

Vaishali Rao in American Banker and Law360: What is the CFPB's Future, With SCOTUS Now Set to Consider a Constitutional Challenge to the Agency's Structure?

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Hinshaw partner Vaishali Rao discussed with Kate Berry of *American Banker* and Jon Hill of *Law360* the significance of the U.S. Supreme Court agreeing to hear a challenge to the constitutionality of statutory restrictions on the president's ability to remove the director of the Consumer Financial Protection Bureau (CFPB) from office. Under the Dodd-Frank Act, which created the agency, the President can only fire the director 'for cause.' Petitioner Seila Law, a debt collection law firm, argues that this provision represents an unconstitutional violation of the separation of powers doctrine.

While some legal commentators have suggested that the 'for cause' language can be severed from the rest of Dodd-Frank, Rao cautioned this would not be an easy decision: "some of the justices will question what actual duty of the president is being impeded such that he can't perform the functions of the office while the for-cause provision is in there." She added that SCOTUS will need to decide what it means as a practical matter to permit heads of federal agencies to be fired at will.

"Even though it seems simple to just fire someone, what you do is essentially create a system that invests a lot of power in the president," she said. "If you say for cause is severed and the president can fire someone because they don't like their politics, you are investing all the policies at all these agencies with the president. I don't think that's what Congress envisioned."

Rao also said that regardless of how SCOTUS rules, it was unlikely to result in significant policy shifts at the CFPB. She noted how the dramatic shift in rulemaking and enforcement activity that followed Mick Mulvaney's appointment as acting CFPB director in 2017 illustrates why her clients are used to thinking of the CFPB in particular ways through changes in administration.

[Read the full *American Banker* article \(PDF\)](#)

[Read the full *Law360* article \(subscription required\)](#)

“[What Supreme Court case means for CFPB’s future](#)” was published by *American Banker*, October 21, 2019

“[CFPB Doomed At High Court? Don’t Bet On It, Attys Say](#)” was published by *Law360*, October 23, 2019

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