

Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—D.C. Cir.: NTEU plaintiffs request rehearing en banc in Vought, CFPB shutdown imbroglio, (Sept. 30, 2025)

Banking and Finance Law Daily Wrap Up

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By Justin Marcus Smith, J.D.

The NTEU plaintiffs contend that the appellate panel majority's ruling puts the constitutional order in jeopardy by enabling federal agencies to do whatever they want by not memorializing their decisions.

The National Treasury Employees Union (NTEU) and allied plaintiffs have [petitioned](#) the U.S. Court of Appeals for the District of Columbia Circuit for an urgent *en banc* review of the Circuit's August 15 decision that effectively allowed the Trump administration to resume dismantling the Consumer Financial Protection Bureau (CFPB). The NTEU plaintiffs presented two main arguments for review: (1) the panel majority's novel "public statement" rule in connection with the Administrative Procedure Act (APA) conflicts with binding precedent and lets agencies evade judicial review; (2) the panel majority's conclusion that a unilateral agency shut down does not give rise to a separation-of-powers claim conflicts with precedent and threatens to make separation-of-powers violations unreviewable. The NTEU plaintiffs warned of jeopardy to the constitutional order if agencies can do whatever they want by not memorializing their decisions (*National Treasury Employees Union v. Vought*, No. 25-5091 (D.C. Cir. Sept. 29, 2025)).

Background. In early 2025, the National Treasury Employees Union (NTEU) and other public interest plaintiffs challenged the Trump administration's dismantling of the Consumer Financial Protection Bureau as unlawful (see [Banking and Finance Law Daily](#), Feb. 14, 2025).

Within days, the district court issued a consent order that, among other things, stopped CFPB employee firings and "reductions in force" (RIF) during case pendency (see [Banking and Finance Law Daily](#), Feb. 18, 2025). On March 28, the district court went a step further and granted the NTEU plaintiffs a preliminary injunction. The court said the Trump administration's "hurried" actions to dismantle the CFPB were "taken in complete disregard" of specific Congressional intent to create the CFPB in the wake of the 2008 Financial Crisis. The next day, March 29, 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).

On April 11, the D.C. Circuit stayed only the preliminary injunction's RIF prohibition to the extent it prohibited CFPB workforce reductions even if based on assessments that particular employees were not needed to carry out the government defendants' statutory CFPB duties. Essentially, firings could continue if they were particularized and not *en masse*.

Vought announced a 90 percent CFBP workforce reduction. That scrambled the plaintiffs in the district court for an order to show cause why the RIF did not violate the partially stayed injunction for lack of particularized assessments. The district court temporarily enjoined the sweeping RIF at an April 18 hearing and barred any terminations until a full evidentiary hearing. A few days later, the district court clarified its April 18 injunction was a temporary action to preserve the status quo until it could hold a full hearing (see [Banking and Finance Law Daily](#), [Apr. 18, 2025](#), and [Apr. 21, 2025](#)).

On August 15, a D.C. Circuit panel majority concluded the NTEU plaintiffs 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 panel majority reasoned the Civil Service Reform Act, 5 U.S.C. § 1101 *et seq.*, precluded jurisdiction over the NTEU plaintiffs' claims. The D.C. Circuit vacated the preliminary injunction of the district court and remanded for further proceedings without a finding of

factual error. Circuit Judge Pillard dissented, maintaining that Congress created the CFPB, and, consequently, it was not up to the President or his appointees to decide whether the country would benefit most by destroying it (see [Banking and Finance Law Daily](#), Aug. 18, 2025).

NTEU petition. The NTEU plaintiffs' petition for urgent *en banc* review began with the observation that the CFPB defendants "never disputed" that unilaterally wiping out an entire agency is unconstitutional, yet the panel held no court may stop them. The NTEU plaintiffs said that conclusion "cannot be squared with binding precedent." The Executive Branch should not be allowed to alter the fundamental structure of our government without congressional authorization or judicial review. Instead, the panel majority "rewrote" core administrative and constitutional law principles that will have "far-reaching impact beyond this case."

Whereas the panel majority reasoned that Vought's directive to eliminate the agency was unreviewable under the APA because he did not sufficiently memorialize it in a public statement in the U.S. Code, the *Federal Register*, or any agency records, Judge Pillard noted in her dissent that the defendants publicly "celebrated their lawless decision to reporters and the broader public." Failure to formally record the decision should not be overlooked, and it certainly should not be a ground to vacate the district court's preliminary injunction, because doing so is an "invitation to agency evasion and deception."

In the NTEU plaintiffs' view, the panel's reasoning ran contrary to its own precedent and Supreme Court precedent, for example, in *Biden v. Texas*, 597 U.S. 785 (2022), among other cases cited. Referring to Judge Pillard's instant dissent, the NTEU plaintiffs echoed that the D.C. Circuit has consistently rejected the idea that an agency can categorically immunize its exercise of power from judicial review by simply not memorializing it.

In any event, the NTEU plaintiffs continued that there is also a freestanding equitable cause of action directly under the Constitution to enjoin unconstitutional Executive action. Even so, in the NTEU plaintiffs' view, the majority held, again in conflict with both Supreme Court and D.C. Circuit precedent, that abolishing an agency without authority is an exclusively statutory dispute. The NTEU plaintiffs cited how the Supreme Court has also long held that the Executive violates the separation of powers when it acts without constitutional or statutory authority, for example, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585-86 (1952).

The NTEU plaintiffs continued that it cannot be the rule that a court may review unconstitutional action unless the defendant admits it is unconstitutional, in which case the court would, as here, let it stand. They predicted the panel's departure from ample precedent renders the judiciary incapable of enforcing bedrock separation-of-powers principles when needed most, calling for urgent *en banc* review.

Last, the NTEU Plaintiffs emphasized that *en banc* review is urgently needed because elimination of the CFPB will cause irreparable damage. It would cause a major regulatory disruption, and it would appreciably damage congressional work in the consumer-finance arena. See *Seila Law LLC v. CFPB*, 591 U.S. 197, 236-37 (2020). Consumers will face immediate harm without the CFPB to refer to for help in foreclosure and identity fraud issues. The nation's largest banks will also go unsupervised.

The damage would not stop there because the panel majority's decision "empowers the Executive to shut down any agency without congressional authority and shield that decision from judicial review until it's too late." Essentially, the NTEU plaintiffs concluded the panel majority decision puts the constitutional order in jeopardy by indulging any agency to do anything by simply not memorializing it.

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Companies: CFPB Employee Association; National Association for the Advancement of Colored People; National Consumer Law Center; National Treasury Employees Union; Virginia Poverty Law Center

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