

Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—D.C. Cir.: CFPB ‘shutdown’ dispute remanded after vacatur of preliminary injunction on failed claims, (Aug. 18, 2025)

Banking and Finance Law Daily Wrap Up

[Click to open document in a browser](#)

By Justin Marcus Smith, J.D.

The district court lacked jurisdiction over the claims of organizations representing CFPB employees, and as for remaining plaintiffs, divergence with the district court turned largely on whether to interpret CFPB actions as a reviewable “shutdown” decision.

A panel majority of the United States Court of Appeals for the District of Columbia concluded the National Treasury Employees Union (NTEU) and Consumer Financial Protection Bureau Employee Association could not pursue their overarching action to stop the Trump administration from allegedly dismantling the CFPB, as tied to individual actions the CFPB has been undertaking pursuant to presidential policy. The Civil Service Reform Act, 5 U.S.C. § 1101 *et seq.*, precluded jurisdiction over the employee associations’ claims. The “shutdown” decision posited here was an abstract one. As a matter of law, the court held it was not a specific agency action as defined under the Administrative Procedure Act (APA). The court vacated the preliminary injunction of the district court and remanded for further proceedings without a finding of factual error. ([National Treasury Employees Union v. Vought](#), No. 25-5091 (D.C. Cir. Aug. 15, 2025)).

The majority noted the dissent did not explain how the purported decision to shut down the agency was reviewable as something that bound the agency, though specific actions taken to implement that decision could be reviewable. In any event, on remand, the majority opinion concluded that the other plaintiffs “have no viable cause of action” as a matter of law.

Aggrieved employees could challenge their terminations before the Merit Systems Protection Board (MSPB) and Federal Labor Relations Authority (FLRA). The remaining four plaintiffs, contrary to CFPB arguments, might continue the action on remand. Specifically, the court found the National Association of Colored People (NAACP) had associational standing.

History of the case. As previously reported, the NTEU led a group of plaintiffs trying to stop the dismantling of the CFPB. The NTEU complaint named the Bureau and Acting Director Russell Vought as defendants (see [Banking and Finance Law Daily](#), Feb. 14, 2025). On March 28, 2025, the district court granted the NTEU plaintiffs a broad preliminary injunction against the “hurried” actions to dismantle the CFPB. The next day, Acting Director Vought and the CFPB filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit (see [Banking and Finance Law Daily](#), Mar. 31, 2025).

Upon appeal, the NTEU argued that dismantlement of a congressionally-created agency is unconstitutional; that the record “unequivocally” showed the CFPB defendants’ intent to dismantle; and that the preliminary injunction was the narrowest means for preserving the status quo while the case proceeds (see [Banking and Finance Law Daily](#), May 12, 2025). The CFPB defendants’ contended however that the NTEU plaintiffs lacked Article III standing; their claims were unripe and belong in civil service channels; the alleged “shutdown” was neither final agency action nor *ultra vires*; and the sweep of the district court injunction in reinstating employees, freezing contracts, and dictating operations overstepped equitable limits and intruded on core executive discretion (see [Banking and Finance Law Daily](#), May 15, 2025).

Majority opinion. The court held the district court lacked jurisdiction to consider the claims predicated on loss of employment. Such claims must proceed through the specialized-review scheme established in the Civil Service Reform Act.

The plaintiffs' other claims did not target final agency action reviewable under the APA, nor did they target unconstitutional action reviewable in equity. The D.C. Circuit accordingly vacated the preliminary injunction.

The majority considered how the CFPB undertook a series of actions to substantially downsize itself in line with the President's deregulatory agenda. These actions included terminating employees; canceling contracts; declining additional funding; moving to smaller headquarters; and requiring advance approval for agency work.

The majority distinguished that the government did not claim the power to "shut down" the CFPB, "[n]or could it." The majority acknowledged that many CFPB functions are mandatory, like responding to consumer complaints and engaging in some sort of regulation of the largest banks. The majority said the agency did not suggest it could lawfully abandon these various responsibilities. Instead, the government disputed that it undertook to shut down the CFPB. The plaintiffs' case hinged on individual actions the CFPB had been undertaking to infer a shut down.

The plaintiffs in this case either represent CFPB employees or use CFPB services who sued to stop its "shut down." The district court found that agency leadership had made the "shut down" decision alleged, but from there, the district court entered a preliminary injunction that, in the majority view, and aside from the lack of jurisdiction, severely restricted agency actions regarding employment, contracting, and facilities, among other things.

Dissent. In her dissent, Judge Pillard argued that it is not within the discretion of the President or his appointees to decide that the country will benefit most if the CFPB ceases to exist. She keyed her dissent to the decision Congress made to create the CFPB after chaos and hardship of the 2008 financial crisis and ensuing Great Recession. Pillard reasoned that Congress gave the Bureau rulemaking, enforcement, and direct-service duties and authorities befitting its mission. Statutory mandates, like those of other agencies, allow presidential administrations to exercise significant discretion in adjusting agency priorities. However, the prerogative of that discretion is subject to ordinary judicial review that prevents final agency action that is arbitrary, capricious, or in violation of a statutory command or constitutional right under the APA. As far as dissolving the CFPB, Congress had already made the contrary decision that the CFPB ought to exist by enacting the legislation that established it. Judge Pillard said only Congress has the power to repeal that legislation.

Congressional reaction. Senate Banking Committee ranking member Elizabeth Warren (D-Mass.) [said](#) the majority decision "willfully ignores the Trump Administration's unprecedented and lawless attempt to destroy an agency created by Congress that has helped millions of families across the country." Warren said she agreed with Pillard's dissent that the majority "hid behind technicalities" to let Trump administration officials off the hook.

Rep. Maxine Waters (D-Calif.), the top Democrat on the House Financial Services Committee, [stated](#) she was "outraged and deeply disappointed" by the majority's decision, which she said opens the door for the mass layoff of hundreds of dedicated civil servants who work to protect service members, veterans, older adults, and students.

Consumer groups react. [Public Citizen](#) echoed Judge Pillard's minority opinion that the Trump administration "does not have the authority to abolish" the CFPB. Public Citizen is considering a petition for rehearing *en banc*.

Better Market's President and CEO Dennis Kelleher [said](#) the CFPB has been an "effective cop on the finance beat" in attempting to protect millions of Americans from "financial predators, scammers, and crooks." He said the majority decision was a "gigantic win for Wall Street's biggest banks and the financial industry, but Main Street Americans are going to pay the price."

The case is [No. 25-5091](#).

Judge: Katsas, G., Pillard, C., Circuit Judge., dissenting.

Attorneys: Jennifer D. Bennett (Gupta Wessler LLP) for National Treasury Employees Union, National Consumer Law Center, National Association for the Advancement of Colored People, Virginia Poverty Law Center, Eva Steege, and CFPB Employee Association. Eric D. McArthur, Deputy Assistant Attorney General, U.S. Department of Justice, for Russell Vought and the Consumer Financial Protection Bureau.

Companies: Better Markets; Public Citizen

MainStory: TopStory CFPB DirectorsOfficersEmployers DistrictofColumbiaNews DoddFrankAct
FederalReserveSystem FedTracker GCNNews BankingFinance DOGE