

Full Panel of D.C. Circuit Upholds CFPB Structure, Reversing Earlier Decision

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Earlier today, an *en banc* panel of the U.S. Court of Appeals for the D.C. Circuit ruled that the CFPB was constitutionally structured, reversing an [earlier decision](#) by a divided three-judge panel and holding that the Dodd-Frank Act permissibly shields the CFPB Director from removal without cause. The Court's 7-3 majority opinion only addressed the constitutionality of the Director's for-cause removal protection; it did not substantively address a related issue concerning the interpretation of the Real Estate Settlement Procedures Act (RESPA) and instead reinstated the three-judge panel's decision as to substantive RESPA issues.

The Court found that Congress's choice to include a for-cause removal provision did not impede the President's Article II executive authority and duty to "take care that the laws be faithfully executed." Specifically, the majority held that:

- Because the President can still remove the Director for "inefficiency, neglect of duty, or malfeasance in office," the President retains ample tools under Article II to ensure the faithful execution of the laws. The majority noted that this same removal standard was upheld when the Supreme Court considered the FTC's for-cause removal provision in its 1935 *Humphrey's Executor* decision.
- The majority rejected the proposed distinction based on the FTC as a multi-member independent agency and the CFPB as a single-director independent agency as "untenable," asserting that the "distinction finds no footing in precedent, historical practice, constitutional principle, or the logic of presidential removal power."
- Finally, the majority held that the functions of the CFPB and its Director, unlike, for example, the Secretary of State or another Cabinet officer, are not core executive functions, and financial and consumer protection regulators have long been afforded a degree of independence, citing the FTC, the Federal Reserve, the FDIC, and others as examples. The majority asserted that holding otherwise would result in a "wholesale attack on independent agencies—whether collectively or individually led—that, if accepted, would broadly transform modern government."

The procedural uniqueness of the case makes it uncertain whether it will be appealed to the Supreme Court. Under the Trump administration, the Justice Department supported the earlier decision finding the CFPB structure unconstitutional and expressed disappointment with today's decision. In that PHH could benefit from the reinstatement of the three-judge panel's decision on RESPA issues, its appetite for appeal may also be limited. We'll continue to watch this interesting case closely and post updates here.