

CFPB Wins at the Supreme Court

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On May 16, the United States Supreme Court, in a 7-2 [ruling](#), held that the CFPB's funding mechanism does not violate the Appropriations Clause of the U.S. Constitution. As we previously discussed in greater detail [here](#), under the Dodd-Frank Act, Congress provided a standing source of funding for the CFPB outside the ordinary annual appropriations process—the Bureau draws from the Federal Reserve System an amount determined by its Director, subject only to an inflation-adjusted cap. Plaintiffs had argued the structure violated the Appropriation's Clause as it did not go through an annual appropriations process and was effectively “double insulated” from congressional oversight.

Writing for the majority, Justice Thomas held that 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.”

What is the impact of the Bureau's decision? Here are our thoughts:

- Many of the Bureau's cases that were in active litigation were put on hold to await the outcome of the Supreme Court's decision. These can now move forward. There are several cases that were currently stayed pending the SCOTUS decision, including a challenge in the Fifth Circuit to the CFPB's credit card late fee rule and its 1071 Small Business Lending Rule.
- The Bureau's payday lending rule, that was the basis of this lawsuit, has new life once again (at least for now). Look for the Bureau to take steps to get the rule enacted as quickly as possible. Installment lending has been a big focus of the Bureau's under the Chopra administration.
- The Bureau is not out of the woods yet. Several trade associations have challenged recent Bureau rulemaking under the “major questions” doctrine that has gained significant traction with courts since the Supreme Court's [decision](#) in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), where the Court ruled that the EPA did not have the authority to regulate greenhouse gas emissions from power plants without clear congressional authorization. Look for those challenges to continue (including against the payday lending rule).

Putting It Into Practice: Companies impacted by various CFPB rules and regulations that were on hold awaiting this decision should continue to monitor the litigation docket to see how those cases will proceed. Given the breadth of plaintiffs' challenges in these cases, many of the CFPB rules will continue to be enjoined as the cases proceed. Enforcement activity, however, should resume at a steady pace. Buckle up – it should be a busy summer!

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