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US Supreme Court Justices Seem Inclined to Preserve Consumer Bureau, Legal Intelligencer

The constitutionality of the Consumer Financial Protection Bureau (CFPB) was the focus of all three branches of government March 3 as the U.S. Supreme Court heard oral argument in the matter of Seila Law v. Consumer Financial Protection Bureau.

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The constitutionality of the Consumer Financial Protection Bureau (CFPB) was the focus of all three branches of government March 3 as the U.S. Supreme Court heard oral argument in the matter of Seila Law v. Consumer Financial Protection Bureau. The petitioner, Seila Law, asked the Supreme Court to strike down the legislation authorizing the CFPB as unconstitutionally insulating the director of the CFPB from removal from office by the president during her five-year term except for "inefficiency, neglect of duty or malfeasance in office." Seila Law argued that the Dodd-Frank Act granted impermissible executive power to an individual who does not answer to the president as the Constitution empowers the president to keep principal executive officers accountable by removing them at will.

The case originated from the issuance of a civil investigative demand (CID) from the CFPB to Seila Law as part of the CFPB's enforcement power. Seila Law challenged the validity of the CID by arguing that the bureau's constitutional infirmity caused the CID to be void. The U.S. Court of Appeals for the Ninth Circuit upheld the CID and the constitutional structure of the agency in a decision last year.

During a 75-minute oral argument, the justices grappled with Congress' intention to provide political independence to the CFPB by preventing the president from removing the director at-will and by funding the bureau outside of the traditional congressional budget process. In an unusual turn of events, the Trump administration, instead of defending the bureau, reversed course from the government's position at the Ninth Circuit and agreed with Seila Law that the removal provision was unconstitutional. The Supreme Court had appointed a special amicus curiae to argue in support of the judgment below and was joined by counsel for the U.S. House of Representatives, which also sought to uphold the statute in its entirety.