



News

Vaishali Rao Discusses Why SCOTUS Ruling Leaves CFPB Enforcement Actions in Doubt

June 30, 2020

Yesterday, the U.S. Supreme Court ruled 5-4 that the CFPB's leadership structure providing for a single Director removable only for inefficiency, neglect, or malfeasance violated the separation of powers doctrine. However, the Court remanded a question over whether the civil investigative demand at the heart of the petitioner's challenge to the CFPB's structure could be enforced back to the U.S. Court of Appeals for the Ninth Circuit.

On remand, a key issue the Ninth Circuit will need to grapple with is whether agency actions undertaken under the Obama administration's CFPB director, Richard Cordray, have been subsequently "ratified" by Trump appointed directors. Following the SCOTUS ruling, the CFPB's current Trump-appointed director, Kathleen Kraninger will need to decide whether to ratify past agency actions. *July 7, 2020 update: the CFPB [announced today](#) it had ratified "most regulatory actions the Bureau took from January 4, 2012 through June 30, 2020."*

Hinshaw partner Vaishali Rao was quoted in a *Bloomberg* article on the prospects for companies seeking to nullify enforcement actions and even regulations issued by the CFPB when it was constitutionally defective.

Rao said that even if the CFPB validated Cordray-era decisions, companies may still have some success arguing that Cordray's actions should not be maintained. By contrast, CFPB regulations and enforcement actions under Kraninger, including new proposals on debt collection or payday lending, would likely be safer from challenge: "[r]ight now we have a director who is appointed by this president and who is presumably carrying out the prerogatives of this president," Rao said.

[Read the full article on Bloomberg's website](#) (subscription required)

Another potential issue is whether the Court's decision could pave the way for similar challenges to other agencies, like the Federal Energy Regulatory Commission, even with multi-member commissions. Rao spoke to Pamela King of E&E News on that issue:

"If they wanted to do that, then they probably would have pushed the analysis much closer to *Humphrey's Executor* [a 1935 SCOTUS decision finding that President Franklin Roosevelt could not remove a member of the Federal Trade Commission on policy grounds] than they did."

Attorneys

Vaishali S. Rao

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"High Court Ruling Leaves CFPB Enforcement Actions in Doubt," was published by *Bloomberg*, June 30, 2020.

"With 5-4 split, justices spare FERC in leadership fight," was published by *Greenwire*, June 30, 2020.

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- Hinshaw Consumer Crossroads blog: "[SCOTUS Holds CFPB's Single Director Structure Unconstitutional, Leaves Open Questions on Existing Bureau Matters](#)"