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NCLA Disputes CFPB Enforcement Action on Ground that Agency Is Unconstitutional post-*Seila Law*

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

Washington, DC (July 16, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [response](#) last night to an order to show cause in *Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C.* in the U.S. District Court for the Southern District of New York. NCLA is challenging the Consumer Financial Protection Bureau’s (CFPB) unconstitutional manner of being funded and its Director’s doomed attempts to ratify her own prior actions, taken while her authority to act was unconstitutional.

Crystal Moroney and her law firm have been on the receiving end of the Bureau’s “knee-buckling” power to punish private citizens for more than three years. CFPB has not brought this lawsuit against Ms. Moroney on the basis of a consumer complaint, but rather on a pure fishing expedition into how her firm practices law. She has spent tens of thousands of dollars providing CFPB with thousands of pages of documents, generating dozens of reports, and answering more than 80 interrogatories. Despite her prodigious efforts to comply, CFPB is asking the court to force her to turn over attorney-client privileged documents—which she will not do. This is the second time the agency tries to interfere with Ms. Moroney’s attorney-client relationships.

CFPB’s unconstitutional design, which combines extraordinary power with unparalleled institutional independence, is at the root of its dysfunction and its scorn for civil liberties. From the outset, Congress unlawfully divested its power to make appropriations through law when it gave CFPB the ability to draw funding directly from the Federal Reserve on demand, without any oversight from Congress.

In a recent Supreme Court decision, *Seila Law LLC v. CFPB*, the Supreme Court declared the Director’s insulation from presidential control unconstitutional, but the Court did not address whether Congress may divest itself of its constitutional duty to fund government operations through appropriations. After *Seila Law*, the Director is answerable to the President. So, the President may now demand more than half a billion dollars per year in off-the-books funds, free from congressional oversight. He controls the enforcement agenda of a free-wheeling agency capable of financially ruining individuals and businesses caught in its crosshairs.

Seila Law has rendered CFPB’s decision-making process defective on multiple levels but has also brought new issues with the validity of the prior CID’s enforcement. Previous actions taken by an unconstitutionally structured agency must be nullified. The Bureau’s only lawfully acting principal prior to *Seila Law* was the

President of the United States. Therefore, only the President could ratify the unconstitutionally insulated acts of pre-*Seila Law* Directors, but he has not. Thus, prior actions against the Law Offices of Crystal Moroney remain unenforceable.

NCLA urges the court to declare CFPB unconstitutional as funded and assert that the Bureau’s actions against Ms. Moroney’s law firm, while its Director was unconstitutionally insulated from removal, cannot be ratified by the agency director herself—the agent in the relationship—but only by the President.

NCLA released the following statement:

“CFPB is a rampaging Frankenstein’s monster. The Supreme Court cut out its Director’s unconstitutional for-cause removal provision in *Seila Law*, but the stitched-together abomination is still stumbling about wreaking havoc. The President now has absolute dominion over an agency that the Supreme Court described as having “knee-buckling” power to punish private citizens, with a direct pipeline to off-the-books funding without congressional appropriation. This unconstitutional monster must be stopped.”

— **Michael P. DeGrandis, Senior Litigation Counsel, NCLA**

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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