



## Federal Judge Knocks Down “The Resistance” on CFPB Power Grab

Bob Bennett

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The Consumer Financial Protection Bureau (CFPB) was created by the Obama Administration under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. CFPB’s stated purpose is: “to ensur[e] that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive,” Writes Thaya Brook Knight, a finance expert from the Cato Institute, in *The Hill*. “The CFPB, however, strays well beyond this purpose and, in many cases, frustrates its own mission by limiting consumer access to needed products.”

One instance is the Bureau’s recent issuance of a rule that “will all but eviscerate the payday lending sector. These loans, while expensive, often fill a gap and can be lifelines for vulnerable people,” writes Knight.

She also charges that the Bureau invaded areas that have nothing to do with consumer finance. An example is: “It attempted to investigate the accreditation process for for-profit colleges, issuing a subpoena for documents.”

This was knocked down by an appeals court.

Ms. Knight writes in a second article that CFPB director Cordray assumed powers beyond those of Congress, by applying a fine to a mortgage firm, PHH Mortgage, based on a new interpretation of a “key statutory provision”—which he applied retroactively. So, CFPB held the company responsible for behavior it could not know would become illegal.

Ms. Knight comments that “if Congress is constitutionally barred from passing *ex post facto* laws, surely an agency is similarly barred; due process forbids it.”

In the PHH case, Cordray had decided to increase a fine of \$6.4 million imposed by an administrative law judge to \$109 million. PHH appealed to the DC Court of Appeals. Knight reports that on October 11<sup>th</sup>, Judge Brett Kavanaugh found “CFPB violated bedrock due process principles by *retroactively* applying its new interpretation of the statute against PHH.” (emphasis in original)

She notes that the court “called the Bureau’s director the ‘single most powerful official in the entire United States Government, at least when measured in terms of unilateral power’ after the President himself.” That’s because, unlike other agencies headed by a single person, such as the DOJ or the DHS, where the president can remove that person—“the director of CFPB can only be removed for cause.”

The court decided to remedy that constitutional defect by requiring that the director serve at the will of the President. See page 10 of the decision:

We therefore hold that the CFPB is unconstitutionally structured....

To remedy the constitutional flaw, we follow the Supreme Court’s precedents,... and simply sever the statute’s unconstitutional for-cause provision from the remainder of the statute. Here, that targeted remedy will not affect the ongoing operations of the CFPB. With the for-cause provision severed, the President now will have the power to remove the Director at will, and to supervise and direct the Director.

Given that decision, it took considerable chutzpah for the outgoing director—an Obama appointee of course—to appoint his former chief of staff, Leandra English, as deputy director of CFPD before he resigned on Friday. The position had been vacant for the last two years. The language of Dodd-Frank allows the deputy director to serve as director “in the absence or unavailability of the director.” So, Cordray’s plan was to preserve the power-grabbing agency by one more power grab.

In addition to Judge Kavanaugh’s decision, under the Federal Vacancies Reform Act, which sets rules for vacant government agency positions, the president has the right to appoint an acting director. He used that power to appoint Mick Mulvaney, a strong critic of CFPD to that position, with the obvious intent to pare back the agency’s power.

Ms. English sued the president, claiming he didn’t have the power to make the appointment. *The Wall Street Journal*, in its editorial today, shows clearly why Ms. English’s claim is patently ridiculous.

“Ms. English claims she is the new acting director, never mind that President Trump has superseded that claim by invoking the Federal Vacancies Reform Act to appoint Office of Management and Budget director Mick Mulvaney as acting director. The law allows the President to temporarily fill a vacancy at an executive agency with a government official who has been confirmed by the Senate.”

The editorial notes that Ms. English had to get her own lawyer because “even the CFPB general counsel concluded that the law is on the Trump Administration’s side.” In an article, *The Journal* adds that “Mary McLeod, the CFPB’s general counsel,... advised senior agency officials in a memo dated Saturday to “act consistently with the understanding that Director Mulvaney is the acting director of the CFPB.” You can read the memo [here](#).

The Left can't count on an Obama-appointed judge to twist the law in English's favor because *The Wall Street Journal* has reported that "The lawsuit is being handled by Judge Timothy J. Kelly, who was confirmed to the bench in September after being nominated by Mr. Trump this summer."

Ms. English met with Chuck Schumer and Nancy Pelosi Monday, in an apparent attempt to portray the CFPB as a fourth branch of government consigned to the losing party in November's election.

At 5:15pm, breaking news from *The Wall Street Journal* is: "Federal Judge Backs Administration in Fight Over CFPB Control; Judge Rejects Restraining Order Against Trump-Backed CFPB Head Mick Mulvaney. An update later said Ms. English will appeal. But that seems pointless, to this reporter.

This was yet another direct move by Democrats to nullify the election, this time by preventing the elected president from carrying out his campaign promises. We can include the strange, new worlds of jurisprudence explored by Leftist judges hearing challenges to Trump's immigration executive orders. These moves follow a phony recount in 3 key states, then a massive attempt to persuade electors not to vote for Trump, using petitions, threats, videos of pleading actors.

Those anti-Trump conservatives who cheer on "The Resistance"—which is nothing more nor less than a revolutionary movement to block the elected president—should be keenly aware of what they're supporting. There is no constitutional requirement or guarantee that we'll like the personality of the elected president.

But the Twelfth Amendment says:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

The person having the greatest number of votes for President, *shall be the president*, if such number be a majority of the whole number of Electors appointed. [Emphasis added.]

Of course, we can disagree with any of the president's decisions, though many of them have been conservative. However, any person or group systematically "resisting" his policies is spitting in the faces of the voters and threatening the integrity of our republic. That could also be called seditious conspiracy, as defined by 8 USC § 2384.

I'm willing to accept the interpretation of that statute put forth by the far-left website Progressive Values, in 2013, during the Obama years:

"In law, sedition is overt conduct, such as speech and organization, that is deemed by the legal authority to tend toward insurrection against the established order. Sedition often includes subversion of a constitution and incitement of discontent (or resistance) to lawful authority. Sedition may include any commotion, though not aimed at direct and open violence against the

laws. Seditious words in writing are seditious libel. A seditious person is one who engages in or promotes the interests of sedition.”