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NCLA Appeals EPA’s Lawless Stranglehold on Refrigeration Companies Amid Dangerous Heat Wave

RMS of Georgia, LLC d/b/a Choice Refrigerants v. Environmental Protection Agency, et al.

Washington, DC (August 4, 2023) – The Environmental Protection Agency is picking and choosing which companies are allowed to produce and sell hydrofluorocarbons (HFCs)—refrigeration chemicals commonly used in air conditioners and refrigerators—by using power that Congress unconstitutionally handed the agency.

The New Civil Liberties Alliance has [petitioned](#) the U.S. Court of Appeals for the D.C. Circuit for an *en banc* hearing in *RMS of Georgia d/b/a Choice Refrigerants v. EPA*. NCLA urges the Court to address the unlawful delegation by Congress on the merits, rather than interposing exhaustion of the issue before the EPA—which is in no position to address it anyway—and to put an end to this unconstitutional arrangement. The timing of this petition is particularly appropriate, as dangerous levels of heat are prevailing in parts of the country.

Congress passed the American Innovation and Manufacturing (AIM) Act of 2020 to phase down HFC production, assigning EPA the power to distribute a limited number of allowances for companies to import or manufacture these critical products. But lawmakers did not give EPA guidance as to who should receive the allowances, violating basic Constitutional protections barring Congress from abdicating legislative authority to agencies.

Instead of allocating allowances properly attributable to NCLA’s client, Choice Refrigerants, an American small business that created and patented a popular HFC blend, EPA oddly granted allowances to Choice’s import agent and to a Chinese-owned company that infringed Choice’s patent. EPA has also relied on Executive Orders to set aside some allowances for new market entrants rather than existing companies like Choice, saying priority for these rights would in part be given based on race and gender.

NCLA is asking the *en banc* D.C. Circuit Court to prevent Congress from delegating legislative power to EPA via the AIM Act. Article I, § 1 of the Constitution vests such power in Congress, which may not divest it to EPA.

NCLA released the following statements:

“The Administrative State has turned our government of limited powers into a paternalistic juggernaut. As a result, administrative agencies such as the EPA are snuffing out businesses like Choice Refrigerants in the interest of whatever alleged ‘public good’ they can conjure. NCLA exists to pare back the Administrative State, return legislative power to Congress, and restore civil liberties to the people of the United States.”

— **Zhonette Brown, Senior Litigation Counsel, NCLA**

“A statute that gives an agency a blank slate to write its own rules is really no statute at all but an abdication of Congress’s legislative power. The EPA cannot be left to its own devices to distribute allowances based on no criteria other than who the EPA deems worthy. NCLA is stepping in to protect small businesses like Choice Refrigerants from being run over by senseless, unconstitutional agency action.”

— **Kaitlyn Schiraldi, Staff Attorney, 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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