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In NCLA Victory, Dep't of Transportation Scraps Illegitimate Administrative Proceeding vs. gh Package

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

Washington, DC (December 19, 2023) – Today, the New Civil Liberties Alliance agreed to a [stipulated dismissal](#) of its *gh Package v. Buttigieg* lawsuit challenging the Department of Transportation's unconstitutional and abusive administrative enforcement regime. NCLA's federal-court lawsuit successfully pressured DOT to dismiss with prejudice its case against a family-run company, gh Package Product Testing and Consulting, Inc., which tests packages used to transport hazardous chemicals safely. The stipulated dismissal follows DOT's dismissal of its administrative proceeding against gh Package with prejudice. NCLA celebrates this great victory for its client.

DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) launched the enforcement proceeding against gh last year, claiming the company submitted test reports with minor inaccuracies that violated DOT regulations. DOT hauled gh into its in-house tribunal, where agency officials violate the due process of law by acting as both prosecutor and adjudicator and by depriving defendants of jury trials. DOT's in-house adjudicators are illegitimate under Article II of the Constitution because neither the President nor the Secretary of Transportation appoints them and they enjoy improper protection from presidential removal. Rather than defend against these constitutional defects on the merits in a real federal court, DOT decided to dismiss its enforcement proceeding.

As a result of NCLA's recent Supreme Court victory in [Michelle Cochran's fight](#) against the Securities and Exchange Commission, gh was able to challenge DOT's unlawful tribunal directly in district court before having to endure the entire administrative proceeding. NCLA requested a preliminary injunction in August to stop the unconstitutional proceeding against gh. Just days before PHMSA was to file its final brief opposing that injunction, it withdrew its notice accusing gh of probable wrongdoing, thus ending the unlawful proceeding as NCLA requested. The Administrative Law Judge who oversaw the enforcement proceeding ultimately dismissed it, declaring that "[b]y its decision to take no further action on the allegations," PHMSA had "in effect failed to meet its burden" to prove its accusations. NCLA is pleased to have vindicated its client in this successful case against DOT's unlawful enforcement regime, and we hope that defendants in similar proceedings will take note.

NCLA released the following statements:

"For decades, DOT has dragged small businesses through administrative proceedings that violate basic constitutional rights such as due process and the right to a jury trial. Thanks to NCLA's *Cochran* victory, family-owned businesses like gh can now fight back by challenging those illegitimate proceedings in federal court. Rather than attempt to defend its unlawful practices, DOT dropped the charges against gh. This is a winning formula that NCLA hopes other small businesses will emulate when they are subject to DOT's unlawful enforcement actions."
— **Sheng Li, Litigation Counsel, NCLA**

"DOT put the 'gh' in Grinch when it brought this enforcement action against our client in its unlawful in-house tribunal. Happily, NCLA's good work kept the Grinch from stealing gh Package's civil liberties this Christmas."

— Mark Chenoweth, President and General 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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