Supreme Court Weakens Independence of Consumer Watchdog

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National Consumer Law Center Advocates' Statement re: U.S. Supreme Court Decision Challenging the Structure and Constitutionality of the CFPB (Seila Law v CFPB)

Washington, D.C. – The U.S. Supreme Court today issued its decision in *Seila Law LLC v The Consumer Financial Protection Bureau.* In a 5-4 decision, the Court, struck down as unconstitutional a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act that restricts the President's ability to remove the director of the Consumer Financial Protection Bureau (CFPB) except for cause. Nonetheless, three of those justices, along with the four dissenters, held that the for-cause provision could be severed from the remainder of the Dodd-Frank Act, leaving the remainder of the CFPB intact.

"The Seila Law decision leaves the CFPB intact, but weakens the Director's independence, making it more likely that the Director will have to think twice before crossing politically powerful financial industry players that have the ear of the President. This is unfortunate, because the CFPB should not be thinking about political ramifications when deciding whether to bring an enforcement action or to enact rules to address consumer protection problems. We have seen in this Administration how agency heads who have dared to express independent views have been short-lived, and it is unfortunate that the consumer watchdog has lost the critical independence that Congress gave it when addressing the fallout from the 2008 financial crisis," **said Lauren Saunders, associate director of the National Consumer Law Center.** "Nonetheless, the CFPB survives as an agency with the rest of its critical consumer protection tools intact, and it will be up to CFPB directors to do their best to resist political pressure not to do their jobs."

NCLC, as Counsel of Record, joined by others, filed an amicus brief that argued that, if the Supreme Court found the for-cause provision unconstitutional, it should sever that provision and preserve the remainder of the Dodd-Frank provisions establishing the CFPB, as Congress intended. That is exactly what the Court did.

"Severing the 'for cause' provision and allowing the CFPB to otherwise continue intact is the appropriate remedy. That result gives effect to the express language of the Dodd Frank Act's severability clause and comports with the traditional doctrine of severability that provides that a court should nullify no more of a statute than is necessary," **said National Consumer Law Center Director of Litigation Stuart T. Rossman.** "Undoing Congress's sweeping restructuring of financial regulation by eliminating the CFPB instead of severing the for-cause removal provision would have contravened Congress's intent to establish a sole federal regulator charged with stabilizing the marketplace and protecting consumers."

Other groups who joined the amicus brief filed by NCLC were: Center for Consumer Law and Education Center (a joint partnership between West Virginia University College of Law and Marshall University); the UC Berkeley Center for Consumer Law & Economic Justice; The housing Clinic of the Jerome N. Frank Legal Services Organization at Yale Law School; Consumer Action; and Professor Craig Cowie (Asst. Professor of Law and Director of the Blewett Consumer Law & Protection Program at the University of Montana Alexander Blewett III School of Law.