

ALERT

Supreme Court Upholds CFPB Funding Structure as Constitutional

May 17, 2024

On May 16, 2024, the U.S. Supreme Court issued its decision in *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Ltd.* In an opinion by Justice Thomas, the Court held, 7-2, that Congress may allow the Consumer Financial Protection Bureau (CFPB) to draw money from the Federal Reserve System consistent with the Constitution's Appropriations Clause. The ruling upholds the CFPB's funding structure and suggests that other government entities with permanent funding structures are here to stay.

The case centered on trade associations representing payday lenders and credit access businesses ("the associations"). The associations argued that the CFPB's funding mechanism – established by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) – violates the Appropriations Clause. The Appropriations Clause states that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Art. I. § 9., cl. 7. Congress typically provides agency funding through annual appropriations, but Congress authorized the CFPB to draw from the Federal Reserve System an amount that its director "deems reasonably necessary to carry out" the agency's duties, subject only to an inflation-adjusted cap.

The associations argued that this structure violated the Appropriations Clause for three reasons – each of which were rejected by the Court. *First*, the associations argued that the CFPB's funding is not drawn "in Consequence made by law" because the agency, rather than Congress, decides the amount of annual funding that it draws from the Federal Reserve. The Court disagreed, holding that "Congress determined the amount of the Bureau's annual

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funding by imposing a statutory cap" on the amount of funds the CFPB may draw from the Federal Reserve System. (p. 16) The associations also argued that the CFPB's funding structure is not a valid appropriation because it is perpetual. The Court disagreed that the lack of a time limit was a problem, citing both historical examples of appropriations that were not time-limited and textual indications in the Constitution that presuppose standing appropriations. *See, e.g.*, Art. I, § 8, cl. 12 (limiting an enumerated Appropriation to "two Years"). Finally, the associations argued that the CFPB's funding mechanism violates separation-of-powers principals by permitting the Executive branch to operate free of a meaningful fiscal check. (p. 18) The Court rejected the idea that the Appropriations Clause operated as that fiscal check, finding that it was instead encompassed by Congress' "powers over the purse" more generally.

The Court appeared able to dispose of the associations' arguments in relatively short order because of an extensive historical analysis of the meaning of the word "appropriation." Justice Thomas' opinion found: "Based on the Constitution's text, the history against which that text was enacted, and congressional practice immediately following ratification, we conclude that appropriations need only identify a source of public funds and authorize the expenditure of those funds for designated purposes to satisfy the Appropriations Clause." (p. 6) The opinion held that the CFPB's funding structure cleared this bar. (pp. 15-16)

Justice Alito's dissent – joined by Justice Gorsuch – offers an alternative interpretation of the original understanding of the word "appropriations." He would find that the Clause requires greater "legislative control over the source and disposition of the money used to finance Government operations and projects." The dissent thus concludes that the CFPB's funding mechanism "blatantly attempts to circumvent the Constitution..." and is "the very kind of financial independence that the Appropriations Clause was designed to prevent." (pp. 23-24)

Ultimately, the Court's decision solidifies the Dodd-Frank Act's funding mechanism for its broad financial-services regulations covering student loans, personal loans, credit cards, and more. The CFPB's funding structure through the Federal Reserve will remain intact and allow the agency to continue pursuing its consumer-protection mission.

If you have any questions about the decision or CFPB regulations or enforcement generally, please contact one of the attorneys listed on this alert.