

## Who Opposes the Fifth Circuit Decision in *CFA vs. CFPB*?

*Military and veterans service organizations, rural and agricultural groups, the AARP, industry members, academic scholars, state attorneys general, congressional leaders, faith groups, housing groups, legal services organizations, consumer protection groups, and civil rights groups all agree that the Fifth Circuit decision holding that the funding mechanism of the Consumer Financial Protection Bureau (CFPB) is unconstitutional should not stand.*

Next term, the Supreme Court will be reviewing a Fifth Circuit [decision](#) holding that the funding structure of the CFPB is unconstitutional. Last month, a dozen amicus briefs were filed in the case. Some of these briefs explained why the Fifth Circuit’s ruling is at odds with constitutional text and history. Some addressed the consequences of a decision affirming the Fifth Circuit: an extraordinary amount of uncertainty in the marketplace, especially for honest businesses that are trying to do right by consumers. Other briefs discussed the critically important work that the CFPB does for America’s consumers, including servicemembers, veterans, farmers, rural Americans, and older Americans. And still others stressed the potential destabilization of federal agencies and programs that also rely on funding outside of the annual appropriations process, including Veterans Administration benefits, the National Farm Credit Administration, the Federal Reserve, and most federal financial regulators.

Significantly, every other court to have considered the issue has upheld the constitutionality of the CFPB’s funding structure. And collectively these amicus briefs make clear both why the Fifth Circuit stands alone—and how devastating the consequences would be if the Supreme Court were to affirm the Fifth Circuit’s decision.

[Military Officers Association of America, Blue Star Families, National Military Family Association, Iraq and Afghanistan Veterans of America, Vietnam Veterans of America, and a number of other military and veterans service organizations, along with former Assistant Directors of the CFPB Hollister K. Petraeus and Colonel Paul E. Kantwill](#), said that the CFPB “**plays a critical and unique role in promoting the financial wellbeing of America’s 16.5 million veterans, over 2 million servicemembers, and their families.** . . . *Amici* do not typically weigh in on Supreme Court cases, but the practical impact of the Fifth Circuit’s ruling is simply too consequential to ignore.”

Numerous [organizations representing farmers, ranchers, fisherfolk, farm and food chain workers, and rural communities](#) discussed the potential implications of the Fifth Circuit ruling to the Farm Credit Administration (FCA), stating that “if affirmed, **that decision could threaten not only the existence of administrative agencies like the [Farm Credit Administration], but also the sources of the food that feeds our nation.** For those reasons, this Court should reverse the decision of the Fifth Circuit and reaffirm that the Appropriations Clause does not bind Congress to funding agencies only through annual appropriations legislation.”

[AARP and AARP Foundation](#), representing nearly 38 million members aged 50 and older, wrote that the “CFPB benefits older adults by providing critical protections they need to successfully navigate the financial services markets and protect their financial security. . . **These consumer protections are a necessary bulwark to protect older Americans’ financial stability. They must not be weakened in any way.**”

[Asian Real Estate Association of America, National Association of Hispanic Real Estate Professionals, National Association for Latino Community Asset Builders \(“NALCAB”\), Oweesta Corporation, and Self-Help Credit Union](#), affirmed the potentially catastrophic implications of upholding the Fifth Circuit’s ruling: “a ruling that prevents the CFPB from continuing to function would have far-reaching effects. Anyone who uses a consumer financial product or service—anyone with a bank account, a credit card, a mortgage, auto loan, or personal loans—would be at risk. The risk extends beyond consumers, however. **Providers of financial products and services, especially small institutions like *Amici*, would struggle to function in a marketplace where the largest players had free reign and none of the players had a steady source of guidance.** Such a result can and should be avoided at all costs.”

Even industry voices that don’t take a position on the constitutionality of the CFPB weighed in to recognize that a Court decision providing the **broad relief provided by the Fifth Circuit’s ruling could “set off a wave of**

challenges and the housing market could descend into chaos, to the detriment of all mortgage borrowers.” [The Mortgage Bankers Association, the National Association of Home Builders, and the National Association of Realtors](#) (who filed in support of neither party) highlighted “the potentially catastrophic consequences that a decision drawing those rules into doubt could have on the mortgage and real-estate markets. Thus, this Court should take care not to call into question current CFPB regulations, including those governing the real-estate financing industry, which could lead to immediate and intense disruption to the housing market, harming both consumers and the broader economy.”

[144 Current and Former Members of Congress](#) explained why Congress chose to fund the CFPB outside the annual appropriations process to ensure that it would have stable funding: “**Armed with its assessment of what went wrong in the financial crisis, Congress determined that to be effective, the CFPB needed independence from unpredictable annual funding cycles....**” Signers, including Senate Banking Committee Chairman Sherrod Brown, Leader Chuck Schumer, Whip Dick Durbin, Senator Elizabeth Warren, House Financial Services Committee Ranking Member Maxine Waters, Leader Hakeem Jeffries, Whip Katherine Clark, Assistant Leader James Clyburn, Speaker Emerita Nancy Pelosi, Rep. Steny Hoyer, as well as former Sen. Christopher Dodd and former Rep. Barney Frank, urged that “**accepting the Fifth Circuit’s decision would place at risk a funding model that has been used since the early Republic, which now applies to the OCC and a host of other crucial federal programs.**”

[24 State Attorneys General](#), representing Arizona, Colorado, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Pennsylvania, Wisconsin, and more, described the unique role the CFPB plays in state law enforcement, stating that “**the CFPB’s important role in partnering with the States could be equally jeopardized by a broad remedy for any Appropriations Clause violation.** The CFPB often coordinates in bringing joint or parallel enforcement actions with the States to enforce the CFPB’s consumer financial standards.... **Losing the CFPB’s continued contributions would seriously impair the States’ efforts to combat fraud and abuse in the consumer financial market.**”

[Financial regulation scholars](#) discussed the potentially catastrophic impact to markets and other federal banking regulators, writing that “[i]f upheld, the court of appeals’ hasty and mistaken conclusion would expose credit markets to acute and systemic distress. **The court’s logic would further require defunding all federal banking regulators, not just the CFPB.** The Appropriations Clause does not compel this result, and **the financial system cannot withstand it.**”

The [Constitutional Accountability Center, in a brief on behalf of distinguished scholars of history and constitutional law](#), affirmed that the Appropriations Clause does not give judges the authority to second-guess Congress’s determination about how best to fund agencies, stating that “[w]hile praising Congress’s appropriations power, Respondents come to bury it. **Like the Fifth Circuit, they would transform the Appropriations Clause from a legislative check on executive power into a judicial check on legislative power, replacing Congress’s plenary discretion over spending with nebulous, judge-fashioned restraints.** Those limits are absent from the Clause’s text, unsupported by its history, and incompatible with legislation dating to the Founding. The decision below should be reversed.”

[90 state and local nonprofit organizations from 34 states and the District of Columbia shared their support of the CFPB, in a brief written by The UC Berkeley Center for Consumer Law and Economic Justice.](#) This brief discussed the broad array of independently funded *state* regulatory agencies across the country, from Indiana to Texas to Wyoming, that are governed by “state constitutional appropriations provisions that substantially mirror the Appropriations Clause of the U.S. Constitution.” Reflecting the importance of stable funding for financial regulators, the brief explained that “[t]he funding architecture of the Consumer Financial Protection Bureau is neither exceptional nor exceptionable. It is echoed not only among other federal agencies but also, crucially, in dozens of state agencies around the country.”

[A number of national consumer protection and student borrower organizations](#) explained how the CFPB’s funding statute satisfies the requirements of the Appropriations Clause, stating that “**The CFPB receives exactly the**

**appropriations that Congress has commanded, and Congress can alter the appropriations whenever it wants. The Appropriations Clause requires nothing more.”**

More than a [dozen civil, human, women’s, and disability rights organizations](#) highlighted the importance of the CFPB’s work for communities of color, affirming that “[t]he CFPB is integral to the federal government’s efforts to counteract discriminatory practices and thereby ensure a fairer marketplace for all people.”

Finally, the National Treasury Employees Union discussed the negative implications of upholding the Fifth Circuit’s decision to the CFPB’s workforce, stating that “[i]f the Fifth Circuit’s ruling stands, the Bureau’s important work will grind to a halt. Its dedicated workforce will no longer be able to pursue enforcement actions against those who violate federal law, issue guidance to industry, or respond to consumer complaints. **The American people, in other words, would be the ultimate losers of this litigation.**”

**Ultimately, all of these amici agree on one thing: the Supreme Court cannot let the Fifth Circuit’s decision stand.** That result is required by the text and history of the Constitution, and any other result would be disastrous for the American people, our nation’s businesses, and our economy.

Questions, concerns? Reach out to [Brienne Gorod with Constitutional Accountability Center](#) or [Rachel Gittleman with Consumer Federation of America](#).