



FOR IMMEDIATE RELEASE

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Press Call: WLF Asks Supreme Court to Review Decision on Ability of CFPB to Ratify Its Past Actions

(*Gordon v. Consumer Financial Protection Bureau*)

WHEN:

Thursday, November 17, 2016
10:30 a.m. – 11:00 a.m. EST

DIAL-IN INFORMATION:

712.451.0204
Conference ID: please email ddye@wlf.org
Please dial in 5-10 minutes prior to start time
Participants will speak for about 10 minutes and then take questions.

PARTICIPANTS:

Mark Chenoweth • General Counsel, Washington Legal Foundation
Richard Samp • Chief Counsel, Washington Legal Foundation
Cory Andrews • Senior Litigation Counsel, Washington Legal Foundation

WASHINGTON, DC—On Thursday, November 17, at 10:30 a.m., Washington Legal Foundation will host a press call to preview its latest petition to the U.S. Supreme Court for a writ of *certiorari* in *Gordon v. Consumer Financial Protection Bureau*, asking the Court to review a decision from the U.S. Court of Appeals for the Ninth Circuit that created a circuit split with two other courts of appeal on when and how a federal agency may ratify prior conduct that was not allowed at the time the agency did it. WLF speakers on the call will explain why the Court should grant review, overturn the Ninth Circuit, and ultimately rule that CFPB’s attempted ratification in this case was invalid.

Richard Cordray’s January 2012 recess appointment as Director of the Consumer Financial Protection Bureau (CFPB) was invalid. As a result, he lacked authority to act on behalf of the federal government for the next 18 months until he was renominated and his nomination was confirmed by the Senate in July 2013. During the intervening period, CFPB (at Cordray’s direction) sought and obtained a civil judgment against a California attorney, Chance Gordon, for alleged violations of consumer protection laws.

The Ninth Circuit rejected Gordon’s claims on appeal that Cordray and CFPB lacked authority to prosecute the enforcement action, concluding that Cordray’s *post hoc*, four-sentence approval in August 2013 of every act he took during his invalid tenure effectively “ratified” all those prior actions. Judge Susan Ikuta dissented, arguing that in light of Cordray’s invalid appointment, CFPB never had standing to file suit against Gordon.

(cont.)

The questions presented in WLF's cert petition on behalf of Gordon are not limited to conduct at CFPB. A Supreme Court decision outlining what counts as effective ratification would apply to all federal agencies. Likewise, a decision reaffirming that federal agencies that are not properly constituted do not have standing to bring enforcement actions would solidify that limit on all runaway agencies.

WLF's cert petition has taken on added significance given the D.C. Circuit's recent decision in *PHH Corp. v. CFPB*. There the D.C. Circuit held that CFPB's structure is unconstitutional because its Director is not sufficiently accountable to the President. The ruling called into question actions taken by the CFPB between January 2012 and October 2016 (the period during which CFPB was unconstitutionally structured). The government will almost certainly argue that the now-restructured agency should be permitted to retroactively "ratify" every action it took during that period. Gordon's petition presents the question what must a valid ratification look like?

WLF is a free-market, public-interest law firm and policy center that regularly litigates in federal court to ensure that administrative agencies adhere to the rule of law.

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