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NCLA Asks Federal Court to Halt Illegitimate U.S. Dep’t of Transportation Administrative Proceeding

gh Package Product Testing and Consulting, Inc. v. Peter M. Buttigieg, et al.

Washington, DC (August 28, 2023) – Today, the New Civil Liberties Alliance [asked](#) the U.S. District Court for the Southern District of Ohio in *gh Package Product Testing and Consulting, Inc. v. Buttigieg* to preliminarily enjoin an abusive Department of Transportation (DOT) enforcement effort against a family-run company.

DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA) launched an administrative enforcement proceeding last November against NCLA’s client, gh Package Product Testing and Consulting, Inc. (“gh Testing”), which tests packages used to safely transport hazardous materials. PHMSA claims the company submitted test reports with minor inaccuracies that violate DOT regulations.

DOT has hauled gh Testing into its in-house tribunals, where agency officials violate the due process of law by acting as both prosecutor and adjudicator. DOT’s in-house administrative adjudicators are further illegitimate under Article II of the Constitution because they are not appointed by the President or DOT Secretary and are improperly shielded from presidential removal. Such tribunals cannot exercise judicial power to adjudicate DOT’s claims because Article III of the Constitution vests such power exclusively in federal courts. Finally, DOT’s in-house proceedings run afoul of the Seventh Amendment by depriving gh Testing of its right to a jury trial.

NCLA has established a strong track record fighting unconstitutional adjudication regimes within the Administrative State, including at 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.](#), after the agency admitted its chief adjudicator was not constitutionally appointed. PHMSA ultimately [dismissed](#) its case against Polyweave in May. That decision did not erase the harm caused by the agency’s profound disregard for the Constitution, a pattern that currently threatens gh Testing.

NCLA released the following statement:

“Suppose you are accused of breaking a law and are prosecuted. But instead of a judge and jury, the chief of police presides over your trial and decides your fate. Americans would rightly recognize such an affair to be profoundly unjust and an affront to the Constitution. Yet, DOT and other administrative agencies routinely act as prosecutor, judge, and jury against Americans whom they accuse of breaking the law. That must stop now.”

—**Sheng Li, 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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