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NCLA Brief Asks High Court to Nullify Actions by Constitutionally Defective Federal Housing Agency

Patrick J. Collins, et al. v. Steven T. Mnuchin, Secretary, U.S. Department of Treasury, et al.

Washington, DC (September 23, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) today in the U.S. Supreme Court taking aim at the unconstitutional structure of the Federal Housing Finance Agency (FHFA). NCLA asks the Court to (1) set aside the final agency action FHFA took against Petitioners while it was unconstitutionally structured and (2) grant them meaningful relief in *Patrick J. Collins, et al. v. Steven T. Mnuchin, Secretary, U.S. Department of Treasury, et al.*

The Court should affirm the Fifth Circuit’s holding that the statute granting FHFA’s director protection from removal by the President—except for cause—violates the separation of powers. But the Court should reverse the appeals court’s award of merely prospective relief to Petitioners. NCLA supports strict enforcement of separation of powers among the three branches of government and opposes efforts by Congress to undermine the constitutionally protected powers of the President of the United States. NCLA’s *amicus* argues that the President cannot effectively control the actions of FHFA’s Director if he may not remove the Director at will.

FHFA is an independent agency headed by a single director, who may only be removed by the president “for cause” and is exempt from the congressional appropriations process. Such a structure denies the President the ability to control the actions of Executive Branch officials and thus violates the Constitution’s separation-of-powers principles. The President cannot effectively carry out his duties unless he has the power to fire any principal officers whom he thinks are inadequately executing his directives—including the FHFA Director.

In a recent Supreme Court decision, *Seila Law LLC v. CFPB*, the Supreme Court declared that it was unconstitutional for the Director of the Consumer Financial Protection Bureau (CFPB) to be insulated from presidential removal. FHFA’s structure has identical defects. NCLA argues that the *Seila Law* decision compels a ruling that, for the same reasons, FHFA’s structure also violates the separation of powers.

NCLA is currently challenging the CFPB’s unconstitutional funding structure in the case of *Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C.* CFPB’s design—like FHFA’s—combines extraordinary power with unparalleled financial independence, compounding its dysfunction with scorn for civil liberties and Presidential control.

FHFA is the federal agency that regulates Fannie Mae and Freddie Mac, two government-sponsored enterprises that provide liquidity to the national mortgage market by buying up home loans from banks and other mortgage lenders across the country. FHFA essentially nationalized those two financial services companies when, in its role as their conservator, it agreed that all future corporate profits should be paid to the U.S. Treasury. The Petitioners, shareholders of Fannie Mae and Freddie Mac, object to the companies’ nationalization, arguing (among other things) that FHFA’s unconstitutional structure made it not authorized to act.

NCLA released the following statements:

“Americans enjoy a constitutional freedom to elect the President, the person in whom the Constitution vests the executive power. The Constitution thereby makes the exercise of power accountable to the people. But that accountability is lost if the President is denied authority to control the actions of FHFA’s Director.”

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

“The CFPB and FHFA are unconstitutional abominations. The Supreme Court shot down removal protections for CFPB’s Director in *Seila Law*, it will shoot down removal protections for FHFA’s Director here, and it should shoot down the unconstitutional financing of these agencies when that issue eventually reaches the justices. Meanwhile, the Court should also unwind FHFA’s unlawful previous actions challenged in this case.”

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

To read the full case summary of *Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C.*, click [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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