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Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Constitutional Case Against SEC Administrative Law Judges Draws Strong Amicus Support

Michelle Cochran v. U.S. Securities and Exchange Commission

Washington, DC (October 2, 2020) – The [Texas Public Policy Foundation](#), the [Cato Institute and Competitive Enterprise Institute](#) filed in support of NCLA’s [petition](#) for rehearing *en banc* last night at the U.S. Court of Appeals for the Fifth Circuit in the case of *Michelle Cochran v. U.S. Securities and Exchange Commission*. The briefs *amici curiae* urge all judges on the Court to rehear the appeal because the petition raises an issue of exceptional importance—whether the Securities and Exchange Commission (SEC) is conducting its administrative proceedings in an unconstitutional manner.

NCLA’s client, Michelle Cochran, is contesting last month’s 2-1 panel decision that erroneously dismissed her case. Ms. Cochran seeks federal court jurisdiction to challenge the unconstitutional protections from removal by the President enjoyed by Administrative Law Judges (ALJs) at SEC. If left to stand, the panel’s flawed decision will condemn single mother Michelle Cochran and other Americans like her to another cycle of futile, duplicative, to-be-vacated administrative proceedings that violate the Constitution and Americans’ due process rights.

“The Fifth Circuit just asked the government to file a brief in response to NCLA’s petition for rehearing *en banc*. NCLA is encouraged that the Court of Appeals is giving serious consideration to Michelle Cochran’s request to rehear this important constitutional challenge.”

—**Peggy Little, Senior Litigation Counsel, NCLA**

Excerpts from the two briefs *amici curiae* submitted in support of NCLA’s petition:

“Separation of powers is the genius of our Constitution—and one of its most important liberty-protecting structures. But its vitality depends upon the judiciary carrying out its unique responsibility to enforce that separation and keep the elected branches within their assigned roles. That responsibility is especially important when it comes to safeguarding the rights of ordinary citizens vis-à-vis the vast administrative state... Forcing a separation-of-powers challenger to present that challenge to the same agency adjudicator whose constitutional legitimacy is under scrutiny will inflict precisely the harm that the challenger seeks to prevent—adjudication before a constitutionally illegitimate arbiter.”

— **Texas Public Policy Foundation (TPPF)**

“This case presents a recurring, exceptionally important issue concerning citizens’ access to federal court when personal liberty is threatened by ongoing executive-branch action that violates the Constitution’s separation of powers. It also highlights the intolerable predicament faced by citizens when structural constitutional violations are allowed to persist until any meaningful remedy evaporates. The panel majority affirmed the district court’s... [denial of jurisdiction, which] ensures that Cochran will never obtain a meaningful remedy for her constitutional injury.”

— **Cato Institute and Competitive Enterprise Institute (CEI)**

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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