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NCLA Amicus Brief Urges Supreme Court to Strike Down CFPB’s Unconstitutional Funding Method

Consumer Financial Protection Bureau, et al., v. Community Financial Services Association of America, Limited, et al.

Washington, DC (July 10, 2023) – The Consumer Financial Protection Bureau operates with an illegitimate funding method, outside of direct Congressional control. Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) joined by The Buckeye Institute and the Manhattan Institute for Policy Research in the case of *CFPB, et al., v. Community Financial Services Association of America, Limited, et al.*, urging the Court to overturn CFPB’s funding method as a violation of the Constitution’s Appropriations Clause.

CFPB pays for its operations by directly requisitioning whatever Federal Reserve funds it deems necessary (up to 12% of the Federal Reserve’s total operating expenses), an arrangement Congress permitted when it created the agency through the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. However, the Supreme Court should recognize that Congress did not have the right to divest itself of power over CFPB’s budget under the Appropriations Clause in Article I of the Constitution.

In October, the U.S. Court of Appeals for the Fifth Circuit correctly [reached](#) that conclusion in *CFSA v. CFPB*. The U.S. Circuit Court of Appeals for the Second Circuit has since issued a [decision](#) upholding CFPB’s funding structure in *CFPB v. Law Offices of Crystal Moroney*, creating a circuit split that NCLA asks the Supreme Court to resolve in CFSA’s favor.

The Second Circuit case involves an NCLA client, the Law Offices of Crystal Moroney, P.C. CFPB drove Ms. Moroney’s law firm out of business through an aggressive years-long investigation, despite never alleging that the firm was suspected of violating any federal debt-collection law. The agency improperly sought confidential and privileged attorney-client materials from Ms. Moroney’s firm and aggressively demanded that she turn over massive amounts of documents and submit written reports, consuming hundreds of hours of her time. Ms. Moroney’s treatment exemplifies how abusive a federal agency can be when it is not accountable to Congress. NCLA filed a separate [petition](#) for a *writ of certiorari* in the case of Ms. Moroney’s law firm in June, calling on the Supreme Court to rule against CFPB in *CFPB v. CFSA*, grant the petition, and vacate the Second Circuit’s decision.

NCLA released the following statements:

“The 2010 Congress handed CFPB a blank check and authorized the Bureau to requisition any amount it deems appropriate, in perpetuity and without meaningful constraints on the amount requisitioned. Such legislation is unprecedented and inconsistent with the Founders’ intent that Congress retain exclusive control over the power of the purse.”

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

“CFPB was unconstitutional when conceived and has trampled Americans' civil liberties for a decade plus. Especially given the Court's 2020 *Seila Law* decision, which gave the President direct control over this funding stream, it is high time for the Supreme Court to corral this maverick agency by restoring Congressional control over its budget and oversight of its actions.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the *amicus* and case pages [here](#) and [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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