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Court says oversight board stays

The Supreme Court issued a decision today on Free Fund Enterprise v. Public Company Accounting Oversight Board, which upheld the constitutionality of the PCAOB, but adds greater oversight to the board as well. Brett Neely reports.



U.S. Supreme Court building (Getty Images)

TEXT OF STORY

TESS VIGELAND: Today marked the last day of the Supreme Court's term. And the first day of Senate confirmation hearings for nominee Elena Kagan. The justices had a going-away ceremony for retiring Justice John Paul Stevens. And, yes, they issued some opinions. One of which upheld the Enron-era Sarbanes-Oxley law and the Public Company Accounting Oversight Board it created.

Brett Neely reports from Washington.

BRETT NEELY: The board often goes by its initials: P-C-A-O-B. But sometimes it's also known as "Peek-a-boo." Today's decision means Peek-a-boo won't be disappearing, despite the best efforts of Ilya Shapiro and others. He's a constitutional law expert at the libertarian Cato Institute and filed a friend-of-the-court brief arguing that the Board was unconstitutional.

ILYA SHAPIRO: Congress created this fourth or fifth branch of government that was the investigator, the prosecutor, the judge, the executioner, the taxman, everything. It had all sorts of authority that was not checked by anyone.

The justices who supported today's five-to-four decision were the Court's conservative majority. But Shapiro thought they didn't go far enough.

SHAPIRO: It's half a loaf.

Half a loaf because Shapiro would have preferred to get rid of the board. Instead, the Court merely tightened the oversight of the executive branch over the board, but otherwise didn't challenge the board or the Sarbanes-Oxley Act.

Duke Law professor James Cox says large companies will now have to resign themselves to working with a powerful and highly independent regulator. And he sees a surprising victory for regulation in today's decision.

JAMES COX: So much of that New Deal thinking that gave rise to the creation of independent regulatory agencies

in the 1930s was reaffirmed by this court, a conservative court.

In a statement, the board's chairman said the decision means its business as usual for Peek-a-boo.

In Washington, I'm Brett Neely for Marketplace.

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