

Lawsuit Claims CFPB Unconstitutional

June 22, 2012 - The State Bank of Big Spring, TX has filed a federal law suit challenging the constitutionality of the Consumer Financial Protection Bureau. The law suit is the first private-party constitutional challenge to the Dodd-Frank financial reform bill and it challenges two specific provisions that established the CFPB. Additionally, it challenges the constitutionality of the recess appointment of Richard Cordray to head the agency by President Obama.

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The case focuses on Title 1 and Title 10 of Dodd Frank. Title 1 allows the government to regulate certain businesses that it deems high risk for financial markets. And Title 10 covers the establishment of the CFPB.

The law suit claims that the CFPB, as it was established under Dodd-Frank, has no effective oversight by the either Congress or the White House. Congress doesn't even have the ability to control the agency's budget because the agency is funded directly by the FED. The agency currently has a \$400 million annual budget.

Dodd-Frank further insulates the agency by making it nearly impossible for either Congress or the President to remove its director. The law also directs the federal court system to defer to CFPB legal decisions by assuming that the CFPB is the only agency "authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law."

The suit seeks to give the President the authority to fire the agency's director. Additionally, it challenges the appointment of its current director on the grounds that Congress was not in recess at the time of his appointment. If that challenge is upheld, it would likely lead to a reversal of every rule and decision made by the CFPB so far because under Dodd-Frank, the agency is required to have a director before it has any power to regulate.

President Obama's appointment of Cordray to head the agency was highly controversial. The appointment had been repeatedly blocked by the Senate. And although most members of the Senate and the House of Representatives were on break at the time the President made his appointment, both houses of Congress were being called to order every three days during that period. These are known as pro-forma sessions and they have been used by both parties to block recess appointments by presidents.

The actual law suit is not yet available online. ACCESS will keep our readers posted on the suit as it develops.

byJim Malmberg

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