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In Another NCLA *Amicus* Win, Supreme Court Holds FHFA’s Leadership Structure Unconstitutional

Patrick J. Collins, et al. v. Janet L. Yellen, U.S. Department of Treasury, et al.

Washington, DC (June 23, 2021) – Today, a divided Supreme Court [held](#) that the structure of the Housing and Economic Recovery Act of 2008 violated the separation of powers. The law ran afoul of the Constitution by restricting the President’s power to remove the Director of the Federal Housing Finance Agency (FHFA). The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in September 2020 arguing that the FHFA Director’s protection from removal denied the President’s power to control the actions of Executive Branch officials. The victory today vindicates separation-of-powers principles and protects Americans’ right to a republican form of government, which unaccountable independent agencies thwart.

In Justice Alito’s opinion for the Court, the judgment of the Fifth Circuit was affirmed under reasoning that the prohibition against independent agencies headed by a single official applies broadly. The Court fully endorsed last year’s holding in *Seila Law LLC v. Consumer Financial Protection Bureau*, which held that it was unconstitutional for the Director of CFPB to be insulated from presidential removal. As NCLA argued, virtually all the factors cited by *Seila Law* as reasons for concluding that CFPB’s structure ran afoul of separation-of-powers principles are fully applicable to FHFA’s structure: each is headed by a single Director who is appointed to a five-year term and may not be removed by the President before the end of that term except for cause.

The Court rejected arguments that *Seila Law* was distinguishable and should only be applied to some federal agencies but not others. *Seila Law* applies to any statute that interferes with the President’s authority to remove an agency head. The Court also held that, in light of the constitutional violation, it was remanding the case to the lower courts to decide the remedy to which plaintiffs are entitled.

Congress sought to protect the Director of FHFA from removal, thus depriving Americans of their constitutional right to live under a government in which executive power is accountable to them through the President. NCLA seeks to protect these rights by participating in cases such as this one and by challenging CFPB’s unconstitutional funding structure in the case of [Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C.](#), now pending in the Second Circuit. CFPB’s design—like FHFA’s—combines extraordinary power with unparalleled and unprecedented financial independence from Congress.

NCLA released the following statements:

“The Supreme Court made absolutely clear that it will not tolerate any restrictions on the President’s authority to remove the head of a federal agency. This is an important victory for separation-of-powers principles. The removal power ensures that Executive Branch officials serve the American people effectively in accordance with the policies that they elected the President to promote.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

“As NCLA predicted last fall, the Supreme Court shot down removal protections for FHFA’s Director today. The FHFA—like the CFPB reined in by *Seila Law* last June—is an unconstitutional abomination. The Court has now addressed the problem with presidential control over these agency heads. It still remains to address the unconstitutional way these agencies are funded.”

— **Mark Chenoweth, Executive Director and General Counsel, NCLA**

For more information visit the case 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.

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