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

NCLA Asks Supreme Court to Reverse Second Circuit, Hold CFPB's Funding Method Unconstitutional

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

Washington, DC (June 22, 2023) – The Consumer Financial Protection Bureau (CFPB) is an outlier agency, and the U.S. Supreme Court should overturn its illegitimate funding method, the New Civil Liberties Alliance argues in a [petition](#) for a *writ of certiorari* filed in the case of *Law Offices of Crystal Moroney v. CFPB*. In October, the U.S. Court of Appeals for the Fifth Circuit [decided](#) in *Community Financial Services Assoc. of America, Ltd. v. CFPB* that the agency's funding structure violates the Appropriations Clause of the U.S. Constitution. The Second Circuit panel in Moroney's case explicitly disagreed with the Fifth Circuit, [ruling](#) in March that CFPB's funding method was okay because it was "authorized by Congress and bound by specific statutory provisions."

The Supreme Court already [agreed](#) to hear CFPB's appeal of the *CFSAA, Ltd.* decision, so NCLA is asking the Court to hold Moroney's *cert* petition until the justices decide that case. NCLA urges the Court to rule against CFPB, then grant Moroney's petition and vacate the Second Circuit's decision below. Meanwhile, NCLA will file an amicus brief in *CFSAA, Ltd. v. CFPB*, further detailing the agency's unconstitutionality.

NCLA's client, the Law Offices of Crystal Moroney, offered ways for debtors to resolve delinquent accounts by amicable agreement with debt collectors. CFPB issued multiple record demands to the law firm without once so much as alleging a violation of any federal debt collection laws. The agency unlawfully demanded that Moroney turn over massive amounts of documents—including attorney-client privileged material—and submit detailed written reports about her firm's activities. Ms. Moroney's law firm generated this material, to which CFPB was not entitled, over years of legal practice. Between June and October of 2017 alone, CFPB's demands consumed 650 hours of Ms. Moroney's time. Eventually, it became impossible for her to comply and keep her firm running.

Ms. Moroney's ordeal is just one example of the unconscionable abuse CFPB inflicts on innocent Americans. The agency's unique, self-funded structure makes it utterly unaccountable to Congress' regular budgetary or oversight control. Congress created CFPB through the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, investing it with daunting enforcement power to regulate consumer financial products and services. One court has called the Director of CFPB the second most powerful person in the federal government. Rather than rely on the annual appropriations process for funding, CFPB simply requisitions whatever Federal Reserve funds it unilaterally determines are necessary to carry out its functions (up to 12% of the Fed's revenues). NCLA argues that the Constitution does not permit Congress to divest itself of power over CFPB's annual budget.

NCLA released the following statements:

"The Framers adopted the Appropriations Clause to ensure that Congress maintains control over spending and thereby checks excessive Executive Branch power. CFPB's funding structure violates that principle by abandoning all meaningful constraints on the agency's budget. CFPB's abuse of Crystal Moroney and her law firm are all-too-predictable results of unconstrained executive power."

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

“Crystal Moroney’s law practice was destroyed by an agency that never articulated a charge, much less made a case against her. It is a devastating cautionary tale of what happens when Congress surrenders its Power of the Purse and unleashes bureaucrats unconstrained by law, due process, or budgetary discipline upon Americans who simply cannot defend themselves against administrative power unmoored from any constitutional tethers.”

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

“Crystal Moroney prevailed against CFPB once—and she is poised to do so again. When *Seila Law v. CFPB* held that the Director of CFPB cannot enjoy protection against removal by the President, that ruling vindicated one of NCLA’s main constitutional arguments on Crystal’s behalf. But that Supreme Court ruling made CFPB’s funding structure even worse, because now all that Federal Reserve funding is directly controllable by the President. CFPB has jumped out of the unconstitutional frying pan directly into the fire. The Supreme Court needs to clarify once and for all that CFPB’s funding structure is unconstitutional.”

— **Mark Chenoweth, President 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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