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WLF Promises to Keep an Eye on CFPB Even Though High Court Denies Cert in Separation-of-Powers Case

(Gordon v. Consumer Financial Protection Bureau)

“WLF is sorely disappointed that the Supreme Court did not see fit to review this case. We fear that Director Cordray’s ratification shortcut will be used by many federal agencies in the future until the Court puts a stop to such abuse.”

—Mark Chenoweth, WLF General Counsel

WASHINGTON, DC—The United States Supreme Court announced its decision not to review *Gordon v. Consumer Financial Protection Bureau* today. This move will keep the Ninth Circuit’s decision intact, condoning a federal agency’s ratification of a statutorily unauthorized and constitutionally defective enforcement action. Washington Legal Foundation represented Mr. Chance Gordon in this case, arguing that CFPB did not have standing to bring this suit and that a federal agency may not use ratification to circumvent the Appointments Clause.

This case arose from the recess appointment of Richard Cordray as Director of CFPB in January 2012, when the Senate was not in recess. CFPB conceded that Cordray’s appointment was invalid, meaning he lacked authority to act on behalf of the federal government for 18 months until his renomination in 2013, which was confirmed by the Senate that July. During that time CFPB, at Cordray’s direction, brought a civil enforcement action against a California attorney, Mr. Gordon, for alleged violations of consumer protection laws.

The Ninth Circuit rejected Gordon’s claims that CFPB lacked authority to prosecute him, over a strong dissent from Judge Susan Ikuta who explained why CFPB lacked standing to bring the case. In addition to the standing issue, WLF’s cert petition to the Supreme Court argued that the Ninth Circuit’s ruling conflicts with decisions from the Supreme Court and other appeals courts as they have never before permitted Executive Branch ratification of previous unauthorized Executive Branch actions.

WLF stands firm in its belief that CFPB acted in an unconstitutional manner and continues to regulate beyond the mandate Congress gave it. When future opportunities arise, WLF will once again attempt to keep this rogue federal agency in check.

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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