

## SCOTUS Opines in Favor of CFPB on Constitutionality of Funding

Alert

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By Anastasia Stull, Michelle Fox & Matthew Grimaldi

The U.S. Supreme Court [ruled yesterday](#) that the Consumer Financial Protection Bureau (CFPB) is constitutionally funded, ending a lengthy challenge by a payday lender to its funding structure under the U.S. Constitution's Appropriations Clause in *Consumer Financial Protection Bureau v. Community Financial Services Association of America (CFSA)*, 601 U.S. \_\_\_\_ (2024). SCOTUS' 7-2 majority upholds the CFPB's funding structure mandated under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The opinion is written by Justice Clarence Thomas and joined by Chief Justice John Roberts.

### HISTORY

This case originated as a challenge to the CFPB's payday lending rule which was defeated in a summary judgment in favor of the CFPB and which CFSA appealed to the U.S. Court of Appeals for the Fifth Circuit. A three-judge panel on the Fifth Circuit struck down the payday lending rule, holding that the CFPB's funding structure violated the Appropriations Clause arguing that the CFPB receives its funding through requests made by its director to the Federal Reserve, subject to a cap, rather than through the traditional congressional appropriations process.

The Supreme Court granted certiorari to determine whether the Fifth Circuit erred (1) in holding that the statute providing funding to the CFPB, 12 U.S.C. § 5497, violates the Constitution's Appropriations Clause and (2) in vacating the payday lending rule promulgated at a time when the CFPB was receiving such funding.

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## OPINION

Justice Thomas' opinion lays out the Court's reasoning that the term "appropriations" has, throughout history, been a valid means for the legislature to authorize expenditures from public funds for designated purposes.

The CFPB currently operates in a manner by which it draws public funds from the Federal Reserve and only uses those funds for a specific purpose; therefore, the Court found the structure to be consistent with the Appropriations Clause. Justice Thomas wrote, "The statute that provides the Bureau's funding meets these requirements. We therefore conclude that the bureau's funding mechanism does not violate the Appropriations Clause." Justices Elena Kagan and Ketanji Brown Jackson filed separate concurring opinions and Justices Amy Coney Barrett, Brett Kavanaugh and Sonia Sotomayor joined Justice Kagan in her concurrence. Notably, Justice Samuel Alito dissented from the majority, joined by Justice Gorsuch.

The CFPB released a statement claiming a "resounding victory for American families and honest businesses alike" and proudly reiterated its mission to be the primary federal watchdog protecting consumers from predatory and abusive practices in the financial sector.

While the CFPB's funding authority has been a hotly contested issue in the industry, this decision does provide some certainty that there will be a path forward with respect to other rulemakings stayed pending the decision, such as the Small Business Lending Data Collection Rule, also known as Section 1071, the Combatting Auto Retail Scams Rule, and the Credit Card Accountability Responsibility and Disclosure Act of 2009.

For more information on the CFPB SCOTUS ruling, please contact [Anastasia Stull](#), [Michelle Fox](#) or one of the Stinson LLP contact with whom you regularly work.

## CONTACTS

Michelle A. Fox

Anastasia D. Stull

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