

CFPB Ruled Constitutional by US Court of Appeals

Description



The U.S. Court of Appeals for the District of Columbia Circuit on

Wednesday January 31st, 2018 ruled that the structure of the Consumer Protection Bureau (CFPB) is constitutional. The 7-3 by a full panel of judges upheld the single-director structure of the CFPB.

The Court of Appeals ruled that the director of the CFPB can only be removed by the President for legitimate reasons. The Court rejected arguments that Congress in 2010, while controlled by Democrats, improperly set up the Consumer Financial Protection Bureau by making it difficult for the president to remove the agency's director.

Congress's decision to provide the CFPB director a degree of insulation reflects its permissible judgment that civil regulation of consumer financial protection should be kept one step removed from political winds and presidential will, Judge Cornelia Pillard wrote for the court's majority.

The decision is all about maintaining independent law enforcement free from politics. We are seeing that theme over and over again in efforts by the courts to check the rogue use of executive power, former CFPB Director Richard Cordray [tweeted](#) on Wednesday

Cordray stepped down as Director of the CFPB last November, appointing the agency's chief of staff, Leandra English, in his place. President Trump named Mick Mulvaney, simultaneously, as successor. The courts have favored Mulvaney, also director of the Office of Management and Budget, in two rulings since.

The ruling was a partial win for the mortgage industry and PHH Corp., which brought the lawsuit leading to the appeals- court ruling. While the court affirmed the bureau's structure, the judges invalidated the \$109 million in penalties the CFPB levied against the firm after finding it violated a federal law on real estate settlement procedures. The judges said legal interpretations in the PHH case were incorrect and were wrongly applied retroactively on the mortgage lender.

The bureau was created by the 2010 Dodd-Frank financial law to enforce consumer-protection laws. It has the power to oversee banks with assets of at least \$10 billion and scrutinizes nonbank firms such as mortgage lenders, student-loan servicers and payday lenders.

The CFPB has been politically polarizing from the outset. Consumer advocates and Democrats say it has provided protections for everyday Americans against heavy-handed tactics by financial institutions. Sen. Elizabeth Warren (D., Mass.) was among its architects. Republicans say the CFPB has abused its

regulatory authority and burdened the industry unnecessarily, producing higher borrowing costs in the process.

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