s in-house proceedings also lack jury trials on questions of fact, running afoul of the Seventh Amendment right to a jury trial for civil cases.

Since its founding in 2017, NCLA has built a strong track record fighting unconstitutional adjudication regimes within the Administrative State, at the U.S. Securities and Exchange Commission, Consumer Financial Protection Bureau, and DOT. In January, the U.S. Court of Appeals for the Sixth Circuit [vacated](#) a PHMSA-imposed civil penalty against another NCLA client, [Polyweave Packaging, Inc.](#), which the agency had also pursued without proving the company knowingly violated a regulation. PHMSA ultimately [dismissed](#) its case against Polyweave in May, a decision that does not erase the harm caused by the agency’s profound disregard for the Constitution.

NCLA released the following statements:

“The Department of Transportation has a long history of dragging small businesses before its own in-house tribunals, where democratically unaccountable agency officials act as prosecutor, judge, and jury. Even though the underlying allegations are meritless, the businesses are bullied into paying fines because they cannot afford years of futile litigation in these hopelessly biased tribunals. It’s high time for federal courts to put an end to DOT’s unconstitutional adjudication scheme.”

— **Sheng Li, Litigation Counsel, NCLA**

“Every day it becomes increasingly apparent just how deeply problematic federal agency adjudication systems and practices are. The Department of Transportation is no exception. Its adjudicatory apparatus has deprived our

client of constitutionally guaranteed rights, including the right to a trial by jury, the opportunity to be heard by an unbiased adjudicator, and the right to due process of law under the Fifth Amendment. We look forward to having a federal court scrutinize DOT's multiple violations of our client's civil liberties."

— **Kara Rollins, 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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