



Here's What's Next For This 'Rogue' Federal Consumer Agency

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October 27, 2016

How much control the Consumer Financial Protection Bureau (CFPB) wields over Americans' financial decisions is a question the next president and Congress, not the courts, will decide, legal scholars told The Daily Caller News Foundation.

Little will change at the agency that regulates everything from credit cards to mortgage loans after the U.S. Court of Appeals for the D.C. Circuit ruled the independent agency is "unconstitutionally structured," and the U.S. Supreme Court — if it intervenes — isn't likely to strike down the agency's legitimacy, experts said.

"The idea that suddenly it's going to change its philosophy and become a lot more accountable — it's a good symbolic gesture to say that the head of the agency should be accountable but as a real-world practicality, the significance isn't great," Alden Abbott, senior legal fellow and deputy director of the Meese Center for Legal and Judicial Studies at the Heritage Foundation, told The DCNF.

CFPB, birthed out of the housing crisis as a part of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, cropped up in the presidential campaign when Democratic presidential candidate Hillary Clinton praised the agency while stumping with Democratic Massachusetts Sen. Elizabeth Warren in New Hampshire.

"You may not know that she (Warren) was the person behind setting up the agency that protects consumers, the Consumer Financial Protection Bureau," Clinton said Monday, to cheers. "And it was set up to stand against and do something about the kinds of fraud and abuse we've seen from Wells Fargo. And they are on the front lines of returning millions of dollars to Americans who have been cheated defrauded by big companies, by banks and by others."

Clinton's praise for CFPB, however, failed to mention that only days before, the court said the agency's structure is unconstitutional because it concentrated too much power in one director not even the president could fire.

U.S. Court of Appeals Judge Brett Kavanaugh ruled in favor of mortgage company PHH Corporation over CFPB earlier this month, invalidating CFPB's \$109 million fine against the corporation for allegedly harming consumers through a mortgage insurance kickback scheme.

Two of the three panel judges ruled the CFPB director's concentrated power was unconstitutional, on the grounds that every government official must somehow be accountable to the American people, at least through an elected official. Now, the president can fire the CFPB director for any reason.

Republicans have long voiced concerns over the agency's centralized power and that its funding comes directly from the Federal Reserve System, not Congress. Any substantial changes to CFPB must happen legislatively with the approval of the next president, Abbott said.

"I would think there would still be some members of Congress that would say, this is great, but it doesn't do nearly enough to reign in the CFPB," Abbott told The DCNF.

That's what Texas Republican and House Committee on Financial Services Chairman Rep. Jeb Hensarling is trying to do with the Financial Choice Act, which would establish a five-member commission to oversee CFPB and an inspector general.

But Hensarling, calling CFPB a "rogue" agency, admitted the success of his legislation depends on who controls the White House and Senate after November.

"To state the obvious, that would be extreme uphill climbing should there be a Democrat in the White House, should there be Democrats running the Senate," Hensarling told The DCNF.

Hensarling said the court's move is a good one, but still concentrates too much power in one person.

"You still have one unelected individual who, for all intents and purposes, has the ability to decide whether Americans can have a credit card, whether they receive a home loan," he said.

The most likely next step in PHH Corp. v CFPB is a review of the three-judge panel decision by the full U.S. Court of Appeals for the D.C. Circuit, Abbott said.

The likelihood of PHH Corp. v CFPB going to the Supreme Court is tough to discern, legal experts told The DCNF. CFPB, PHH and PHH's lawyer, Ted Olson, did not return requests for comment.

"The Supreme Court only hears a tiny percentage of the cases," said Jeffrey Manns, associate professor of law at George Washington University in Washington, D.C. He added that the Supreme Court may wait to take up a case on CFPB's constitutionality until similar cases progress through circuit courts.

Thaya Brook Knight, associate director of financial regulation studies at the Center for Money and Financial Alternatives at the Cato Institute, said other companies will be more inclined to sue CFPB now that an appeals court has dismissed its constitutionality. But it's unlikely the Supreme Court or any other court would take the aggressive stance of eliminating CFPB or Dodd-Frank entirely, Knight said.

“I just don’t see a judge coming in and striking down all of Dodd-Frank,” Knight told The DCNF.