

WEIL'S SCOTUS TERM IN REVIEW

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High Court Upholds CFPB's Funding Mechanism as Constitutional

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The Supreme Court issued a decision today in *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited*, holding that the Consumer Financial Protection Bureau's ("CFPB") funding structure is constitutional under the Appropriations Clause of the U.S. Constitution.

Congress created the CFPB in 2010, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, in response to the 2008 financial crisis. To maximize its independence, Congress authorized the CFPB to draw money at will from the earnings of the Federal Reserve System, subject to an annual cap, without having to return to Congress annually for appropriations legislation.

In today's 7-2 ruling, penned by Justice Thomas, the Supreme Court held that the CFPB's funding mechanism is constitutional because the Dodd-Frank Act itself serves as the "appropriation" required by the Constitution: "[A]n appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes." That remains true even though the Dodd-Frank Act does not require the CFPB to obtain annual appropriations from Congress because, according to the Court, Congress has broad discretion to enact laws that determine how and when agencies can be funded. Pointing to early American federal agencies, such as the Post Office, the Court explained that Congress has historically provided agencies with open-ended funding mechanisms, without time limits, evincing the original understanding of the Appropriations Clause. The Court also noted that the Constitution provides for time-limited appropriations in the context of supporting the Army, showing that the Framers knew how to expressly limit the duration of appropriations if they wanted to.

Justice Alito dissented, in an opinion joined by Justice Gorsuch, arguing that the majority's approach would undermine the Appropriations Clause by permitting "the Executive to draw as much money as it wants from any identified source for any permissible purpose until the end of time."

This decision is noteworthy because it means that Congress retains substantial discretion to insulate agencies from oversight by the political branches using creative funding processes, including by allowing them to avoid annual congressional funding oversight. The decision also allows the CFPB to continue operating in its current form—which was in question after the lower court ruling under review found the agency's funding structure to be

unconstitutional. Although in recent years the Court's decisions have tended to limit agency power and jurisdiction—and have specifically reined in the powers of independent executive agencies—this decision suggests a more deferential approach to the way in which Congress structures federal agencies, at least with respect to the Appropriations Clause.

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