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NCLA Asks Supreme Court to Stop FTC’s Unlawful Power Grab for Monetary Relief

AMG Capital Management, LLC v. FTC and *FTC v. Credit Bureau Center, LLC*

Washington, DC (October 5, 2020) – For more than 30 years, the Federal Trade Commission has claimed imaginary powers to obtain millions, if not billions, of dollars in damages under Section 13(b) of the FTC Act, which only authorizes injunctions against present or future illegal behavior. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an [amicus brief](#) in the U.S. Supreme Court admonishing the FTC for its unlawful practice in applying the agency’s statutory provisions. FTC has transformed its limited statutory right to enjoin into an absolute right to secure any “equitable remedy.”

NCLA argues that the FTC has chosen this course to avoid the due process protections for monetary remedies provided by Congress in the FTC Act. It did this by a stealthy litigation strategy singling out weak targets and then using consent orders and judgments obtained to move the law in an unauthorized direction.

The Supreme Court consolidated two cases, *AMG Capital Management, LLC v. FTC* and *FTC v. Credit Bureau Center, LLC*, to examine this question. NCLA supports the Petitioner in *AMG Capital Management*, where the Ninth Circuit sided with the FTC, and the Respondent in *Credit Bureau Center, LLC*, where the Seventh Circuit correctly noted that the statute gave the FTC no such power. In both cases the FTC sought to manipulate a forward-looking injunction to obtain an award of damages for past injury. Section 13(b) of the FTC Act allows the FTC to obtain an injunction in certain circumstances, but under no circumstances does it authorize the permanent injunctions that include monetary relief.

Recently, in *Credit Bureau*, the U.S. Court of Appeals for the Seventh Circuit called out the FTC on this atextual interpretation of the law that had wrongly asserted equitable powers for the agency under Section 13(b). The Ninth Circuit, bound by its own precedent, noted the problem but allowed the FTC over a billion dollars of damages against AMG Capital—without the statutory protections provided by Congress for monetary damages or even a jury trial, which the Seventh Amendment to the Constitution grants all Americans for suits at law for money damages over twenty dollars.

This Court should reject the FTC’s arguments and restore the limits Congress imposed on the agency, avoiding further Constitutional challenges based on a denial of due process or jury rights.

NCLA released the following statements:

“The FTC uses Section 13(b) for the same reason and with as little legal justification as Willy Sutton had for robbing banks: ‘That’s where the money is.’ The Supreme Court has to stop this unlawful power grab by an out of control agency.”

— **John J. Vecchione, Senior Litigation Counsel, NCLA**

“If the FTC believes it has inadequate tools for enforcing its regulatory goals, it should go to Congress and ask for new legislative authority. It is unacceptable for the FTC to invent new enforcement powers that Congress has never granted.”

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

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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