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NCLA Suit Challenges AIM Act for Unlawfully Delegating Power over Refrigeration Companies to EPA

RMS of Georgia, LLC d/b/a Choice Refrigerants v. EPA, Administrator Michael Regan, in his official capacity

Washington, DC (October 5, 2023) – The Environmental Protection Agency picks and chooses which companies may produce and sell hydrofluorocarbons (HFCs)—refrigeration compounds used in air conditioners and refrigerators—by wielding power Congress unconstitutionally handed the agency. The New Civil Liberties Alliance has co-filed a [complaint](#) in *RMS of Georgia d/b/a Choice Refrigerants v. EPA*, asking the U.S. District Court for the Northern District of Georgia to stop EPA’s use of such unbounded legislative authority.

Congress passed the American Innovation and Manufacturing (AIM) Act of 2020 to phase down HFC production, empowering EPA to distribute a limited and ever-shrinking number of allowances for companies to manufacture or import these critical products. The AIM Act gives EPA essentially no guidance as to who should receive the allowances, violating Constitutional restrictions on Congress’s abdicating legislative authority to agencies.

Instead of properly granting NCLA’s client, Choice Refrigerants, the allowances attributable to its patent-protected products, EPA oddly allocated some of those allowances to Choice’s former business partner and to a Chinese-owned company that infringed Choice’s patent and engaged in illegal dumping into the United States market. 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 the race and gender of company owners. Between these actions, EPA granted Choice far fewer allowances than were needed for Choice to maintain the market share it had worked for decades to create.

Partnering with Southeastern Legal Foundation, as co-counsel for Choice Refrigerants, NCLA urges the U.S. District Court for the Northern District of Georgia to recognize that Congress has no right to delegate unbridled legislative power to EPA through the AIM Act. Article I, § 1 of the Constitution vests such power solely in Congress, which may not divest it to EPA, or any other executive branch agency.

NCLA released the following statement:

“Choice’s challenge to the AIM Act stands on a principle that was intuitive and fundamental to this nation’s founders: only Congress, and only via legislation, can bind the people’s liberty and property. Here, Congress was derelict in its duty to make policy decisions that EPA would then implement. Instead, Congress left it to EPA to pick who could produce or import refrigerants, why such selection was appropriate, and what market share each company would get. When Congress gives such unbounded discretion to an agency, it violates the Constitution.”
— **Zhonette Brown, Senior 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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