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NCLA Challenges Constitutionality of CFPB's Unique, Congress-Free Funding Structure

Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C.

Washington, DC (March 8, 2021) — The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed its opening brief in the U.S. Court of Appeals for the Second Circuit in the case of *Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C.* NCLA argues that the district court erred when it allowed CFPB to enforce a second Civil Investigative Demand (CID) against Ms. Moroney's firm because the agency's funding mechanism is unconstitutional. Given Congress' unprecedented, broad delegation of appropriations authority to the President and CFPB, this case may ultimately provide the U.S. Supreme Court the opportunity to reinvigorate the Nondelegation Doctrine that five justices expressed interest in revisiting after the Court's *Gundy v. United States* decision.

After being forced by CFPB's outrageous demands to downsize more than two-thirds of its staff since the first CID was issued in 2017, Ms. Moroney's law firm now faces another stream of demands generated by the second CID, which NCLA argues is illegitimate. The opening brief makes the point that Congress unlawfully divested its legislative appropriations power when it gave the President and CFPB the ability to draw funding directly from the Federal Reserve rather than be funded by appropriations via the bicameralism-and-presentment legislative process mandated by the Constitution.

Crystal Moroney already prevailed on her first structural constitutional claim against the agency when the U.S. Supreme Court held last June 30 in *Seila Law v. CFPB* that the CFPB Director's protection from presidential removal violated the separation of powers because the agency head must be answerable to the President. That decision also affirmed that CFPB's then-Director Kathy Kraninger was not lawfully empowered to act at the time the agency issued the second CID against Ms. Moroney's law firm.

There are three remaining bases for Ms. Moroney's appeal: 1) Title X of the Dodd-Frank Act violates Article I's Appropriations and Vesting Clauses; 2) the Director's attempt to blindly ratify the second CID was ineffectual because she intentionally caused the constitutional harm of which Ms. Moroney complains, along with several other defects in her attempted ratification; and 3) the second CID is unreasonable because it seeks information prohibited by Title X. NCLA is asking the court to reverse the district court's erroneous judgment and dismiss the second unlawful CID.

A Second Circuit panel will hear oral argument on Ms. Moroney's Motion to Stay Pending Appeal on Wednesday, March 10, 2021.

NCLA released the following statement:

"The CFPB has become the first federal agency in American history to be independent of Congress, but completely dependent upon the President. The Executive Branch cannot simultaneously set executive priorities and then take whatever funding it wants to achieve its goals, free of legislative approval or oversight. This dynamic is a direct affront to the Constitution, and it poses a serious threat to civil liberties, as Ms. Moroney knows all too well."

— Michael P. DeGrandis, Senior Litigation Counsel, NCLA

For more information about this case visit 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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