

Court to Consider Constitutionality of CFPB in PHH v CFPB

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Consumer Agency Was Structured to Ensure It Would Represent Main Street, Not Be Influenced by Wall Street

Washington – On Wednesday, the U.S. Court of Appeals for the D.C. Circuit hears arguments in a case challenging the constitutionality of the law that established the U.S. Consumer Financial Protection Bureau (CFPB), created in the wake of the 2008 financial crash to protect Main Street consumers against Wall Street predators.

The legal question is whether the statute that created the CFPB violates separation-of-powers principles by providing that the CFPB director can be removed by the president only for cause. A divided lower court in October held that the agency's leadership structure is unconstitutional.

In PHH Corporation v. CFPB, Public Citizen, together with the Consumer Federation of America, Consumers Union, the National Association of Consumer Advocates, the National Consumer Law Center and Tzedek DC, filed an amicus brief explaining that Congress created the CFPB as an independent agency to ensure that the agency could avoid political pressure and capture by the industries whose practices it was charged with regulating. Congress determined that failures of existing regulatory agencies were largely attributable to their focusing on the interests and needs of the financial industry they regulated, while giving insufficient attention to the interests and needs of consumers.

As of February of this year, the CFPB has returned nearly \$12 billion to more than 29 million consumers victimized by unlawful and fraudulent activity.

The opponents' proposition that Congress may confer authority on an independent agency only if the agency is headed by a multimember commission finds no support in past U.S. Supreme Court decisions, the groups maintain. Nor does the notion that multimember commissions might be better protectors of liberty than agencies directed by single officers bear on the separation-of-powers issue.

Below are statements from representatives of the amici groups:

"Underlying the constitutional issue at stake in this case is a simple question of crucial importance to all Americans: Does the Consumer Financial Protection Bureau work for American consumers or for the Big Banks? With an independent director, the CFPB in a few years has conservatively saved Americans \$12 billion and forestalled countless abuses," said **Robert Weissman, president of Public Citizen**. "A CFPB with a director serving at the effective pleasure of the Big Banks and the financial industry will be just another captured regulatory agency in Washington, D.C. We already have enough of those."

"In our increasingly complex financial world, vigilant government oversight is essential to protect consumers in the financial marketplace," said **Stuart Rossman, director of litigation of the National Consumer Law Center (NCLC)**. "NCLC strongly supports the independence of the Consumer Financial Protection Bureau's current management structure, which we believe depoliticizes the supervisory process and insures the integrity of the agency's enforcement efforts

while being fully consistent with constitutionally mandated separation of powers principles.”

“PHH v CFPB is a case between a special interest and the American people. Opponents have spent millions to gut an agency that has stood up for military families, students and seniors who have been harmed by financial crimes,” stated **Rachel Weintraub, legislative director and general counsel at Consumer Federation of America**. “The CFPB has returned \$12 billion to 29 million consumers. The American people need the CFPB to stand up for them. This case is about pulling the agency down.”

“The CFPB director needs to be independent from potential political pressure in order to be able to stand up for protecting the interests of consumers against the immense power of the financial industry,” said **Pamela Banks, senior policy counsel for Consumers Union**, the policy and mobilization arm of Consumer Reports. “The structure designed by Congress ensures that the director will be both independent and accountable. It is squarely in keeping with the legal precedents under our Constitution, and we hope the full en banc court will agree.”

“This case represents another cynical corporate attack on the CFPB and its outstanding work on behalf of American consumers. PHH and its allies have attempted to conjure up arguments that question the agency’s structure, but don’t be fooled by their claims,” said **Ira Rheingold, executive director of the National Association of Consumer Advocates**. “Plain and simple, this case is about eradicating the CFPB’s ability to protect consumers and allowing financial services companies to sell the harmful products and engage in the dangerous behaviors that created our most recent economic crisis.”

“Tzedek DC and our low-income D.C. resident client communities have a substantial interest in the continued, robust work of the CFPB, the only federal agency dedicated solely to consumer financial protection,” said **Ariel Levinson-Waldman, Tzedek DC’s president and director-counsel**. “In 2016, debt collection was the topic on which the CFPB received the most complaints from D.C. households. We urge the court to recognize the validity of Congress’ choice in setting up this critical agency.”

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