The Washington Post

Federal appeals court rules the structure of CFPB is unconstitutional

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October 11, 2016

A federal appeals court dealt a blow to the government's consumer watchdog Tuesday by ruling that the structure of the agency is unconstitutional.

The U.S. Court of Appeals for the District of Columbia found that the setup of the Consumer Financial Protection Bureau, which is led by a single director, is not in line with other independent agencies, which are typically run by a group of commissioners.

The decision was a response to a petition from mortgage lender PHH, which challenged an enforcement action from the agency and called for the CFPB to be eliminated.

But the court decided against shutting down the CFPB, instead ordering that the agency be restructured so that the director could be removed by the president at will. Currently, the director can only be removed with cause — a system that Judge Brett Kavanaugh said lacked checks and balances.

"The CFPB therefore will continue to operate and to perform its many duties, but will do so as an executive agency akin to other executive agencies headed by a single person, such as the Department of Justice and the Department of the Treasury," the court said. The ruling also vacated a $109 million enforcement action against PHH, sending the case back to the CFPB for review.

The ruling comes as Republican lawmakers and financial groups are upping their efforts to weaken or dismantle the agency, which was created as part of the 2010 Dodd-Frank financial reform law. Conservative lawmakers have criticized CFPB Director Richard Cordray and staunchly opposed various rules and enforcement actions issued recently by the agency. For instance, many spoke out against rules restricting payday lenders, higher standards for brokers who work with retirement savers and a proposal that would ban financial firms from usingarbitration clauses that prohibit customers from participating in class action lawsuits.

The decision was celebrated by Rep. Jeb Hensarling (R-Tex.), chairman of the House Financial Services Committee, which recently introduced a bill that called for restructuring the CFPB to replace the director with a five-person commission. And conservative groups said the move could help increase oversight of the agency.

"We're only supposed to have three branches of government," said Ilya Shapiro, senior fellow in constitutional studies for the Cato Institute, a libertarian Washington think tank. "So to have an agency that is not accountable to the president or to Congress violates the constitutional structure."

Consumer groups and lawmakers who support the CFPB said they worry the change could make the agency more vulnerable to political shifts. For instance, if the decision stands, future presidents could pick their own director as they would with Cabinet positions.

"There is a need for the banking regulators and the financial regulators to be able to make independent judgments on the merits, outside of the needs of the electoral cycle and concerns about blowback from one lobby or another," said Brian Simmonds Marshall, policy counsel for Americans for Financial Reform, a coalition of more than 200 civil rights, consumer- and labor-oriented community groups. Marshall said it was important that the director of the CFPB be allowed to serve a full term.

The CFPB said Tuesday that it is reviewing its options for challenging the ruling. "The Bureau respectfully disagrees with the Court's decision," the agency said in a statement. "In the meantime, as the court expressly recognized, the Bureau will continue its important work. … Today's decision will not dampen our efforts or affect our focus on the mission of the agency."

Lawmakers supporting the agency said the efforts to restructure the bureau could affect the group's ability to act swiftly on behalf of consumers. They pointed to the agency's recent accomplishments, such as a notable enforcement action against Wells Fargo after it was found that employees opened checking and credit card accounts in customers' names without permission. "The CFPB is a critical part of the Dodd-Frank Act and has returned nearly $12 billion to more than 27 million consumers by going after fraud at large banks like Wells Fargo," Rep. Maxine Waters (D-Calif.) said in a statement.

Sen. Elizabeth Warren (D-Mass.), who proposed the creation of the agency, said the ruling should be reversed and defended the bureau's work. "The CFPB has been, and will remain, highly accountable to both Congress and the President," she said in a statement. "Continued Republican efforts to transform the agency's structure or funding should be seen for what they are: attempts fostered by big banks to cripple an agency that has already forced them to return over $11 billion to customers who have been cheated."