

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA, AMERICAN  
BANKERS ASSOCIATION, AMERICAN  
FINANCIAL SERVICES ASSOCIATION,  
CONSUMER BANKERS ASSOCIATION,  
FINANCIAL SERVICES ROUNDTABLE,  
TEXAS ASSOCIATION OF BUSINESS,  
TEXAS BANKERS ASSOCIATION, GRAND  
PRAIRIE CHAMBER OF COMMERCE,  
GREATER IRVING LAS COLINAS  
CHAMBER OF COMMERCE, GRAPEVINE  
CHAMBER OF COMMERCE, LUBBOCK  
CHAMBER OF COMMERCE, BAY CITY  
CHAMBER OF COMMERCE, GREATER  
NEW BRAUNFELS CHAMBER OF  
COMMERCE, LONGVIEW CHAMBER OF  
COMMERCE, MCALLEN CHAMBER OF  
COMMERCE, NORTH SAN ANTONIO  
CHAMBER OF COMMERCE, PARIS-LAMAR  
CHAMBER OF COMMERCE, and PORT  
ARTHUR CHAMBER OF COMMERCE,

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION  
BUREAU; RICHARD CORDRAY, in his  
official capacity as director of the Consumer  
Financial Protection Bureau,

Defendants.

Case No. 3:17-cv-02670-D

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 65, respectfully request entry of a preliminary injunction regarding defendant Consumer Financial Protection Bureau's ("CFPB" or "Bureau") new regulation banning pre-dispute arbitration agreements ("the Arbitration Rule" or "the Rule"). *See* Arbitration Agreements, 82 Fed. Reg. 33,210 (July 19, 2017). Specifically, Plaintiffs request a preliminary injunction that (1) enjoins the 180-day implementation period, which commenced on the date the Rule became effective, so that—if the Rule ultimately is upheld—plaintiffs' members will have the full 180-day implementation period established by the Rule to come into compliance; and (2) prohibits defendants from implementing or enforcing the Arbitration Rule pending the completion of judicial review.

The four-part test for issuance of a preliminary injunction (*Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)) is met here.

*First*, plaintiffs are "likely to succeed on the merits" of their challenge to the Arbitration Rule. *Id.* The Bureau's structure is unconstitutional, an infirmity that makes this Rule promulgated by the Bureau invalid. The substantial nature of plaintiffs' constitutional challenge is manifest: a panel of the D.C. Circuit recently held that the Bureau's structure is invalid under Article II of the Constitution because the Bureau's Director is unconstitutionally insulated from control by the elected branches of government. *See PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 26, 30-32 (D.C. Cir. 2016), *reh'g en banc granted, order vacated*, Feb. 16, 2017.

*Second*, plaintiffs' members are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Plaintiffs' members will suffer irreparable injury if they are subject to a rule promulgated by an unconstitutionally structured independent bureau. Plaintiffs' members also will not be able to recover either the significant administrative costs that they will have to expend to come into compliance with the Rule or the increased dispute-resolution costs that

will result if they are forced to comply with the Rule while this suit is pending. Once plaintiffs are subject to the Rule, they will experience a spike in unrecoverable litigation settlement costs.

*Third*, “the balance of equities tips in . . . favor” of a preliminary injunction. *Winter*, 555 U.S. at 20. Although plaintiffs would suffer severe, irreparable injury if an injunction were withheld, the Bureau will experience no harm at all if an injunction is issued. The injunction would simply preserve the status quo permitting pre-dispute arbitration agreements—a status quo that existed for *decades* prior to the issuance of the Rule, including the more than five years during which the Bureau considered whether and how to regulate arbitration. Particularly in light of the Bureau’s own five-year process, there is no credible argument that the Bureau would be harmed by a short additional delay while this Court considers the important constitutional and statutory issues presented by this case.

*Fourth*, a preliminary injunction “is in the public interest.” *Winter*, 555 U.S. at 20. Maintaining the availability of arbitration would benefit not only businesses like plaintiffs’ members, but also consumers. Arbitration often provides consumers the *only* realistic mechanism for the resolution of disputes with providers of financial services, while the cost savings that businesses achieve through the use of arbitration are passed through to customers in the form of lower prices. Indeed, the Treasury Department’s Office of the Comptroller of the Currency has concluded that implementation of the Rule will result in greater costs for consumers.

In support of this motion, Plaintiffs submit the accompanying Memorandum in Support of Motion for Preliminary Injunction, Proposed Order, and Appendix.

Dated: October 19, 2017

Respectfully submitted,

By: s/ Andrew J. Pincus

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*Counsel for Plaintiff Chamber of Commerce of the  
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**CERTIFICATE OF CONFERENCE**

I hereby certify that counsel for Plaintiffs conferred with counsel for Defendants on October 19, 2017 as to the substance of this motion. Christopher Deal, counsel for Defendants, stated that Defendants are opposed to the relief requested. Agreement could not be reached because Defendants believe that the challenged Arbitration Rule is lawful and thus should not be enjoined.

/s/ Kevin Ranlett

Kevin Ranlett

**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2017, I electronically filed the foregoing motion for preliminary injunction, supporting memorandum, appendix, and proposed order with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record and constitute service on such counsel and their represented parties pursuant to FED. R. CIV. P. 5(b)(2)(E) and Local Rule 5.1(d). In addition, by agreement of the parties, I caused the foregoing to be served by email on counsel for Defendants as follows:

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/s/ Andrew J. Pincus

Andrew J. Pincus

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**[PROPOSED] ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

This matter comes before the Court on the plaintiffs’ motion for a preliminary injunction. Having reviewed the papers filed in support of and in opposition to this motion (if any), and being fully advised, and in accordance with Federal Rule of Civil Procedure 65, the Court finds that plaintiffs have satisfied the four-part test for issuance of a preliminary injunction set forth in *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008).

*First*, plaintiffs are “likely to succeed on the merits” of their challenge to the new regulation of defendant Consumer Financial Protection Bureau (“CFPB” or “Bureau”) banning pre-dispute arbitration agreements (“the Arbitration Rule” or “the Rule”). *See* Arbitration Agreements, 82 Fed. Reg. 33,210 (July 19, 2017). As a panel of the D.C. Circuit recently has held, the Bureau’s Director is unconstitutionally insulated from control by the elected branches of government. *See PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 26, 30-32 (D.C. Cir. 2016), *reh’g en banc granted, order vacated*, Feb. 16, 2017. The Bureau’s unconstitutional structure renders the Rule it promulgated invalid.

*Second*, plaintiffs’ members are “likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Plaintiffs’ members will suffer irreparable injury if they are subject to a rule promulgated by an unconstitutionally structured independent bureau. Plaintiffs’ members also will not be able to recover either the significant administrative costs that they will have to expend to come into compliance with the Rule or the increased dispute-resolution costs that will result if they are forced to comply with the Rule while this suit is pending. Once plaintiffs are subject to the Rule, they will experience a spike in unrecoverable litigation settlement costs.

*Third*, “the balance of equities tips in . . . favor” of a preliminary injunction. *Winter*, 555 U.S. at 20. Although plaintiffs would suffer severe, irreparable injury if an injunction were withheld, the Bureau will experience no harm at all if an injunction is issued. The injunction would simply



preserve the status quo permitting pre-dispute arbitration agreements—a status quo that existed for *decades* prior to the issuance of the Rule, including the more than five years during which the Bureau considered whether and how to regulate arbitration. Particularly in light of the Bureau’s own five-year process, there is no credible argument that the Bureau would be harmed by a short additional delay while this Court considers the important constitutional and statutory issues presented by this case.

*Fourth*, a preliminary injunction “is in the public interest.” *Winter*, 555 U.S. at 20. Maintaining the availability of arbitration would benefit not only businesses like plaintiffs’ members, but also consumers. Arbitration often provides consumers the *only* realistic mechanism for the resolution of disputes with providers of financial services, while the cost savings that businesses achieve through the use of arbitration are passed through to customers in the form of lower prices. Indeed, the Treasury Department’s Office of the Comptroller of the Currency has concluded that implementation of the Rule will result in greater costs for consumers.

Upon finding that plaintiffs have carried their burden of satisfying *Winter*’s four-part test, the preliminary injunction is granted pursuant to Federal Rule of Civil Procedure 65 and the inherent equitable powers of the Court.

The Court hereby preliminarily RESTRAINS AND ENJOINS defendants CFPB and Richard Cordray, the director of the CFPB, and their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with them, from implementing or enforcing the Arbitration Rule pending the completion of judicial review. In particular, the Court RESTRAINS AND ENJOINS the 180-day implementation period, which commenced on the date that the Rule became effective, so that—if the Rule ultimately is upheld—plaintiffs’ members will have the full 180-day implementation period established by the Rule to come into compliance.

This preliminary injunction shall take effect immediately and shall remain in effect pending further order of the Court.

Plaintiffs are not required to post a bond. The Court finds that security is not required under the circumstances of this case.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017 at \_\_\_\_\_ a.m./p.m.

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Hon. Sidney A. Fitzwater  
United States District Judge