

Locke Lord QuickStudy: Supreme Court Resolves Circuit Split and Decides CFPB's Funding Structure Is Constitutional

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On May 16, 2024, the U.S. Supreme Court resolved the Circuit Split discussed in our prior QuickStudy and ruled in a 7-2 decision that the Consumer Financial Protection Bureau's ("CFPB") funding structure does not violate the U.S. Constitution's Appropriations Clause. The Supreme Court's decision in *Consumer Financial Protection Bureau v. Community Financial Services Association of America* ("*Community Financial Services*")^[1] reverses the Fifth Circuit's 2022 decision in the case, which held that, in creating the agency, Congress unconstitutionally ceded its appropriations power to the CFPB in violation of separation of powers. After the Fifth Circuit issued its decision, the Second Circuit then created a circuit split by unanimously ruling in *Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.* ("*Moroney*") that the CFPB's funding structure does not violate the Constitution. The *Moroney* court held it could find no support for the Fifth Circuit's conclusion that Congress had "ceded control" of the funding process to the CFPB.

Justice Thomas delivered the 7-2 opinion in *Community Financial Services*, in which Justices Kagan and Jackson wrote separate concurring opinions. Justice Alito dissented from the majority opinion, joined by Justice Gorsuch. In reversing the Fifth Circuit's decision, the Supreme Court held that "an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes." The Court reasoned that Dodd-Frank, which authorizes the CFPB to draw its funds from the Federal Reserve System, therefore creates a proper appropriation mechanism that does not violate the Appropriations Clause.

The Supreme Court's opinion also rejected appellant Community Financial Services' contention that the CFPB's funding structure rendered it "free of any meaningful fiscal check." The Court said that the Appropriations Clause acts as a limitation on, not a source of, Congress's powers over the purse, and that Community Financial Services "offer[s] no defensible argument that the Appropriations Clause requires more than a law that authorizes the disbursement of specified funds for identified purposes."

The Supreme Court's ruling resolves this question and the Circuit Split between the Second and Fifth Circuits. But, challenges to the CFPB based on constitutional and other grounds – which have been mounted continuously since the agency's creation – will almost certainly continue.

[1] *Consumer Fin. Protection Bureau v. Community Fin. Servs. Ass'n of Am., Ltd.*, No. 22-448, 2024 WL 2193873, at *3 (U.S.S.C. May 16, 2024).

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