
***Seila Law LLC v. CFPB*, No. 19-7**

Today, the Supreme Court held 5-4 that the structure of the Consumer Financial Protection Bureau (CFPB) violates the separation of powers, because the CFPB's Director is not removable at will by the President, but that the removal restriction is severable from the other provisions of the Dodd-Frank Act.

Background: Congress established the CFPB in the wake of the 2008 financial crisis, granting its Director substantial rulemaking, enforcement, and adjudicatory powers over consumer financial services companies. Congress put in place numerous mechanisms designed to make the CFPB independent, including permitting removal of its director only for "inefficiency, neglect of duty, or malfeasance in office." 12 U.S.C. § 5491(c)(3). After receiving a civil investigative demand from the CFPB, Seila Law, a firm that provides debt-related legal services, challenged the removal provision as violating separation of powers.

Issue: Whether the CFPB's removal provision violates the separation of powers and, if so, whether that provision is severable from the rest of the Dodd-Frank Act.

Court's Holding: In an opinion written by Chief Justice Roberts and joined, in relevant part, by Justices Thomas, Alito, Gorsuch, and Kavanaugh, the Supreme Court held that the structure of the CFPB is unconstitutional. The majority held that the CFPB, which is "an independent agency that wields significant executive power and is run by a single individual who cannot be removed by the President unless certain statutory criteria are met," is unconstitutional because it "concentrate[s] power in a unilateral actor insulated from Presidential control."

Chief Justice Roberts, joined by Justices Alito and Kavanaugh, also concluded that the removal protection is severable from the provisions of the Dodd-Frank Act that established the CFPB. Chief Justice Roberts noted that Congress could "pursu[e] alternative responses to the problem—for example, converting the CFPB into a multimember agency."

Justice Thomas, joined by Justice Gorsuch, agreed that the CFPB's structure is unconstitutional, but would not have reached the severability question.

Justice Kagan, joined by Justices Ginsburg, Breyer, and Sotomayor, dissented as to the constitutional question but concurred in the judgment with respect to severability.

Mayer Brown filed an amicus brief on behalf of the U.S. Chamber of Commerce