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# Supreme Court Holds CFPB's Funding Structure Constitutional

Client Alert | May 16, 2024

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Click for PDF ***CFPB v. Community Financial Services Association of America*, No. 22-448** – Decided May 16, 2024 **Today, the Supreme Court held 7-2 that the Consumer Financial Protection Bureau's funding structure—which allows the agency to draw money from the Federal Reserve—does not violate the Constitution's Appropriations Clause.**

> *"Under the Appropriations Clause, an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes. The statute that provides the Bureau's funding meets these requirements."*

Justice Thomas, writing for the Court

**Background:**

The Appropriations Clause states that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law." U.S. Const. art. I, § 9, cl. 7. When Congress created the Consumer Financial Protection Bureau (CFPB) in 2010, it determined that the CFPB would not receive its funding through an annual appropriation law, as most agencies do. Instead, it directed that the CFPB would receive funding directly from the Federal Reserve each year in an amount that the CFPB Director deems "reasonably necessary"—up to an inflation-adjusted cap. 12 U.S.C. § 5497(a)(1)–(2). The Federal Reserve, in turn, is also funded outside the ordinary appropriations process. 12 U.S.C. § 243. Community Financial Services Association is an association of lenders that sought to set aside a CFPB regulation, arguing that it was promulgated through the CFPB's use of funds received in violation of the Appropriations Clause. The Fifth Circuit agreed and vacated the regulation. It held that the CFPB's funding structure violated the Appropriations Clause because the CFPB has unilateral discretion to determine its own funding level and the funds it receives are insulated from Congress's control.

**Issue:**

Whether the CFPB's funding structure violates the Constitution's Appropriations Clause.

**Court's Holding:**

The CFPB's funding structure does not violate the Constitution's Appropriations Clause.

**What It Means:**

- Resolving the "narrow question" whether the CFPB's funding mechanism complies with the Appropriations Clause, Justice Thomas, writing for a seven-Justice majority, held that the statute authorizing the CFPB's funding qualifies as an "appropriation" because it specifies the amount (in the form of a cap), source, and purpose of the public funds. Op. 1, 15–16. The Court noted that unspecified but capped appropriations were commonplace after the founding. Op. 16. The Court held that it is not necessary that Congress regularly or directly appropriate public funds because the Constitution's two-year limit for appropriations for the Army, U.S. Const. art. I, § 8, cl. 12, implies authority to make standing

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appropriations in other contexts, as confirmed by founding-era practice. Op. 17.

- The Court did not agree that upholding the CFPB's funding structure under the Appropriations Clause would allow the Executive to operate free of any meaningful fiscal check. Op. 18–19. While leaving open the possibility that there may be structural limits on agency funding mechanisms, the Court reasoned that those limits do not find their source in the Appropriations Clause. *Id.*
- Justice Kagan, writing for four Justices, concurred to note that the CFPB's funding scheme is consistent not only with founding-era practices, but also with practices "at any other time in our Nation's history" up through the present day. Op. 1. Justice Jackson concurred separately, asserting that "[w]hen the Constitution's text does not provide a limit to a coordinate branch's power, we should not lightly assume that Article III implicitly directs the Judiciary to find one." Op. 1.
- Justice Alito, joined by Justice Gorsuch, dissented, concluding that "the CFPB's unprecedented combination of funding features affords it the very kind of financial independence that the Appropriations Clause was designed to prevent." Op. 23.
- The decision rejects the constitutional challenge in this case and likely will allow CFPB actions stayed during the pendency of this case to resume. The Court's "narrow" decision leaves open what constitutes "public money" or "designated purposes" for that money, questions that might be litigated in future cases involving other agencies' funding schemes that do not depend on annual appropriations—such as the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Federal Housing Finance Agency. The decision also leaves open whether other structural limits may constrain an agency's funding structure.

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The Court's opinion is available here. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice leaders:

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