



Written by [Bob Adelman](#) on October 21, 2022

Another Court Fails to Abolish Consumer Financial Protection Bureau

When Freddy Eynsford-Hill attempted to court Eliza Doolittle (played by Julie Andrews) in the play *My Fair Lady*, she expressed her exasperation:

Words! Words! I'm so sick of words!
I get words all day through;
First from him, now from you! Is that
all you blighters can do?

One reading through the [latest court decision](#) on whether Elizabeth Warren's illegitimate brainchild, the Consumer Financial Protection Bureau (CFPB), is unconstitutional or not, and one gets sick of the words: It's unconstitutional, all right, but we're just going to clip its wings and not abolish the monstrosity altogether.

Three Federalist Society-approved, Trump-appointed, so-called conservative judges (Cory T. Wilson, Don R. Willett, and Kurt Engelhardt) ruled that the CFPB is unconstitutional, but kept it in place anyway.

They used smooth-sounding words, quoting from *The Federalist*, No. 48:

An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced . . . that no one could transcend their legal limits, without being effectually checked and restrained by the others.

But that is exactly what the CFPB is: deliberately and intentionally designed by an enemy of the Constitution (Sen. Elizabeth Warren, with *The New American's* Freedom Index rating of just 15 out of 100, lower even than that of another enemy, Nancy Pelosi, with 23) to protect the runaway and rogue agency from any constraints whatsoever and thus allow it to expand its power over the financial sector of the nation without limit.

Two financial service groups, the Community Financial Services Association of America and the Consumer Service Alliance of Texas, brought four charges against the rogue agency:

- (1) the [2017 Payday Lending Rule's] promulgation violated the APA [i.e., exceeded its authority];
- (2) the rule was promulgated by a Director [who is] unconstitutionally insulated from



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presidential removal;

(3) the Bureau's rulemaking authority violates the nondelegation [of powers] doctrine; and

(4) the Bureau's funding mechanism violates the Appropriations Clause of the Constitution.

Wrote Judge Wilson, for the three's unanimous decision:

We agree that, for the most part, the Plaintiffs' claims miss their mark.

But one arrow has found its target: Congress's decision to abdicate its appropriations power under the Constitution, i.e., to cede its power of the purse to the Bureau, violates the Constitution's structural separation of powers.

We thus reverse the judgment of the district court, render judgment in favor of the Plaintiffs, and vacate the Bureau's 2017 Payday Lending Rule.

This leaves in place the rogue agency, created by Congress in 2010, and its license to pursue hapless financial institutions that happen to stumble over the agency's ever-changing and ever-expanding power to make the rules, interpret the rules, and then enforce the rules — precisely what the Founders intended to prohibit.

The three blind and weak-kneed mice admit the agency is unconstitutional. On page 32, deep into its [39-page screed](#), Wilson admits that their decision will allow the agency to act "as a mini legislature, prosecutor, and court, responsible for creating substantive rules for a wide swath of industries, prosecuting violations, and levying knee-buckling penalties against private citizens."

They add that

An expansive executive agency insulated (no, double-insulated) from Congress's purse strings, expressly exempt from budgetary review, and headed by a single Director removable at the President's pleasure is *the epitome* of the unification of the purse and the sword in the executive — an abomination the Framers warned "would destroy that division of powers on which political liberty is founded." [A quote from *The Works of Alexander Hamilton*]

And so, through temerity or threats or unknown pressure from unknown places, the three "constitutional" "conservative" judges abdicated their responsibility to protect the citizenry from such combinations and threats to their liberties.

[Constitutionalist Judge Stands Up to Unconstitutional Consumer Financial Protection Bureau Runaway Federal Agency Reined in, a Little](#)



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