



The Daily Dish

Seila Law LLC v. Consumer Financial Protection Bureau

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Eakinomics: Seila Law LLC v. Consumer Financial Protection Bureau

If eyewitness accounts by AAF staffers are to be believed – my personal advice is NOT – yesterday morning the line to enter the Supreme Court (SCOTUS) wrapped around the block twice. Surely this means that SCOTUS was hearing oral arguments on the constitutionality of Obamacare, right? No. It was the oral arguments in *Seila Law LLC v. Consumer Financial Protection Bureau* (*Seila*), which doesn't sound very sexy.

But *Seila* is very important. In the aftermath of the financial crisis, the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) created the Consumer Financial Protection Bureau (CFPB) and tasked it with regulating the consumer finance industry. In an effort to isolate the CFPB from political pressures, Congress designed it to be led by a single director in whom is vested broad powers. On top of that, the director cannot be removed at will by the president (as is common) but rather only [in cases of](#) “inefficiency, neglect of duty or malfeasance in office.” Congress also forced the Federal Reserve to fund the CFPB, thus removing it from the traditional budget process.

This structure is quite unlike that of other financial regulators such as the Securities and Exchange Commission or Commodity Futures Trading Commission, both of which have five-person bipartisan boards. The question is whether the structure is so different as to be [unconstitutional](#).

The issue has arisen before. In an opinion authored by Judge Kavanaugh – now a member of SCOTUS – the D.C. Circuit Court ruled: “the CFPB departs from settled historical practice regarding the structure of independent agencies. And that departure makes a significant difference for the individual liberty protected by the Constitution’s separation of powers. Applying the Supreme Court’s separation of powers precedents, we therefore conclude that the CFPB is unconstitutionally structured because it is an independent agency headed by a single Director.”

As it turned out, the Court later reheard the case *en banc*, and came to the opposite conclusion. On the heels of this, the U.S. District Court for the Southern District of New York ruled that the CFPB was unconstitutional. Needless to say, the standing of the CFPB is a bit muddled at this point.

So, it is important that the constitutionality of the CFPB gets settled. But the implications are even greater than that. In the midst of the financial crisis, Congress created the Federal Housing Finance Agency (FHFA) to regulate (and, currently, act as the conservator of) Fannie Mae and Freddie Mac. Well, as Thomas Wade and Matthew Adams [point out](#): “The FHFA has a single director who can only be fired ‘for cause’ – failure to perform the job, actions of criminal behavior, or moral turpitude – unlike most agency heads who can be fired ‘at will.’ Congress went further to undercut its ability to maintain proper oversight by mandating that the FHFA be funded outside the traditional appropriations process.”

So, if the CFPB goes down, it seems likely that it will take the FHFA with it at exactly the moment that the

FHFA is trying to find a path out of conservatorship for the housing giants. Exciting stuff. No wonder all those Fannie and Freddie employees were lined up to watch.