



## The Supreme Court May Eliminate Key Financial Regulations and Rule Whole Swaths of the Government Unconstitutional

The Supreme Court has a long record of catering to wealthy corporations at the expense of actual people. But in *Consumer Financial Protection Bureau (CFPB) v. Community Financial Services Association (CFSA)*, [the Court could go as far as declaring an entire federal agency](#) — the only one whose sole job is to protect people from financial service corporations like exploitative payday lenders — unconstitutional. An adverse ruling in the case could not only destabilize the entire financial industry and potentially trigger a massive economic crisis, but also call into question the constitutionality of other crucial government programs and entities, including Social Security, Medicaid, insurance on savings accounts, the USPS, and the U.S. Mint. At stake is the government’s ability to function, deliver services, and protect people.

### Special Interests Want To Dismantle The Consumer Financial Protection Bureau

The CFPB was created shortly after the 2008 financial crisis as part of 2010’s Dodd-Frank Act. It is an independent agency whose primary function is to protect consumers from abuse in the financial sector. The CFPB provides information and assistance directly to consumers as they navigate tasks such as paying off loans and interacting with big banks; collects and acts on complaints from consumers; and issues rules and regulations to protect people and stabilize the financial sector. By holding financial services accountable, the CFPB has returned more than [\\$17 billion to Americans](#), imposed \$4 billion in civil penalties on corporations and individuals who violate the law (money which was deposited into the victims relief fund), and handles approximately 3,000 complaints against financial corporations daily.

Precisely *because* of the important work CFPB does on behalf of everyday Americans, a group called the Community Financial Services Association (CFSA) wants to dismantle it. Don’t let the word “community” fool you; CFSA is a group of predatory payday lenders whose entire business model depends on and perpetuates poverty.

At face, the suit revolves around a CFPB rule disciplining payday lenders. But the case is far broader. CFSA is calling into question the constitutionality of CFPB’s entire funding mechanism. Congress funded the CFPB through the Federal Reserve rather than the annual congressional appropriations process to stabilize the CFPB, ensure its independence, and shield it from political gamesmanship.<sup>1</sup> That funding mechanism has longstanding precedent. The CFSA — represented by Donald Trump’s former solicitor general — claims that the funding mechanism is unconstitutional, and thus, that **every regulation and rule ever promulgated by the CFPB ought to be struck down**. The radical, Trump-packed Fifth Circuit, with no basis in law, sided with the payday lending industry in its ludicrous and dangerous scheme, ruling against the very existence of the CFPB.<sup>2</sup>

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<sup>1</sup> [“CFPB v. CFSA: How the Supreme Court Could Harm Consumers and Financial Markets,”](#) Center for American Progress (Sep. 28, 2023).

<sup>2</sup> See *CFSA v. CFPB*, No. 21-50826 (Fifth Cir. 2022).



Before the Fifth Circuit ruling in this case, “no court ha[d] ever held that an Act of Congress violated the Appropriations Clause.”<sup>3</sup>

The Fifth Circuit ruling is as baseless as it is dangerous. The Appropriations Clause of the Constitution states that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law...”<sup>4</sup> But the CFPB and its funding structure were, indeed, appropriated *by Congress and by law* — in 2010’s “Dodd-Frank Wall Street Reform and Consumer Protection Act.” And in case any doubt remained, 86 years ago, the Supreme Court clarified that the Appropriations Clause “means simply that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.”<sup>5</sup> The Fifth Circuit’s unfounded ruling therefore stands in the face of the Constitution, decades-long precedent, and common sense.

### An Adverse Ruling In The Case Could Throw The Financial Sector And Federal Government Into Absolute Chaos

*CFPB v. CFSA* directly threatens the very existence of the CFPB—the sole agency whose central responsibility is protecting consumers from being exploited by the multi-trillion dollar financial services industry. The stakes for everyday Americans could not be higher; rules and regulations across the financial service industry would disappear overnight, leading to chaos, confusion, and even more consumer exploitation. If the Supreme Court sides with the payday lending industry, it would cause mass disruption across the banking industry and would very likely cause the US mortgage market to cease functioning because banks will not know which rules they need to comply with to issue loans and mortgages.<sup>6</sup> Because industries that depend on the mortgage market comprise 17% of the US economy, a bad ruling could even lead to [a second Great Depression](#).

But an adverse ruling wouldn’t just affect the financial industry. If the Court declares that an entire federal agency is unconstitutional because of its funding structure, the ripple effects would be catastrophic. Potentially *every other government program* whose funds are not allocated through annual appropriations would be on the line, including:

- Social Security benefits, which 71 million elderly and disabled Americans rely upon;<sup>7</sup>
- Medicare, which provides health insurance to 65.7 million Americans;<sup>8</sup>
- The United States Postal Service, which processes more than 400 million pieces of mail each day;<sup>9</sup>
- The Federal Reserve, or “Fed,” which oversees and stabilizes the US economy;
- The U.S. Mint, which produces all U.S. coins;
- The FDIC and NCUA, which insure Americans’ savings if their bank or credit union fails;
- The FDA, which regulates food and pharmaceutical products to ensure safety;

<sup>3</sup> [Brief of Petitioners](#), *CFPB v. CFSA*, No. 22-448.

<sup>4</sup> U.S. Const. art. 1, § 9, cl.7

<sup>5</sup> *Cincinnati Soap Co. v. United States*, 301 U.S. 308(1937).

<sup>6</sup> Ian Millhiser, “A new Supreme Court case could trigger a second Great Depression,” *Vox* (Sep. 23, 2023).

<sup>7</sup> “[Monthly Statistical Snapshot, August 2023](#),” *Social Security Administration* (Sep. 2023).

<sup>8</sup> “[Medicare Enrollment Numbers](#),” *Center for Medicare Advocacy* (June 29, 2023).

<sup>9</sup> “[One Day In The Postal Service](#),” *United States Postal Service* (accessed Sep. 28, 2023).



- The Federal Housing Finance Agency, which regulates federal home loan banks.

The stakes of *CFPB v. CFSA* are impossible to overstate. A Supreme Court opinion threatening the very existence of these and other federal agencies—as well as all the rules and regulations they have ever promulgated—would unleash utter chaos.

### The Court Has An Unrelenting, Unethical Pro-Corporate Record

From *Citizens United*<sup>10</sup> to *Glacier Northwest v. Teamsters*,<sup>11</sup> the Court has repeatedly sold out workers and consumers to help wealthy corporations. As one of many examples, the Court consistently sides with the conservative business lobby giant, the Chamber of Commerce. In the 2022-23 Supreme Court term, the Chamber prevailed in 78% of cases in which it filed an amicus brief.<sup>12</sup> This Court is the [most pro-corporate Court of all time](#), and has proven that it will change rules, abandon jurisprudential principles, and give handouts to corporations when they come knocking on its door.

Moreover, the current Court's legitimacy is tainted by its unrelenting [ethics scandals](#), which call into question whether the corrupt right-wing justices' decisions are based in law or designed to appease their wealthy benefactors. In yet another instance of the justices' relationships with right-wing billionaires posing a clear conflict of interest, Clarence Thomas has attended at least two Koch donor summits; the Koch empire has direct interest in at least two high-profile cases this term, including *CFPB v. CFSA*. His tie to the Koch family "puts Thomas in the extraordinary position of having served as a fundraising draw for a network that has brought cases before the Supreme Court."<sup>13</sup> The Koch empire bankrolls Americans For Prosperity, an extreme astroturf group with a long history of attacking the CFPB<sup>14</sup> that has filed an amicus brief in favor of CFSA.<sup>15</sup>

### We Need A Court That Works For Us, Not For Corporate Interests

When the most powerful branch of government refuses to behave ethically and instead acts like a policy shop for hire by corporate interests, Congress has a constitutional obligation to check and balance it. We cannot stand by as nine Supreme Court justices contemplate destabilizing the U.S. financial industry and causing a second Great Depression by unilaterally decreeing that whole swaths of the federal government must cease to exist. Without immediate reform, the already 50-year conservative vice grip on the Supreme Court is expected to last until *at least 2065*, and so will its radical pro-corporate, anti-worker, and anti-consumer decisions. We must expand the Court to restore balance, integrity, and stability to the Court and its decisions.

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<sup>10</sup> *Citizens United v. FEC*, 558 U.S. 310 (2010).

<sup>11</sup> *Glacier Northwest, Inc. v. Teamsters*, 598 U.S. \_\_\_\_ (2023).

<sup>12</sup> Harold Kim, "U.S. Chamber Wins Big for Business at the U.S. Supreme Court, *Chamber of Commerce* (Aug. 1, 2023).

<sup>13</sup> Joshua Kaplan, Justin Elliott, and Alex Mierjeski, "[Clarence Thomas Secretly Participated in Koch Network Donor Events](#)," *ProPublica* (Sep. 22, 2023).

<sup>14</sup> "[Roundup of Conflicted Characters Cheerleading the Predatory Lender Lawsuit Against CFPB](#)," *Accountable.US* (Jul. 14, 2023).

<sup>15</sup> Brief of *Amicus Curiae* Americans For Prosperity Foundation In Support Of Respondents, *CFPB v. CFSA*, No. 22-448.