

## Court Removes Restriction on President's Power to Remove CFPB Director

By Ope Osinubi, LL.M Candidate 2017 | November 7, 2016

The D.C. Circuit recently [held](#) that the [Consumer Financial Protection Bureau](#) (CFPB), an independent agency established by the Dodd Frank Act, was unconstitutionally structured because it was a single director agency whose director was only removable by the President for cause. The court resolved this unconstitutionality by striking down the “for cause” requirement that limited the President’s removal power, and severed it from the Act.

The CFPB has often been the object of [partisan](#) and [academic](#) criticism; and in this case, [PHH v CFPB](#), the plaintiff had petitioned the court of appeal to challenge CFPB-imposed sanctions and the constitutionality of CFPB’s structure. The plaintiff’s core contention was that to comply with constitutional separation of powers, CFPB’s director must be removable by the President at will, or CFPB must be structured as a multi-director agency. The court agreed with the plaintiff, finding that CFPB’s structure departed from settled historical practices regarding independent agencies, which could affect individual liberties. The court struck down the “for cause” requirement, so that the CFPB more closely resembled a traditional executive agency supervised by the President.

There is certainly a longstanding practice (with judicial support) of creating independent agencies that the President has limited oversight over. In an important [case](#), the Supreme Court held that a similar restriction was constitutional because it did not impermissibly impede the President’s exercise of executive power. However, the *PHH v CFPB* court distinguished this precedent, on the grounds that courts had not yet determined the constitutionality of such restrictions in the case of single director agencies.

The extent to which this distinction justifies the court’s conclusions in this case is an open question, and the CFPB is fully expected to [appeal](#) to the full circuit court or [apply](#) to the Supreme Court for review. One thing that is clear is that the court’s decision erodes the CFPB’s independence, undermining what was one of Congress’ fundamental considerations in establishing the consumer watchdog. The decision raises important issues of constitutional interpretation, highlighting the thin line that can exist between a judicial decision on an Act’s validity, and one on the wisdom of its provisions.