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NCLA's *Choice Refrigerants v. EPA* Case Offers Supreme Court a Chance to Fix Nondelegation Doctrine

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

Washington, DC (February 27, 2026) – Today, the New Civil Liberties Alliance [petitioned](#) the Supreme Court to take up the [Choice Refrigerants v. EPA](#) lawsuit and enforce or replace the lax intelligible-principle test that the D.C. Circuit misapplied below. Joined by acclaimed Supreme Court litigators Erin Murphy and Paul Clement, NCLA asks the Justices to set aside a portion of the American Innovation and Manufacturing Act of 2020 (the AIM Act) because it fails to supply any direction to the Environmental Protection Agency regarding how it must allocate 98% of the allowances in the economically significant hydrofluorocarbons market. As the petition puts it, “if the abject lack of direction in the AIM Act does not violate that test, then it is hard to see what ever could.”

Even under the Court’s current Nondelegation Doctrine, Congress cannot empower EPA to phase down HFCs without providing an “intelligible principle” directing the agency how to determine how many HFC allowances Choice and each other company will receive. The D.C. Circuit implicitly recognized that the AIM Act lacked any principle, but it wrongly stated that control over market share is a “technical” issue that can be left to EPA’s discretion with little congressional guidance. Because the AIM Act says nothing about any specific allocation method for 98% of HFC allowances, the D.C. Circuit grafted the Clean Air Act’s allocation rules for the cap-and-trade phaseout of substances that deplete the ozone to the AIM Act and applied them to phasing down HFCs, which do not deplete the ozone. However, a court cannot constitutionally supply an intelligible principle Congress did not. Doing so violates the Vesting Clause of Article I of the Constitution, which says “All legislative Powers herein granted shall be vested in a Congress of the United States”—not in agencies or courts.

Left to its own devices by the AIM Act, EPA’s flawed decisions have decimated the market share of our client, the Georgia-based small business Choice Refrigerants. Instead of properly granting Choice Refrigerants the allowances attributable to its patented products, EPA relied on Biden-era Executive Orders to set aside some allowances for new market entrants who may have been “disadvantaged.” In picking winners and losers, EPA also oddly allocated some allowances to Choice’s former import agent and to a Chinese-owned company that infringed Choice’s patent and engaged in illegal dumping into the U.S. market. EPA ultimately granted Choice far fewer allowances than the company needed to maintain the market share it had worked for decades to create.

Choice Refrigerants CEO, Ken Ponder, pioneered responsible refrigerant cleaning methods to comply with the Clean Air Act Amendments of 1990, later inventing three patented HFC products. HFCs are compounds used in air conditioners, refrigerators, foams, aerosols, and industrial applications. Congress passed the AIM Act to phase down HFC production, empowering EPA to distribute a limited and ever-shrinking number of “allowances” for companies to produce or import these critical products. EPA picks which companies may produce and import HFCs (and how much) by wielding legislative power Congress handed the agency. NCLA applauds Choice Refrigerants and Ken Ponder for standing up to this unconstitutional handoff of power to an unelected and unaccountable bureaucracy. Executive agencies like EPA are not allowed to wield unbridled legislative power over the American people. This case offers the Supreme Court a chance to fix the Nondelegation Doctrine by reinvigorating or replacing the intelligible-principle test. The Court should do so.

NCLA released the following statements:

“The EPA took roughly one-third of Choice Refrigerants’ market share because Congress was lazy. Congress told EPA to shrink the market but let EPA choose any reason for taking (or giving) rights to any company. The Constitution limits that kind of core rights-impacting legislative power to Congress. The Supreme Court must hold Congress to doing its duty rather than let Congress leave hard choices to an unaccountable executive agency.”

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

“If the Court is not willing to breathe even the smallest resuscitating breath into the intelligible-principle test, then it should take this opportunity to inter the test for good and craft a better one.”

— **Erin Murphy, Clement & Murphy Partner and Counsel of Record in *Choice Refrigerants v. EPA***

“NCLA was excited Clement & Murphy agreed to lead this cert petition, not only because they are supremely talented Supreme Court litigators, but also because they share our belief that this case presents a certworthy issue. Having worked in parallel with Paul Clement to dispose of the *Chevron* deference doctrine, NCLA is excited to work even more directly with Erin and Paul to give the Nondelegation Doctrine its overdue Day of Reckoning.”

— **Mark Chenoweth, President and Chief Legal Officer, NCLA**

“The Constitution purposefully separated the three branches of government to protect the American people, and the AIM Act has blurred the lines between legislative and executive power. EPA went off script—rather off statute—and fashioned its own rules for what businesses, like our client, live or die under AIM Act allowances.”

— **Kaitlyn Schiraldi, Staff Attorney, NCLA**

For more information visit the case page [here](#). Case photos are available [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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