
Consumer Financial Protection Bureau v. Community Financial Services Ass'ns of America, No. 22-448

Today, the Supreme Court held in a 7-2 decision that the funding structure for the Consumer Financial Protection Bureau (CFPB) is constitutional.

Background: Congress funds most federal agencies through annual appropriations. In contrast, Congress funds the CFPB through the Dodd-Frank Act, which authorizes the CFPB Director to annually determine the amount that is “reasonably necessary to carry out” the CFPB’s authorities and directs the Federal Reserve Board of Governors to transfer that amount to the CFPB so long as it does not exceed a set cap. 12 U.S.C. § 5497(a). The CFPB may use those funds to “pay the expenses of the Bureau in carrying out its duties and responsibilities.” *Id.* § 5497(c)(1).

In a challenge to a CFPB regulation focused on high-interest consumer loans, trade groups argued that the CFPB’s funding structure violates the Constitution’s Appropriations Clause, which provides that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” The district court granted summary judgment to the CFPB and the Fifth Circuit reversed, holding that the Appropriations Clause requires Congress to fund the CFPB through specific appropriations rather than a “perpetual funding mechanism.”

Issue: Whether the statute providing funding to the CFPB violates the Appropriations Clause.

Court’s Holding: In an opinion authored by Justice Thomas and joined by Chief Justice Roberts and Justices Sotomayor, Kagan, Kavanaugh, Barrett, and Jackson, the Supreme Court held that the CFPB’s funding structure satisfies the Appropriations Clause. The Court based its answer on the Constitution’s text, the history against which that text was enacted, and congressional practice immediately following the Constitution’s ratification. The Court concluded that an identified source and purpose are all that is required for a valid “appropriation.” The Court held that the Dodd-Frank Act satisfies those requirements because it identifies a specific source (the Federal Reserve) and purpose (carrying out the CFPB’s duties and responsibilities).

The Court rejected the trade groups’ argument that the Appropriations Clause requires Congress to determine the specific dollar amount of CFPB funding. The Court explained that it was common immediately after ratification for Congress to permit agencies to decide how much funding to draw up to a cap. The Court also rejected the trade groups’ argument that the Appropriations Clause requires Congress to periodically agree on an amount of funding for an agency. The Constitution, the Court reasoned, does not expressly limit the duration of any appropriations except for funds to support an army.

Justice Kagan authored a concurring opinion, which was joined by Justices Sotomayor, Kavanaugh, and Barrett. In their view, the CFPB’s funding structure is consistent with Congress’s practice not only following ratification but also at all other times in U.S. history. According to the concurrence, that is an additional reason to uphold Congress’s decision about how to fund the CFPB. Justice Jackson also filed a concurring opinion, reasoning that separation-of-powers principles preclude judicial review of a constitutional challenge to the CFPB’s funding structure.

Justice Alito authored a dissenting opinion, joined by Justice Gorsuch. In their view, the Appropriations Clause requires additional legislative control over the source and disposition of funding. They would have held that the CFPB’s funding features give the agency more financial independence than the Appropriations Clause permits.

Read the opinion [here](#).