

## Hudson Cook CFPB Supreme Court Alert: Supreme Court Upholds CFPB Funding Structure, Clears Way for Payday Lending Rule Implementation

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By a 7-2 vote today, the U.S. Supreme Court rebuffed a challenge to the constitutionality of the Consumer Financial Protection Bureau's funding structure, lifting a cloud that threatened the agency's enforcement and rulemaking efforts and clearing the way for final implementation of the Payday Lending Rule.

### **Case Background**

The issue centered on the manner in which Congress decided to fund the CFPB when it created the agency as part of the Dodd-Frank Act in 2010. The agency is organized under the Federal Reserve System and is not subject to Congress's annual appropriations process. Instead, the CFPB director requests operating funds from the Federal Reserve each year up to a statutory cap of 12% of the Fed's overall budget. The Federal Reserve System, in turn, is funded mainly through assessments on financial firms and certain interest income on investments; it too is not subject to regular Congressional appropriations.

As part of their lawsuit challenging the Payday Lending Rule, trade associations representing payday lenders argued that the CFPB's funding mechanism violates the constitutional requirement that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." By removing the CFPB from the more typical, annual Congressional funding process, the trade associations argued, Congress ran afoul of its own appropriations power by essentially delegating it to the executive branch. While that argument was rejected by a federal district court, it found favor with the U.S. Court of Appeals for the Fifth Circuit, which ruled in 2022 that the funding arrangement was unconstitutional and that, as a result, the Payday Lending Rule must be vacated.

### **The Supreme Court's Decision**

Today, the Supreme Court reversed the Fifth Circuit's decision. Justice Thomas wrote the majority opinion, joined by all three of the traditionally liberal Justices (Kagan, Sotomayor, and Jackson) as well as Justices Kavanaugh and Barrett and Chief Justice Roberts.

The Court stressed that "an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes" and that the CFPB's funding scheme "fits comfortably" within that framework, consistent with historical practice. The Court highlighted two founding-era agencies—the Customs Service and the Post Office—and described how their fee-based, standing appropriations serve as precedent for the CFPB's funding structure. Also important for the Court was the statutory cap on the agency's spending, which it likened to the common historical practice of Congressional appropriations for a "sum not exceeding" a specified amount.

Today's opinion, while not a foregone conclusion, reflects the skepticism expressed by many Justices

at oral argument last year. At that time, Justice Thomas noted that the CFPB's funding setup "is different, that it's unique, that it's odd...[but] not having gone this far is not a constitutional problem." A concurring opinion by Justice Kagan (joined by Justices Sotomayor, Kavanaugh, and Barrett) stressed this point too, noting that Congress regularly uses "a variety of mechanisms" to fund federal agencies as part of a "continuing tradition" of exercising "broad discretion" under its appropriations clause power.

Justice Jackson wrote a separate concurring opinion to emphasize that the political branches of government are better suited and intended to address policy concerns like the mortgage and financial crisis giving rise to the Dodd-Frank Act. She noted that the judicial branch "should not lightly assume" to place limits on other branches' powers.

In a dissenting opinion, Justice Alito (joined by Justice Gorsuch) echoed many of the themes in the Fifth Circuit's opinion. They focused on the novelty of the CFPB's funding arrangement and the robust rulemaking and enforcement powers exercised by the agency, concluding that the CFPB enjoys "the very kind of financial independence that the Appropriations Clause was designed to prevent."

### **What Next?**

The ruling removes a disability from the CFPB and provides the agency a freer hand in pursuing its rulemaking and enforcement agenda. Several CFPB investigations and enforcement actions were stayed pending resolution of this case, and the CFPB is poised now to push those matters forward (as the agency suggested in [its own statement](#) after the decision).

On Capitol Hill, the chair of the House Financial Services Committee, Patrick McHenry [issued a statement](#) vowing to revisit the CFPB's authority through reform legislation.

While the ruling all but assures that the Payday Lending Rule eventually will go into effect, it will not happen immediately. The case will now be remanded to the lower courts. Before the Supreme Court took up the final appeal, the Fifth Circuit stayed the rule's effective compliance date until 286 days after resolution of the appeal. It remains to be seen whether and how the Fifth Circuit will revisit that timeline in the wake of today's decision.

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