



U.S. Supreme Court Nullifies CFPB Leadership Structure

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In the wake of the 2008 financial crisis, the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act brought the Consumer Financial Protection Bureau ("CFPB"), with CFPB given wide-ranging administrative and enforcement authority over numerous existing banking laws and regulations. The legislation placed the operation of CFPB into the hands of a single "Director," who had a five year term and could only be dismissed "for cause" due to "inefficiency, neglect of duty or malfeasance in office."

On June 29, the United States Supreme Court issued its opinion in the case of Seila Law, L.L.C. v. Consumer Financial Protection Bureau, in which the Court left undisturbed the role and powers of CFPB but struck from the law its provisions relating to the Director as the sole executive in charge of the agency.

The case that rose to the Supreme Court involved an order from CFPB to a law firm that provided debt-related legal services, requiring the turnover of documents (effectively a subpoena). The law firm refused to comply with the CFPB order, and in the federal District Court included among its defenses a challenge to the constitutionality of CFPB due to its leadership structure; the District Court rejected the argument and ruled in favor of enforcement of the CFPB order. The law firm's appeal to the Ninth Circuit Court of Appeals proved unavailing, as that Circuit Court affirmed the decision of the lower District Court. The Supreme Court then took the case on appeal.

In its June 29 opinion reversing the District and Circuit Courts, the Supreme Court ruled that CFPB was clearly an "executive branch" agency under the Constitution, and the Congressional act (i.e., Dodd-Frank) that bestowed an independent Director of an agency with a longer term of office than the President's four-year term and made her/his dismissal and replacement beyond the reach of the President.....because the President could not dismiss the Director unless one of the three statutory grounds for removal existed.....was an unconstitutional violation of the separation of powers. Essentially, the Court concluded that the heads of executive branch agencies were "at will" appointees and officers of the President, and Congress could not enact parameters that would prevent a President from replacing a CFPB Director during the President's term. The President is the exclusive head of the executive branch and is accountable to the public via the electoral process. The Supreme Court determined that there could not be an independent director of an executive branch agency who was not accountable to any elected official.

The Court noted that many executive branch agencies operate with a multi-member board or commission in charge of the agency or with a single officeholder who is accountable solely to the President and can be removed at the President's discretion. The CFPB leadership structure was neither

of those two alternatives, and thus the Court found the leadership structure of CFPB to be unconstitutional.

The actual significance of the Supreme Court's decision is yet-to-be-determined. Nothing in the opinion suggests that ***all prior*** adopted regulations or enforcement actions of CFPB are now void. Even in the case before the Court (i.e., the law firm's refusal to comply with a CFPB order to turn over documents), the Supreme Court did not rule on the ultimate outcome due to specific facts in the case. Those specific facts were that although the CFPB order to the law firm was initially issued in 2017 when the CFPB Director was Richard Cordray, a lifelong Democrat, he was subsequently followed in that office by Acting Director Mick Mulvaney who, in turn, was followed by another Acting Director appointed by President Trump. Therefore, while the Supreme Court agreed in concept that the CFPB's directorship was unconstitutional, this case resulted in a remand back to the District Court for a determination on whether the law firm had *actually been disadvantaged* by that unconstitutional feature, given the fact that two appointees accountable to President Trump may have effectively ratified the original order.

The one certainty from the Supreme Court's opinion is that Congress must revisit Dodd-Frank's codification of CFPB to rewrite the management of that agency as either a multimember commission structure or a single director who is subject to removal at will by the President.

Feel free to contact me or CBAI Paralegal Levette Shade if you want any additional information.

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