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Media Inquiries: [Joe Martyak](mailto:Joe.Martyak@ncla.org), 703-403-1111

SEC Surrenders to NCLA Client Michelle Cochran in Wake of Her Unanimous Supreme Court Win

Michelle Cochran v. Securities and Exchange Commission, et al.

Washington, DC (September 27, 2023) — While bravely battling the Securities and Exchange Commission for nearly seven-and-a-half long years, NCLA client Michelle Cochran turned her administrative enforcement ordeal into a nightmare for the agency. Now her ordeal will be officially over, but the SEC’s woes are just beginning. The New Civil Liberties Alliance has secured a [stipulation](#) from the SEC under which NCLA will dismiss its federal district court action against the agency in exchange for SEC’s promise that it has ended its long-running enforcement case targeting her and [“... will not bring a future administrative proceeding against Cochran\[.\]”](#) NCLA celebrates this major victory with our client, whose valiant fight against Administrative State overreach achieved watershed reform at the U.S. Supreme Court.

In April 2023, Ms. Cochran unanimously won her argument at the U.S. Supreme Court, which held that she could bring “fundamental, even existential” constitutional challenges in federal court before enduring administrative adjudication. This landmark ruling freed Americans trapped in interminable regulatory purgatory to seek relief in federal court from these ersatz proceedings where the agency is prosecutor, judge, jury and first court of appeal—or as the High Court put it, where “agencies, as currently structured, are unconstitutional in much of their work.”

But before Ms. Cochran could renew her challenge in the wake of the decision finding district court jurisdiction to hear her constitutional claims against the agency, SEC announced the unprecedented dismissal of 42 pending enforcement cases. These June 2, 2023, dismissals included NCLA clients [Ms. Cochran](#) and [Marian Young](#) and former client [Christopher Gibson](#). That order followed a disturbing court filing over a year earlier, in April 2022, while Ms. Cochran’s case was pending at the Supreme Court. In that filing, SEC [revealed](#) that members of its enforcement staff had for years illegally downloaded and gained access to privileged adjudicative documents.

The agency downplayed its deliberate pilfering of electronic files as a “control deficiency.” But the June 2 mass dismissal of its open cases divulged that this breach occurred in dozens more cases than originally reported and had been known to the SEC for years. The order self-servingly provided dismissal relief only to open cases—the very defendants who could now challenge SEC in court—while irrationally denying such relief in closed or settled cases where tainted adjudication damage is equally likely and now rendered permanent and possibly irreparable.

SEC had aggressively pursued Ms. Cochran in administrative proceedings since 2016, falsely accusing her of aiding and abetting alleged federal accounting paperwork violations by a small Texas accounting firm where she had not worked since 2013. SEC forced her into multiple, years-long administrative enforcement proceedings adjudicated by agency-appointed “Administrative Law Judges,” who were unconstitutionally appointed and shielded from presidential removal. Once the court accepts it, this stipulation ends SEC’s attack on Ms. Cochran.

NCLA also filed a mandamus [petition](#) in April on behalf of Ms. Young and her company, asking the U.S. Court of Appeals for the Fifth Circuit to issue an order compelling the SEC Commissioners in *In re Marian P. Young and Saving2Retire, LLC* to either dismiss the case or else promptly decide the appeal in the agency’s eight-year-

old case. Rather than await the Fifth Circuit’s ruling on NCLA’s mandamus petition, SEC abandoned its administrative case against Ms. Young as well.

In April 2023, Christopher Gibson accepted the Supreme Court’s invitation in its *Cochran* decision to challenge his seven-years-long biased and unconstitutional adjudication. He sued SEC for trying him before an unconstitutional ALJ exercising improper judicial power and violating his Seventh Amendment right to a jury trial. SEC dismissed Mr. Gibson’s administrative charges rather than subject its proceedings to constitutional scrutiny in a federal court.

NCLA released the following statements:

“The reason SEC gave for its mass dismissal of every open case affected by this disturbing internal data breach is an obvious pretext. SEC is manipulating court dockets to avoid judicial review of its rigged agency adjudication scheme because it is afraid of what a court will discover behind the curtain—namely, biased trials that deny targets their rights to due process, and access to a real court with a jury, in a separate branch of government, as promised in our Constitution.”

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

“The full scope of NCLA’s Supreme Court victory in *Cochran* was not apparent until SEC dismissed 42 pending enforcement cases—including some legitimate cases the agency had no business dismissing. This unprecedented action naturally raises the question: ‘What is the SEC so afraid of?’ By taking its ball and going home, SEC seeks to avoid accountability for both its unlawful internal data practices and its unconstitutional internal adjudication scheme. Unfortunately for the SEC, NCLA does not plan to let it off the hook so easily. Michelle Cochran’s battle is over and won, but the war against SEC’s disdain for constitutional due process is just beginning.”

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

For more information visit the case page [here](#) or watch the case video [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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