



May 13, 2024

FIFTH CIRCUIT STAYS EFFECTIVE DATE OF CFPB LATE FEE RULE

In a decision coming just under the wire set by the Fifth Circuit, Judge Pittman of the District Court of Texas, Fort Worth Division granted the U.S. Chamber of Commerce's motion for preliminary injunction in its case against the Consumer Financial Protection Bureau ("CFPB"), staying the CFPB's late fee rule effective date of May 14, 2024. See our ALERTS of [March 8](#), [March 29](#), [April 3](#) and [April 8, 2024](#) for an overview of the case's procedural history to date.

After a thorough examination of the case timeline (complete with an actual timeline) the District Court ruled that because the Fifth Circuit has held that the CFPB's funding structure is unconstitutional, a preliminary injunction is warranted in this case. To obtain a preliminary injunction, Plaintiffs must show (i) a substantial likelihood of success on the merits, (ii) a substantial risk of irreparable injury, (iii) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted and (iv) that the grant of an injunction will not disserve the public interest.

The District Court held that the Chamber has a high likelihood of success on the merits and faces irreparable harm. If the CFPB's funding is unconstitutional, any regulations promulgated under that regime are likely unconstitutional as well under controlling precedent. When balancing interests under the third and fourth prongs (which merge when the government is the opposing party), courts in the Fifth Circuit usually apply a "do-no-harm" approach that results in preserving the status quo. Since the late fee rule has not yet gone into effect, the status quo is preserved by granting injunctive relief.

The Fifth Circuit's holding that the CFPB's funding is unconstitutional is currently on appeal pending decision by the Supreme Court of the United States. The Supreme Court decision in the funding case may affect the status of this preliminary injunction, as the District Court decision is based on the Fifth Circuit's CFPB funding precedent. In its motion for preliminary injunction, the Chamber of Commerce additionally argued that an injunction is warranted because the late fee rule violates the CARD Act, TILA and APA; however, the District Court did not address those arguments. Should the Fifth Circuit's CFPB funding decision be overturned or modified by the Supreme Court, the Chamber's additional arguments for the preliminary injunction may be revisited in further litigation. The Supreme Court decision on the CFPB's funding is expected

before the end of this term, likely sometime in June.

We will continue to monitor the status of this case and provide updates on the final credit card late fee rule in light of this legal challenge.

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