NEWS RELEASE

U.S. Supreme Court Decision Cites NCLA's Amicus Brief in Preserving Access to Federal Courts

2025-06-20

Food and Drug Administration; et al. v. R.J. Reynolds Vapor Company; RJR Vapor Company L.L.C.; Avail Vapor Texas, L.L.C.; and Mississippi Petroleum Marketers and Convenience Stores Association

Washington, DC, June 20, 2025 (GLOBE NEWSWIRE) -- Today, the U.S. Supreme Court **ruled** in FDA v. R.J. Reynolds Vapor Co. that anyone adversely affected by an FDA order can challenge the agency in court, referencing the New Civil Liberties Alliance's amicus curiae **brief** that advocated this result. FDA had oddly claimed that vaping retailers are not adversely affected by a ban on sale of vaping products, asking the Justices to restrict the right to challenge the ban only to parties to the agency proceedings. NCLA thanks the Supreme Court for rejecting FDA's argument, in line with the Family Smoking Prevention and Tobacco Control Act ("TCA") and the Court's own precedent.

Under the TCA, manufacturers need FDA approval to sell certain e-cigarette or "vaping" products. R.J. Reynolds Vapor Company applied for permission to sell its "Vuse" e-cigarettes. FDA denied the application that prevents all retailers from selling the Vuse e-cigarettes, which they were allowed to sell while the application was pending. So, several retailers filed a petition for review in the U.S. Court of Appeals for the Fifth Circuit, stating that FDA's decision "adversely affected" them by costing them lost sales. But FDA moved to dismiss their petition, arguing that the only person who could be "adversely affected" under the TCA is the manufacturer who filed the denied application. The Fifth Circuit rejected FDA's argument, ruling that the retailers have standing to bring their petition for review of the order. The Supreme Court wisely affirmed the Fifth Circuit's judgment.

"'Adversely affected' (and its variations like 'adversely affected or aggrieved') is a term of art with a 'long history in federal administrative law,'" Justice Barrett wrote for the Court, citing NCLA's amicus brief. "Most notably, the term

appears in the [Administrative Procedure Act], which entitles anyone 'adversely affected or aggrieved by agency action within the meaning of a relevant statute … to judicial review.' We have interpreted 'adversely affected' broadly, as covering anyone even 'arguably within the zone of interests to be protected or regulated by the statute … in question.'"

Today's ruling stops FDA from narrowing the scope of the TCA's judicial review provision and prevents such a limitation from being applied to other statutes that provide for judicial review of agency actions across the Administrative State. As a result, those harmed by agency action will still be able to seek relief in federal court.

NCLA released the following statements:

"Today's ruling is a welcome affirmation that administrative agencies may not creatively interpret statutory terms for the purpose of denying access to the courts by those who have been harmed by agency action."
— Daniel Kelly, Senior Litigation Counsel, NCLA

"NCLA is delighted that the Supreme Court preserved the ability for people to challenge federal regulations even if they were not a party to, for example, the denial of a petition application. A contrary decision here would have narrowed the scope of judicial review provisions in many other statutes governing challenges to agency conduct."
— Mark Chenoweth, President, NCLA

For more information visit the amicus 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.

###

Joe Martyak
New Civil Liberties Alliance
703-403-1111
joe.martyak@ncla.legal

Source: New Civil Liberties Alliance