

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE NATIONAL BANK)	
OF BIG SPRING <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:12-cv-01032 (ESH)
)	Hon. Ellen S. Huvelle
JACOB LEW, in his official capacity as)	
United States Secretary of the Treasury and)	
<i>ex officio</i> Chairman of the Financial Stability)	
Oversight Council, <i>et al.</i> ,)	
)	
Defendants.)	

**BRIEF OF AMICI CURIAE REP. SEAN P. DUFFY AND
CONSUMERS' RESEARCH IN SUPPORT OF PLAINTIFFS**

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INTEREST OF AMICI CURIAE¹

Amici curiae include the Honorable Sean P. Duffy, who represents the Seventh Congressional District of Wisconsin in the United States House of Representatives. Rep. Duffy has a special interest in preserving the Constitution's separation of powers, particularly in cases, like this one, that implicate Congress's exclusive power of the purse. Rep. Duffy also serves as the Chairman for the House Financial Services Subcommittee on Oversight & Investigations, which is responsible for oversight of the Consumer Financial Protection Bureau ("CFPB" or "the Bureau"). Rep. Duffy thus has firsthand knowledge of how the CFPB's independence from Congress's power of the purse insulates the CFPB from congressional oversight.

Amici curiae also include Consumers' Research, an independent educational organization whose mission is to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding. The CFPB's reluctance to share with Congress and the public the basis for many of its regulatory and enforcement decisions has significantly undermined the ability of Consumers' Research to fulfill its mission as a consumer watchdog. Consumers' Research thus has firsthand knowledge of how the CFPB's independence from Congress's power of the purse insulates the CFPB from public scrutiny.

¹ The parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no person or entity other than amici or their counsel made a monetary contribution intended to fund its preparation or submission.

INTRODUCTION

The CFPB’s five-year plan proclaims that the Bureau has “full independence” from Congress in regulating trillions of dollars’ worth of consumer financial markets.² This is not just an idle boast. The CFPB enjoys “full independence” from Congress because it enjoys *financial independence* from Congress. Specifically, the CFPB’s operations are funded with hundreds of millions of dollars drawn directly from the Federal Reserve System each year, independently of Congress’s appropriations. But the Constitution, in order to preserve liberty, creates a separation of powers that grants Congress alone the power of the public’s purse. This exclusive power may not be shared with the CFPB or any other part of the Executive Branch.

This violation of the separation of powers is exacerbated by other features of the CFPB’s design. As explained below, the CFPB possesses not one but two layers of insulation from Congress’s power of the purse. And the CFPB enjoys comprehensive independence not only from Congress but from the President as well. Although the Supreme Court has approved, in limited circumstances, “independent agencies” within the Executive Branch, it has done so knowing that diminished presidential control would be replaced by increased congressional oversight. Not so here. The CFPB is accountable to neither political branch. The Constitution does not allow such significant regulatory powers in the hands of a single unelected, self-sustaining agency accountable to no one.

Plaintiffs’ motion for summary judgment persuasively explains why the CFPB’s unprecedented structure undermines the separation of powers by insulating the Bureau from the President, the Congress, and the Courts. In this brief, amici will expand on how the CFPB’s

² CFPB, *Consumer Financial Protection Bureau Strategic Plan, FY 2013–2017* at 36 (Apr. 2013), <http://goo.gl/nn8spf>.

“full independence” from Congress’s power of the purse violates the separation of powers and thus threatens liberty.

BACKGROUND

The CFPB regulates consumer financial markets that are worth trillions of dollars.³ These markets are central to the American economy and include the mortgage market, bank accounts, credit cards, student loans, and more.⁴ Few agencies or bureaus regulate larger portions of the economy.

The CFPB’s powers include broad authority to administer eighteen federal consumer financial laws that were previously administered by numerous other agencies. 12 U.S.C. §§ 5481(12), 5511. The CFPB is charged with ensuring “that markets for consumer financial products and services are fair, transparent, and competitive.” *Id.* § 5511(a). To that end, the CFPB may regulate “unfair, deceptive, or abusive act[s] or practice[s]” in connection with the offer or sale of a consumer financial product or service. *Id.* § 5531(a). To support its many rulemaking, oversight, and enforcement powers, the CFPB employs more than 1,500 full-time equivalent employees and wields an annual budget of about \$600 million.⁵

The CFPB executes these laws with wholesale independence from the Chief Executive. Although the CFPB formally resides within the Executive Branch, it is designated an “independent bureau” that sits within the Federal Reserve System, *id.* § 5491(a), and it has its

³ Richard Cordray, *Prepared Remarks of CFPB Director Richard Cordray at the Consumer Advisory Board Meeting* (Sept. 11, 2014), <http://goo.gl/FRbd2J>.

⁴ *Id.*

⁵ In fiscal year 2016, the CFPB projects that it will employ 1,690 full-time equivalent employees (FTEs) and have a budget of \$605.5 million. In fiscal year 2015, the CFPB employed 1,537 FTEs and had a budget of \$582 million. CFPB, *The CFPB Strategic Plan, Budget, and Performance Plan and Report* at 14–15 (Feb. 2015), <http://goo.gl/kHc4vd> (hereinafter “2015 CFPB Plan”).

own independent litigation authority, *id.* § 5564. The CFPB is headed by a single Director, *id.* § 5491(b), not the multi-member commission or board that generally heads independent agencies.⁶ Though the President normally has plenary power to remove principal officers, he may remove the Director of the CFPB only “for inefficiency, neglect of duty, or malfeasance in office.” *Id.* § 5491(c)(3). Once appointed, the Director serves a five-year term, but even that term may extend indefinitely “until a successor has been appointed and qualified.” *Id.* § 5491(c)(2).

The CFPB also enjoys independence from both the Federal Reserve’s Board of Governors and the Office of Management and Budget. The Board of Governors may not “appoint, direct, or remove any officer or employee of the Bureau.” *Id.* § 5492(c)(2)(B). The Board of Governors may not “intervene in any matter or proceeding before the Director, including examinations or enforcement actions,” unless specifically authorized by law. *Id.* § 5492(c)(2)(A). The CFPB’s rules and orders are not subject to approval or review by the Board of Governors. *Id.* § 5492(c)(3). And the Board of Governors may not “delay or prevent the issuance of any rule or order of the Bureau.” *Id.*⁷ Similarly, OMB lacks “any jurisdiction or oversight over the affairs or operations of the Bureau.” *Id.* § 5497(a)(4)(E). Although the CFPB Director must submit certain reports and forecasts to OMB, the Director is not required “to consult with or obtain the consent or approval of the Director of [OMB] with respect to any” such report. *Id.*

⁶ See Lisa Schultz Bressman & Robert B. Thompson, *The Future of Agency Independence*, 63 VAND. L. REV. 599, 610 (2010).

⁷ The Financial Stability Oversight Council may set aside a CFPB regulation under exceedingly narrow circumstances: two-thirds of the Council’s ten voting members must vote to set aside the regulation, and they may do so only if they make “an official determination” that the regulation “would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.” 12 U.S.C. § 5513.

The CFPB also exercises its regulatory and enforcement powers without meaningful oversight or control from Congress. The CFPB does not rely upon *any* appropriations from Congress to fund its operations. As a result, it faces less congressional oversight than almost any agency or bureau. To fund its activities, each year the CFPB Director has sole power to requisition from the Federal Reserve System up to 12% of the total 2009 operating expenses of the Federal Reserve System, adjustable for inflation. *Id.* § 5497(a).⁸ And the CFPB’s funds “*shall not* be construed to be Government funds or appropriated monies.” *Id.* § 5497(c)(2) (emphasis added). The CFPB requisitioned \$539 million from the Federal Reserve System in fiscal year 2015, and it plans to requisition \$605.5 million in fiscal year 2016.⁹

Congress has no control over the hundreds of millions of dollars that the CFPB requisitions from the Federal Reserve System: “[T]he funds derived from the Federal Reserve System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate.” *Id.* § 5497(a)(2)(C). The President, *id.* § 5491(c)(3), and the Board of Governors, *id.* § 5492(c), are also prohibited from reviewing the Director’s decision to requisition this money.

SUMMARY OF ARGUMENT

“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. CONST. art. I, § 9, cl. 7. These few words bestow upon Congress the exclusive power of the purse, a hard-won “bulwark of the Constitution’s separation of powers.” *Department of Navy v. FLRA*, 665 F.3d 1339, 1347 (D.C. Cir. 2012). The Appropriations Clause

⁸ The CFPB could requisition up to 10% of the 2009 operating expenses in fiscal year 2011, and up to 11% in fiscal year 2012. For fiscal year 2013 and each year thereafter, the amount is 12% of such expenses, adjustable for inflation. 12 U.S.C. § 5497(a)(2)(A).

⁹ 2015 CFPB Plan, *supra* note 5, at 21.

has its roots in Parliament's centuries-long struggle to wrest control of the purse from the Crown and establish, for the first time, a potent second branch of government. The Framers knew this history and the dangers in conjoining the sword and purse. So they readily agreed that Congress alone would hold the appropriations power, for if "the executive would possess an unbounded power over the public purse of the nation," it "might apply all its moneyed resources at [its] pleasure." *OPM v. Richmond*, 496 U.S. 414, 427 (1990) (quoting 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1348 (3d ed. 1858)). Today, the appropriations power remains a vital feature of the separation of powers and the primary tool for Congress to oversee how the vast array of federal agencies—many of them independent from the President—do their job.

The CFPB violates the separation of powers because it evades Congress's "exclusive power over the federal purse." *Rochester Pure Waters Dist. v. EPA*, 960 F.2d 180, 185 (D.C. Cir. 1992). Although the Constitution provides that Congress alone holds the purse strings of the federal government, the CFPB administers vast federal powers yet does not depend upon Congress for a single cent. Instead, the CFPB holds the strings to a private purse, worth more than half-a-billion dollars, that exists *completely independent* of Congress. This private purse has no expiration date. It is not subject to periodic congressional review. It is expressly denominated not to be comprised of Government funds or appropriated monies. It supports vast regulatory and enforcement powers over entire industries accounting for trillions of dollars' worth of the economy. And its size will vary significantly at the sole discretion of the Director, who may take *up to* 12% of the 2009 operating expenses of the Federal Reserve, an amount that could reach \$631.7 million in fiscal year 2016.¹⁰

¹⁰ 2015 CFPB Plan, *supra* note 5, at 21.

This violation of the separation of powers is particularly problematic in light of two other features of the CFPB's design. *First*, the CFPB's budget is subject to a dual layer of insulation from Congress's power of the purse, because the Board of Governors, from which the CFPB draws its funds, *also* funds itself entirely without congressional appropriations. The CFPB is thus uniquely insulated from Congress's power of the purse. *See Free Enter. Fund v. PCAOB*, 561 U.S. 477, 495 (2010).

Second, the CFPB enjoys complete autonomy not only from Congress, but also from the President. "Independent agencies" free from Presidential control present obvious and grave separation of powers concerns. Although the Supreme Court has approved independent agencies in certain limited circumstances, it has done so with the understanding that diminished presidential control would be replaced by increased congressional oversight. Yet here, the CFPB wields vast executive and legislative powers free from control by either political branch.

The CFPB uproots centuries of separation of powers precedent and practice, and the results are as predictable as they are anti-constitutional. Because the CFPB is not beholden to Congress for funding, it is not beholden to Congress for anything. Time and again, the CFPB has resisted congressional oversight and control on matters large and small. The People's representatives have been sidelined while a single unelected official, accountable to no one, exercises immense power over the consumer financial markets. The Constitution does not countenance this usurpation of the separation of powers, and neither should this Court.

ARGUMENT

A. **The Separation of Powers Doctrine Originated When Parliament— and Congress—Wrested the Appropriations Power From the Executive.**

The seeds of the Appropriations Clause were planted in Britain eight centuries ago. The Crown historically had two principal sources of revenue: hereditary revenue and tax revenue.¹¹ The hereditary revenue belonged to the Crown, but the Crown could not raise tax revenue without the consent of Parliament.¹² The principle of parliamentary consent to levy taxes dates as far back as 1215, when King John agreed in the Magna Carta that “[n]o scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom.”¹³ Thus whenever the hereditary revenue was insufficient to sustain the government—this typically occurred in times of war—the Crown was forced to request Parliament’s approval to levy the necessary taxes.¹⁴

Whenever the King could not *fund* the government entirely by himself, he could not *control* the government entirely by himself. From the start, Parliament deployed its power of the purse to oversee and restrain how the Crown used its executive power.¹⁵ For example, in 1628, when Charles I asked Parliament to levy a tax to fund the war against Spain and France, Parliament assented only on the condition that Charles sign the Petition of Right, whereby he agreed that no person could be “compelled to make or yield any gift, loan, benevolence, tax or

¹¹ Paul F. Figley & Jay Tidmarsh, *The Appropriations Power & Sovereign Immunity*, 107 MICH. L. REV. 1207, 1217–18 (2009).

¹² Peter Raven-Hansen & William C. Banks, *Pulling the Purse Strings of the Commander in Chief*, 80 VA. L. REV. 833, 891 (1994).

¹³ WILLIAM SHARP MCKECHNIE, *MAGNA CARTA: A COMMENTARY ON THE GREAT CHARTER OF KING JOHN* 232 (2d ed. 1914), *quoted in* Figley & Tidmarsh, *supra* note 11, at 1218.

¹⁴ Raven-Hansen & Banks, *supra* note 12, at 891.

¹⁵ Figley & Tidmarsh, *supra* note 11, at 1219.

such like charge without common consent by act of parliament.”¹⁶ When Charles I requested another tax in 1640, Parliament assented only on the condition that the King abolish the Star Chamber and the Commission for Causes Ecclesiastical.¹⁷ In 1665, Parliament agreed to levy a tax to fund Charles II’s war against Holland, but it included an appropriations clause prohibiting the King from spending the money on anything other than the war effort.¹⁸ In 1689, Parliament used its power of the purse to subject the size, pay, and discipline of the army to statute.¹⁹

Parliament also used its power of the purse to limit the Crown’s hereditary revenues. Parliament gradually replaced the Crown’s independent hereditary revenues with lifetime and annual grants from Parliament, ensuring that the King could not “live of his own.”²⁰ “The elimination of the hereditary revenues meant that the King received virtually all his funds from Parliament,” and was thus beholden to Parliament.²¹ Parliament also limited the duration of its grants to the Crown, ensuring the Crown had to continually call Parliament back into session.²²

By 1700, as “the colonies began to be established in America, the British legislature had assumed plenary control over the appropriations process.”²³ The colonial assemblies understood that the power of the purse was necessary to restrain the Executive, and their “path to power was

¹⁶ Col. Richard D. Rosen, *Funding “Non-Traditional” Military Operations: The Alluring Myth of a Presidential Power of the Purse*, 155 MIL. L. REV. 1, 35 (1998) (internal quotation marks omitted).

¹⁷ *United States v. Gecas*, 120 F.3d 1419, 1450 (11th Cir. 1997) (en banc).

¹⁸ Figley & Tidmarsh, *supra* note 11, at 1226.

¹⁹ Raven-Hansen & Banks, *supra* note 12, at 891.

²⁰ Figley & Tidmarsh, *supra* note 11, at 1228, 1235 (internal quotation marks omitted).

²¹ Michael B. Rappaport, *The Selective Nondelegation Doctrine and the Line Item Veto: A New Approach to the Nondelegation Doctrine and Its Implications for Clinton v. City of New York*, 76 TUL. L. REV. 265, 323 (2001).

²² Figley & Tidmarsh, *supra* note 11, at 1228.

²³ Todd David Peterson, *Protecting the Appropriations Power: Why Congress Should Care About Settlements at the Department of Justice*, 2009 BYU L. REV. 327, 333 (2009).

the familiar one that Parliament had blazed in the seventeenth century: control of the fisc.”²⁴ The assemblies won the appropriations power and used that prerogative to override the colonial governors on many important political questions of the day.²⁵ Another fight for control of the fisc—whether the Crown could impose taxation without representation—then precipitated the Revolution.

The Constitution’s Appropriations Clause is thus rooted in the “concern of seventeenth- and eighteenth-century British Parliaments that an executive with access to the treasury as well as to offices could corrupt legislators and free itself from popular oversight.”²⁶ James Madison justified the Appropriations Power by explicitly appealing to this history, explaining that Congress must “hold the purse—that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government.”²⁷

The most salient feature of the debate over the Appropriations Clause at the Constitutional Convention is the unanimous agreement that *Congress*, not the President, should control the purse.²⁸ As the D.C. Circuit has explained, “[t]he Framers placed the power of the purse in the Congress in large part because the British experience taught that the appropriations power was a tool with which the legislature could resist” executive power. *Noel Canning v. NLRB*, 705 F.3d 490, 510 (D.C. Cir. 2013), *aff’d*, 134 S. Ct. 2550 (2014). The Convention

²⁴ Figley & Tidmarsh, *supra* note 11, at 1243.

²⁵ Peterson, *supra* note 23, at 333.

²⁶ Adrian Vermeule, *The Constitutional Law of Official Compensation*, 102 COLUM. L. REV. 501, 509 (2002).

²⁷ THE FEDERALIST No. 58, at 359 (James Madison) (C. Rossiter ed., 1961).

²⁸ Figley & Tidmarsh, *supra* note 11, at 1252.

debate thus focused not on *whether* Congress would control the purse, but on *which house* of Congress would have the power to originate and amend spending bills.²⁹

The Framers understood that the Appropriations Power granted Congress “the right to dictate not only the *amount* of government expenditures, but also the *purposes* to which those expenditures would be put.”³⁰ Alexander Hamilton explained that “no money can be expended, but for an *object*, to an *extent*, and *out of a fund*, which the laws have prescribed.”³¹

Congressional control over military affairs was particularly important, and the Appropriations Clause “was specially intended in the United States as an antidote to executive abuse of military power and as a tool for congressional control of such power.”³² But the concern was about much more than just the military. President Jefferson, in his first annual address to Congress, emphasized more broadly the prudence of “bringing back to a single department all accountabilities for money, where the examination may be prompt, efficacious, and uniform.”³³

In short, the Appropriations Clause embeds in the Constitution a vital and hard-won principle of the separation of powers: he who holds the sword must never also hold the purse.³⁴ As Joseph Story explained, to preserve “in full vigor the constitutional barrier between each department,” the Constitution grants Congress “a controlling influence over the executive power, since it holds at its own command all the resources by which a chief magistrate could make

²⁹ *Id.* at 1249–1251.

³⁰ Todd D. Peterson, *Controlling the Federal Courts Through the Appropriations Process*, 1998 WIS. L. REV. 993, 1010 (1998) (emphasis added).

³¹ 8 ALEXANDER HAMILTON, THE WORKS OF ALEXANDER HAMILTON 128 (Henry Cabot Lodge ed., 1904).

³² Raven-Hansen & Banks, *supra* note 12, at 890.

³³ Thomas Jefferson, President of the United States of America, First Annual Message to Congress (Dec. 8, 1801), *reprinted in* 1 MESSAGES AND PAPERS OF THE PRESIDENTS 329 (James D. Richardson ed., 1897).

³⁴ *See* THE FEDERALIST No. 78, at 465 (Alexander Hamilton) (C. Rossiter ed., 1961).

himself formidable.”³⁵ The Executive Branch must rely upon the Legislative Branch for the public’s money, and it must regularly account to Congress for how it spends the public fisc.

B. The CFPB Violates the Separation of Powers Because It Allows The Executive Branch to Exercise the Appropriations Power.

Just three years ago, the D.C. Circuit reiterated that the appropriations power remains “one of the most important authorities allocated to Congress” in the Constitution. *Department of Navy v. FLRA*, 665 F.3d 1339, 1346 (D.C. Cir. 2012). The Appropriations Clause provides an essential “bulwark” of the separation of powers that is “particularly important as a restraint on Executive Branch officers.” *Id.* at 1347. It serves this purpose by “assur[ing] that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents” *OPM v. Richmond*, 496 U.S. 414, 428 (1990). This Court recently acknowledged that, even today, the “constitutional structure would collapse, and the role of the House would be meaningless, if the Executive could circumvent the appropriations process and spend funds however it pleases.” *United States House of Representatives v. Burwell*, -- F. Supp. 3d --, 2015 WL 5294762, at *13 (D.D.C. Sept. 9, 2015).

In light of this history, it should come as no surprise that the courts have vigilantly guarded Congress’s appropriations power. For example, the Supreme Court has held that although a pardon may remove all disabilities of one convicted of treason, the President’s pardon power does not allow the Chief Executive, in the absence of an appropriation, to order the Treasury to repay the proceeds from the sale of the convict’s forfeited property. *Knote v. United States*, 95 U.S. 149, 154 (1877). The Supreme Court has also held that the Executive Branch

³⁵ 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 531.

may not even inadvertently obligate the Government to pay money in the absence of a congressional appropriation. *Richmond*, 496 U.S. at 426. And the D.C. Circuit has held that when Congress rescinds an agency's funding, the judiciary may not order the agency to set aside funds in the face of that rescission. *Rochester Pure Waters Dist. v. EPA*, 960 F.2d 180, 184 (D.C. Cir. 1992). Each case stands for the proposition that neither the Executive Branch nor the Judicial Branch may arrogate Congress's "absolute control of the moneys of the United States." *Hart's Case*, 16 Ct. Cl. 459, 484 (1880), *aff'd*, 118 U.S. 62 (1886).

The CFPB uproots this cornerstone of the separation of powers. Although the Constitution grants Congress an "exclusive power over the federal purse," *Rochester Pure Waters*, 960 F.2d at 185, Congress has granted the CFPB its own private purse that Congress may not touch. Instead of relying upon Congress for appropriations, the CFPB is entitled to requisition its entire budget—hundreds of millions of dollars—each year from the Federal Reserve System. 12 U.S.C. § 5497(a). And these requisitioned funds "shall not be construed to be Government funds or appropriated monies." *Id.* § 5497(c)(2). Neither Congress, *id.* § 5497(a)(2)(C), nor the President, *id.* § 5491(c)(3), nor even the Board of Governors, *id.* § 5492(c), may review the Director's decision to requisition whatever amount he determines is necessary to fund the agency's operations. Nor does the statute identify criteria the Director should employ in determining how much money to requisition. Instead, Congress has outsourced that decision to the Director, providing simply that he may take however much he deems "reasonably necessary" to do his job, so long as the Director's annual draw does "not exceed" a fixed percentage of the total 2009 operating expenses of the Federal Reserve System. *Id.* § 5497(a). For fiscal year 2016, the CFPB expects to requisition about \$600 million.

The CFPB's private purse exists *without end*: the Bureau's requisition authority has no

termination date, and no law provides for periodic congressional review of the Bureau's spending to discharge its *enormous regulatory and enforcement powers*, including the power to regulate and prosecute any "unfair, deceptive, or abusive" acts or practices. *Id.* § 5531(a).

"[W]here, in all this, is the role for oversight by an elected" Congress? *See Free Enter. Fund v. PCAOB*, 561 U.S. 477, 499 (2010). The Appropriations Clause, after all, provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. CONST. art. I, § 9, cl. 7. "No Money" means no money. Yet the CFPB possesses hundreds of millions of dollars expressly denominated as free from Congress's power of the purse. The Framers, steeped in British history, created a Constitution that would never allow the Executive to attain the financial independence that the Crown once had. Yet the CFPB, like the kings and queens of old, may "live of its own."

Perhaps most troubling of all, Congress exempted the CFPB from the appropriations process precisely because it wanted to abdicate its most important constitutional check against executive power.³⁶ The Senate Report for the CFPB's organic statute explains that the CFPB's independence from Congress's power of the purse would ensure "the independent operations of any financial regulator." S. REP. NO. 111-176, at 163 (2010). The Report continues that the supposed necessity of removing the CFPB from the appropriations process was "a hard learned lesson from the difficulties faced by the Office of Federal Housing Enterprise Oversight (OFHEO), which was subject to repeated Congressional pressure because it was forced to go

³⁶ Numerous commentators have also made this point. *See* Charles Kruly, *Self-Funding and Agency Independence*, 81 GEO. WASH. L. REV. 1733, 1736 (2013); Todd Zywicki, *The Consumer Financial Protection Bureau: Savior or Menace?*, 81 GEO. WASH. L. REV. 856, 875, 889 (2013); Note, *Independence, Congressional Weakness, and the Importance of Appointment: The Impact of Combining Budgetary Autonomy with Removal Protection*, 125 HARV. L. REV. 1822, 1841 (2012).

through the annual appropriations process.” *Id.*

But Congress’s appropriations power is “one of the most important authorities allocated to Congress in the Constitution’s ‘necessary partition of power among the several departments.’” *Department of Navy*, 665 F.3d at 1346–47 (quoting THE FEDERALIST No. 51, at 320 (James Madison)). To be sure, congressional budgetary oversight can make it more difficult for presidents (or independent bureaus) to achieve their objectives, but that is its *raison d’être*: “[c]onvenience and efficiency are not the primary objectives—or the hallmarks—of democratic government.” *INS v. Chadha*, 462 U.S. 919, 944 (1983).

It is, of course, no answer to say that Congress is free to restrict *its own* constitutional powers by enacting a statute permanently removing the CFPB from the appropriations process. The separation of powers is violated “whether or not the encroached-upon branch approves the encroachment.” *New York v. United States*, 505 U.S. 144, 182 (1992). Just as Congress may not bestow upon the President Congress’s own exclusive power to make, or to repeal, federal law, *see Clinton v. City of New York*, 524 U.S. 417, 445–46 (1998), it may not bestow upon the Executive its own exclusive power of the purse.

C. The CFPB Is Uniquely Insulated from Congress’s Power of the Purse.

To hold that the CFPB violates the separation of powers, this Court need not hold that agencies and bureaus may never, under any circumstances, exist outside the appropriations process. It is enough to say that the CFPB is uniquely insulated from Congress’s power of the purse, and thus uniquely violates the Constitution.

The CFPB’s private purse is unique because it is protected by a dual-layer of insulation from Congress’s power of the purse, much like the dual-layer of insulation from the President’s removal power that the Supreme Court held was unconstitutional in *Free Enterprise Fund v.*

PCAOB, 561 U.S. 477, 495 (2010). As discussed, the CFPB exists within the Federal Reserve System and funds its operations by requisitioning hundreds of millions of dollars from the Federal Reserve. The Federal Reserve is controlled by the Board of Governors. Perhaps if Congress controlled the *Board of Governors*' budget, Congress would at least have an indirect method of influencing the CFPB. But the Board of Governors *also* relies on its own private purse. Specifically, the Board of Governors funds its operations by assessing fees upon the Federal Reserve banks. 12 U.S.C. § 243.³⁷ And “[t]he Board of Governors assesses the Reserve Banks to fund the operations of the [CFPB].”³⁸ The fees that the Board of Governors assesses on the Federal Reserve banks—like the assessment that the CFPB imposes on the Board of Governors—“shall not be construed to be Government funds or appropriated moneys.” 12 U.S.C. § 244.

“The added layer of” budget “protection makes a difference.” *See Free Enter. Fund*, 561 U.S. at 495. To see why, consider *Free Enterprise*, which concerned the dual for-cause removal protection that insulated the Board of the Public Company Accounting Oversight Board (PCAOB) from presidential control. The Securities and Exchange Commission (SEC) could remove PCAOB board members only “for cause,” and, in turn, the President could remove SEC commissioners only “for cause.” *Id.* at 486–87. Each layer of insulation from the President’s

³⁷ For a discussion of the Board of Governors’ structure, powers, and funding, *see Albrecht v. Committee on Emp. Benefits of the Fed. Reserve Emp. Benefits Sys.*, 357 F.3d 62, 67 (D.C. Cir. 2004) (the Board of Governors “receives no funding through congressional appropriations”); *Denkler v. United States*, 782 F.2d 1003, 1005 (Fed. Cir. 1986); Alfred C. Aman Jr., *Bargaining for Justice: An Examination of the Use and Limits of Conditions by the Federal Reserve Board*, 74 IOWA L. REV. 837, 850 (1989) (stating that the Board of Governors “does not depend on congressional appropriations for its operating funds” and its assessments upon the Federal Reserve banks are “not subject to congressional review”).

³⁸ BOARD OF GOVERNORS OF THE FEDERAL RESERVE, 101ST ANNUAL REPORT—2014, at 105 tbl. 4 n.3 (June 2015), <http://goo.gl/2HiCU3>.

removal authority, standing alone, did not violate the separation of powers, but conjoining the two layers did. The Supreme Court explained that the “novel structure does not merely add to the Board’s independence, but transforms it.” *Id.* at 496. The difference, the Court explained, is that “[n]either the President, nor anyone directly responsible to him, nor even an officer whose conduct he may review only for good cause, has full control over the Board.” *Id.* The same is true of the CFPB. The CFPB exists outside the appropriations process, and it requisitions its money via a Board of Governors that *also* exists outside the appropriations process. The CFPB’s private appropriations are protected from review by the Board of Governors, Congress, and the President. And the Board of Governors’ private appropriations are, in turn, also protected from review by Congress and the President.³⁹ The CFPB alone controls the CFPB’s budget.

Just as the double layer of “for cause” removal shielded PCAOB board members from presidential accountability, the added layer of insulation here shields the cost of the CFPB’s activities from any accountability. If the CFPB were to fund itself by assessing fees or selling services directly to the public, there would be a measure of transparency and accountability. But the CFPB simply demands its money from another independent entity within the Executive Branch. And although the Board of Governors transfers money to the CFPB, the Board is not obligated to reduce its own budget to fund the CFPB. Instead, the Board simply assesses higher fees to the Federal Reserve banks, which in turn may be expected to pass on those costs too. For example, in 2011, as the CFPB came online, the Board of Governors assessed the Federal Reserve banks \$242 million to fund the CFPB, but it did not reduce its own private assessments to the Federal Reserve banks by that amount. To the contrary, the Board of Governors actually

³⁹ The President may only remove members of the Board of Governors “for cause.” 12 U.S.C. § 242.

increased by \$50 million, year over year, the assessments to fund its own operations.⁴⁰

D. The Constitutional Problems with the CFPB’s Private Purse Are Exacerbated By the CFPB’s Independence from the President.

Not only is the CFPB independent from Congress—it is independent from the President too. The President may remove the Director only “for cause,” i.e. “for inefficiency, neglect of duty, or malfeasance in office.” 12 U.S.C. § 5491(c)(3). Without presidential oversight, the CFPB exercises vaguely worded—and thus largely discretionary—power to secure “fair, transparent, and competitive” services, *id.* § 5511(a), and punish “unfair, deceptive, or abusive” practices, *id.* § 5531(a).

There are obvious and serious constitutional problems with insulating a principal officer from presidential control. The Constitution, after all, vests the executive power in an elected “*President of the United States of America*,” U.S. CONST. art. II, § 1, cl. 1 (emphasis added), not in various unelected agency and bureau heads. Thus the Supreme Court recognized in *Free Enterprise* that granting PCAOB “executive power without the Executive’s oversight . . . subverts the President’s ability to ensure that the laws are faithfully executed” and is “incompatible with the Constitution’s separation of powers.” 561 U.S. at 498.

When courts have allowed Congress to insulate an agency from the President’s control, they have done so knowing that such independent agencies “are sheltered not from politics but from the President,” because “freedom from presidential oversight (and protection) has simply been replaced by increased subservience to congressional direction.” *FCC v. Fox Television*

⁴⁰ BOARD OF GOVERNORS OF THE FEDERAL RESERVE, 98TH ANNUAL REPORT—2011, at 144 tbl. 4 (May 2012), <http://goo.gl/ZF8Bmx> (itemizing the Board’s assessments of the Federal Reserve banks in both 2010 and 2011).

Stations, Inc., 556 U.S. 502, 523 (2009) (plurality opinion).⁴¹ This principle was central to *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), where the Supreme Court first allowed a “for cause” limitation on the President’s removal power. The Court emphasized throughout its opinion that diminished presidential oversight had been replaced by vigorous congressional control. *Humphrey's Executor* highlighted, for example, that the agency was “created by Congress to carry into effect legislative policies,” and that, because it was obligated to act “quasi legislatively” and “mak[e] investigations and reports thereon for the information of Congress,” it effectively “act[ed] as a legislative agency.” *Id.* at 628.

But the CFPB presents a uniquely dangerous cocktail of independence from both the President and Congress. If law enforcement agencies can ever be allowed to be independent from the President, they must be subject to meaningful control by Congress. When the CFPB’s insulation from the executive, legislative, and judicial branches are added together, the result is an agency with unprecedented insulation from the three branches of government. And so, even if each of the problems with the CFPB’s structure were, standing alone, constitutional, together they are not. “[J]ust because two structural features raise no constitutional concerns independently does not mean Congress may combine them in a single statute.” *Association of American Railroads v. United States Dep’t of Transp.*, 721 F.3d 666, 673 (D.C. Cir. 2013), *vacated and remanded on other grounds*, 135 S. Ct. 1225 (2015).

⁴¹ Many commentators have noted that Congress replaces the President in oversight of independent agencies. *See, e.g.*, Steven G. Calabresi & Saikrishna B. Prakash, *The President’s Power to Execute the Laws*, 104 YALE L.J. 541, 583 (1994).

E. Freed from Congress’s Power of the Purse, the CFPB Has Time and Again Resisted Congressional Oversight.

The Framers would have easily predicted the result of all this. The CFPB is not beholden to Congress for funding, and so it is not beholden to Congress for anything. “[C]ongressional oversight through the appropriations process” preserves liberty by ensuring that agencies are held “accountable to Congress and the public.” *Community-Service Broad. of Mid-America, Inc. v. FCC*, 593 F.2d 1102, 1109 (D.C. Cir. 1978) (en banc). But the CFPB has vigorously resisted congressional oversight on nearly all fronts.⁴²

To gain an insight into the CFPB’s total resistance to congressional oversight, consider just three letters sent this year from Representative Jeb Hensarling, the Chairman of the House Committee on Financial Services, to Richard Cordray, the Director of the CFPB. On March 2, 2015, Rep. Hensarling informed Mr. Cordray that the CFPB had failed to comply with ten separate requests that Congress made to the CFPB, dating as far back as March 2014. *See* Exhibit A. On May 22, 2015, Rep. Hensarling sent another letter, this time identifying *fourteen* separate requests with which the CFPB had not complied. *See* Exhibit B. On June 29, 2015, Rep. Hensarling sent a *third* letter, informing Mr. Cordray, “you have regrettably chosen to continue to withhold the records and information sought by . . . eight requests” made in the May 22 letter, “some of which are more than a year overdue.” *See* Exhibit C.

There are numerous instances where the CFPB has used its independence from the power of the purse to resist congressional oversight. Here are just three:

1. *Allegations of Discrimination.* The CFPB has faced allegations of racial

⁴² Notably, Congress’s oversight task would be somewhat easier if the CFPB were comprised of a multi-member commission. In that situation, dissenting members could disclose information that the majority might prefer to keep private. Here, a single Director wields all the power.

discrimination in its own workplace. One former CFPB employee testified to Congress that the CFPB had the workplace atmosphere of a “plantation” and that he had been “the victim of racial discrimination perpetrated by black as well as white managers.”⁴³ Another employee testified that the CFPB’s discriminatory practices have not been exposed because “there is a pervasive culture of retaliation and intimidation [at the CFPB] that silences employees and chills the workforce from exposing wrongdoing.”⁴⁴ Congress has attempted to investigate these grave allegations of wrongdoing, but the CFPB has serially stonewalled Congress. Indeed, *all three* of Rep. Hensarling’s letters, mentioned at the outset of this section, complain that the CFPB had repeatedly failed to respond to a *September 2014* request for further information about the CFPB’s compliance with federal whistleblower laws.

2. *Auto Loans*. The CFPB has alleged discrimination in the auto loans market, but its methodology has come under severe criticism. Because lenders do not collect data on the race or ethnicity of their borrowers, the CFPB has created a methodology that essentially guesses whether a borrower is a racial minority based on their last names and locations.⁴⁵ One Democratic member of the House Committee on Financial Services has lambasted the CFPB’s approach as “deceitful” and has described its methodology as “shamefully flawed, it was inaccurate, and to tell you the truth, it was downright insulting to African Americans because you just assumed our last name was Johnson or Williams or Robinson or maybe even Scott.”⁴⁶

⁴³ Tim Devaney, *Ex-staffer: CFPB Run Like a ‘Plantation’*, THE HILL, June 18, 2014, <http://goo.gl/jfpXGe>.

⁴⁴ M.J. Lee, *Worker Alleges CFPB ‘Trail of Victims’*, POLITICO, Apr. 2, 2014, <http://goo.gl/cXWNi5>.

⁴⁵ Annamaria Andriotis & Rachel Louise Ensign, *U.S. Government Uses Race Test for \$80 Million in Payments*, WALL ST. J., Oct. 29, 2015, <http://goo.gl/34Y1Hl>.

⁴⁶ House Financial Services Committee, *Hearing on The Semi-Annual Report of the Bureau of Consumer Financial Protection*, 1:50:25 (GOP Financial Services 2015), <http://goo.gl/xOyaq4>.

The House Financial Services Committee has attempted for more than a year to obtain full details on the methods and analysis the CFPB used to support its allegations of discrimination, but the CFPB has engaged in a “pattern of obfuscation”⁴⁷ and continually resisted the Committee’s requests.⁴⁸ Although the CFPB has admitted that its methodology may overestimate discrimination, it has still resisted full transparency with Congress.⁴⁹

3. *Data collection.* The CFPB has engaged in the collection and monitoring of massive amounts of data about ordinary Americans, including data from 600 million credit cards, along with millions of credit reports and home mortgages.⁵⁰ But the CFPB has not been fully transparent with Congress about its data collection and data security practices—despite the fact that two consecutive annual reports from the Office of the Inspector General have identified data security as a major challenge facing the CFPB.⁵¹ According to one news report, “[e]ven Democrats [have] warned Cordray that the CFPB was beginning to appear unresponsive, particularly on sensitive issues like data gathering and how it bids contracts with third parties.”⁵²

The Constitution grants Congress the exclusive power of the purse so that an unelected bureau head may not so easily escape congressional oversight and democratic accountability on matters of so great importance.

⁴⁷ Letter from Jeb Hensarling, Chairman, United States House of Representatives Comm. on Fin. Servs., to Richard Cordray, Dir. of CFPB, at 3 (Mar. 7, 2014), <https://goo.gl/n9gVDi>.

⁴⁸ Stephanie Armour, *Rep. Hensarling Still Pushing CFPB on Alleged Auto-Loan Discrimination*, WALL ST. J., Mar. 7, 2014, <http://goo.gl/4irARY>.

⁴⁹ John Niemann, *CFPB Could Face House Subpoenas*, CFPB JOURNAL, Oct. 14, 2015, <http://goo.gl/vf0kG0>.

⁵⁰ Trey Garrison, *CFPB Collecting Data on 600 Million Credit Accounts Despite Privacy, Security Risks*, HOUSINGWIRE, Sept. 22, 2014, <http://goo.gl/qL6O2O>.

⁵¹ Kim Phan, *CFPB Information Security Remains a Challenge*, CFPB MONITOR, Oct. 7, 2015, <https://goo.gl/5dV06X>.

⁵² Rachel Witkowski, *Lawmakers Fume Over Unanswered Questions to CFPB*, AM. BANKER, Sept. 12, 2013, <http://goo.gl/X2pgVQ>.

CONCLUSION

The Court should hold that the CFPB violates the separation of powers.

December 1, 2015

Respectfully submitted,

s/Charles J. Cooper
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CERTIFICATE OF SERVICE

I hereby certify that by filing the foregoing pleading via the ECF for the United States District Court for the District of Columbia, a copy of the above and foregoing will be served upon all registered parties, pursuant to the E-Noticing System this 1st day of December, 2015.

s/Charles J. Cooper
Charles J. Cooper (Bar No. 248070)

EXHIBIT A

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 2, 2015

The Honorable Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Dear Director Cordray:

The Bureau of Consumer Financial Protection (Bureau) has not complied with the following requests from the Committee on Financial Services (Committee):

1. Letter from Chairmen Hensarling and McHenry dated March 18, 2014.
2. Letter from Chairman McHenry dated April 17, 2014, concerning e-mail communications associated with Scott Pluta, Dane D'Allesandro, and Rachael Goldfarb containing specified search terms or key words.
3. Request from Chairman Hensarling for full responses to questions 13(b) and 24 from questions for the record Chairman Hensarling submitted following your appearance before the Committee on January 28, 2014.¹
4. Request from Chairman Hensarling for the identity of the individual who made the decision to renovate the building owned by the Office of the Comptroller of the Currency and located at 1700 G Street, NW in Washington, D.C.²
5. Letter from Chairman McHenry dated September 9, 2014, concerning the Bureau's compliance with federal whistleblower protection laws.
6. Letter from Chairman McHenry dated September 9, 2014, concerning the Bureau's retention of Hollowell, Foster & Herring, P.C.
7. Request from Chairman Hensarling for an unredacted copy of the report provided by Skidmore, Owings & Merrill LLP to the Bureau on April 12, 2013, detailing a variety of specific estimates for project costs related to the headquarters renovation.³
8. Request from Chairman Hensarling for the most recent version of the "Contract Pipeline" identified in the "Office of Procurement Quarterly View" reports.⁴
9. Letter from Chairman McHenry dated December 9, 2014.

¹ I previously requested this information from you in my letters dated May 13, 2014, and December 3, 2014.

² I previously requested this information from you in my letters dated July 18, 2014, and December 3, 2014.

³ I previously requested this information from you in my letters dated October 24, 2014, and December 3, 2014.

⁴ I previously requested this information from you in my letters dated October 24, 2014, and December 3, 2014.

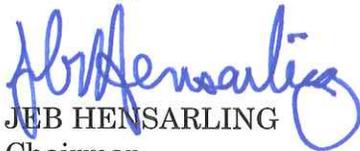
The Honorable Richard Cordray
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March 2, 2015

10. Letter from Chairman Hensarling dated December 11, 2014.

Your failure to comply with these requests constitutes the improper withholding of information that will aid the Committee's examination of the operation and effectiveness of laws or programs within the Committee's jurisdiction. To allow the Committee to fulfill its oversight responsibilities under the House Rules,⁵ please provide the Committee with unredacted copies of all previously requested records by March 16, 2015.⁶ If you do not fully comply with this request by the specified date, I will authorize and issue a subpoena *duces tecum* to compel the production of the requested information pursuant to Committee Rule 3.

If you have any questions regarding this request, please contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services

cc: The Hon. Maxine Waters, Ranking Member

⁵ Rule X, Rules of the House of Representatives, 114th Cong.

⁶ The Committee will not consider the Bureau's production as complete until a representative of the Bureau certifies in writing that the Bureau conducted a search reasonably calculated to locate all responsive records and that the Bureau produced to the Committee all known responsive records in its or any agent's custody or control. In addition, the Bureau's obligation to produce records is continuing in nature; if, after tendering the written certification required herein, the Bureau becomes aware of any responsive record in its or any agent's custody or control, the record should be promptly produced.

EXHIBIT B

May 22, 2015

The Honorable Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Dear Director Cordray:

The Bureau of Consumer Financial Protection (Bureau) has not complied with the following requests:

1. Letter from Chairmen Hensarling and McHenry dated March 18, 2014.¹
2. Letter from Chairman McHenry dated April 17, 2014, concerning e-mail communications associated with three named current and former Bureau officials containing specified search terms or key words.²
3. Letter from Chairman McHenry dated September 9, 2014, concerning the Bureau's compliance with federal whistleblower protection laws.³

¹ As my staff has previously informed you, the Committee will not be accepting your offer of *in camera* review of these long-overdue records, which the Committee is legally entitled to obtain and control. As you should know, the Committee's ability to efficiently conduct its investigation of the Bureau would be greatly impeded by an *in camera* review of the large number of records you claim to have identified, since such a review would both restrict the Committee's access to these records and would prevent Committee staff from utilizing computer software to efficiently review these records. Moreover, none of the privileges or disclosure restrictions you raise in your March 16th response will be recognized by the Committee as a proper basis for withholding information from Congress. Given the importance of this information—and all information outlined in this letter—to the Committee's oversight efforts, the only privilege that the Committee will be recognizing with respect to any of these records is the presidential communications privilege, which the Bureau does not claim in its March 16th letter, nor do I believe the Bureau could reasonably claim in good faith for any of the records outlined in this letter, in light of the test set forth in *Judicial Watch v. Department of Justice*, 365 F.3d 1108 (D.C. Cir. 2004). Accordingly, because the privileges underlying your privilege reviews of the requested records do not apply to this Committee, the Committee rejects your claim that the Committee must wait several months or even "more than a year"—on top of the months and, in some cases, years it has already waited—to receive this information until the Bureau can conduct inapplicable privilege reviews of records that the Committee is legally entitled to receive.

² As Chairman McHenry informed you on July 30, 2014, and Committee staff has reaffirmed on several occasions, the Committee will not be accepting *in camera* review of these records. The Committee is under no obligation to impede its investigation of the Bureau by agreeing to an unnecessarily burdensome method of reviewing the records it has a legal right to receive and control. Accordingly, the Committee reiterates its demand that the Bureau produce these records to the Committee, as the Bureau has done in its previous productions of records containing sensitive and private information.

The Honorable Richard Cordray

May 22, 2015

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4. Letter from Chairman McHenry dated December 9, 2014, requesting all unredacted deposition transcripts taken in the course of litigation with Morgan Drexen, Inc.
5. Letter from Chairman Hensarling dated December 11, 2014, requesting narrative comments submitted by survey respondents of the “2014 CFPB Annual Employee Survey.”⁴
6. Letter from Chairman Duffy dated February 5, 2015, requesting all referrals of allegations of unlawful conduct to the Federal Reserve Board Office of Inspector General (OIG).⁵

³ You have failed to provide any records relevant to Chairman McHenry’s April 9, 2014, request in your production of March 16, 2015, apparently for the same reason your staff noted in an e-mail to Committee staff on March 2, 2015—namely because you believe the request for records is unclear and/or in need of further refinement. As Committee staff informed your staff on March 10, 2015, the Committee’s request is unambiguous on its face. The request, which is more than six months old, seeks “[a]ll records generated by or in the custody or control of the Bureau’s Office of General Counsel containing the terms “litigation hold,” “questionnaire,” or “Williams,” *that also contain* one or more of the following additional terms: “identity,” “whistleblower,” “Congress,” or “Republican.”” (Emphasis added.) These terms clearly identify the universe of responsive records that should be produced to the Committee. The Committee has reason to believe that the proposed search terms will generate records demonstrating that the Bureau has been attempting to identify Bureau employees who have reported allegations of discrimination, retaliation, and/or mismanagement at the Bureau to the Committee, ostensibly for the purpose of illegally retaliating against these whistleblowers and obstructing Congressional oversight. Accordingly, the Committee will not be recognizing the attorney-client privilege with respect to these records—or any other records requested in this letter.

⁴ While the Bureau has provided much of the requested information, there are at least two defects in the Bureau’s March 16, 2015, production pertaining to the Committee’s request for verbatim, unredacted copies of all narrative comments submitted by survey respondents of the “2014 CFPB Annual Employee Survey.” First, a number of the response boxes containing employee comments are cut off in the Bureau’s production to the Committee and therefore are not viewable. (For several examples, see HFSC CFPB AES 000306. The majority of these instances appear to occur between HFSC CFPB AES 000304 and HFSC CFPB AES 000328.) Second, the Bureau redacted several names, offices, dates, technical details, and other information in the employees’ responses—the overwhelming majority of which serves to protect the identities of Bureau managers and officials that the surveyed employees are either praising or critiquing in their open-ended comments, rather than the survey respondents themselves. The Committee reiterates its original request for this information in its entirety and without redactions. As you know, the Committee is legally entitled to this information, which contains important information shedding light on the inner operations of the Bureau, including allegations of wrongdoing and mismanagement by Bureau managers, which the Committee is charged with investigating under the House Rules. Rule X, Rules of the House of Representatives, 114th Cong.

⁵ The Committee requested a complete list including “the name of every Bureau employee referred to the OIG for investigation, the reason for the referral (including but not limited to the specific allegations of unlawful conduct involved), the date of the referral, and the name of each individual who made the referral.” The Bureau’s April 21, 2015, response to the Committee’s request claimed only that “the Bureau has not made other OIG referrals involving individuals that the Bureau knew had contact with Congress or its staff”; it did not provide the requested list of all referrals, nor has it assured the Committee that the Bureau has not referred more than one congressional whistleblower to the OIG for investigation.

The Honorable Richard Cordray

May 22, 2015

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7. Letter from Chairman Duffy dated February 5, 2015, requesting all minutes and transcripts of the Consumer Advisory Board (CAB) and all e-mails between the Bureau and the CAB's Chairperson or Vice Chairperson.⁶
8. Letter from Chairman Duffy dated February 13, 2015, requesting the agendas for all non-public CAB meetings occurring on February 19, 2015.⁷
9. Letter from Chairman Duffy dated February 24, 2015, requesting records pertaining to improperly hiring an employee in February 2011.⁸
10. Letter from Chairman Duffy dated February 24, 2015, requesting information and records pertaining to the non-competitive hiring of two recent employees.⁹
11. Letter from Chairman Duffy dated February 24, 2015, seeking information regarding the Bureau's practices when responding to congressional information and document requests.¹⁰
12. Letter from Chairman Duffy dated April 27, 2015, requesting the text messages contained on any government-owned device issued to Bureau employee Scott Pluta.¹¹

⁶ The Committee requested "[a]ll meeting minutes and transcripts of the Consumer Advisory Board (CAB) or any subcommittee or subunit thereof." The Bureau's response did not provide complete information for each meeting of the CAB. The Committee also requested "[a]ll e-mails to or from a Bureau employee and one or more of the following: the Chairperson of the CAB, Bill Bynum, or the Vice Chairperson of the CAB, Maeve Brown." The Bureau has yet to produce any of the requested e-mails to the Committee.

⁷ The final page of the Bureau's response is marked "sample" and "pre-decisional," and the Bureau has failed to provide any assurances that this is the final and complete version of this page.

⁸ The Bureau's April 8, 2015, response redacted the names of the applicants who were not selected and the names of Bureau managers and human resource officers involved in the hiring and/or onboarding of the Bureau employee at issue—redactions which limit the Committee's ability to thoroughly investigate whether the employee at issue was improperly hired. As you should know, Congress is entitled to view all of the requested information in unredacted form. However, as an accommodation to the Bureau that in no way limits the Committee's right to the requested information in this or any other case, the Committee in this single instance will permit the Bureau to redact the following information: e-mail addresses, social security numbers, phone numbers, birth dates, and home and mailing addresses. All other information must be promptly produced to the Committee in unredacted form, as the Committee originally requested on February 24, 2015.

⁹ On February 24, 2015, the Committee (1) asked the Bureau three questions pertaining to the noncompetitive hiring of two Bureau employees and (2) requested "all records pertaining to the . . . hiring of [these two] employees, including but not limited to all pertinent job announcements and certification lists, by no later than March 10, 2015." The Bureau has failed to directly answer questions 1 and 2 and has failed to produce any of the requested records to the Committee.

¹⁰ The Bureau has failed to fully answer any of the Committee's questions. In its April 20, 2015, response to the Committee's information requests, the Bureau completely disregarded questions 1, 3, and 5-7, and only partially answered questions 2 and 4.

¹¹ On April 27, 2015, the Committee requested that the Bureau produce to the Committee by May 11, 2015, all text messages on Mr. Pluta's government-owned device. In its May 11th response, the Bureau acknowledged that it had identified text messages on Mr. Pluta's government-owned device, but nevertheless failed to provide them to the Committee. Because the Bureau failed to timely comply with the Committee's April 27th request, the Committee sent the Bureau a follow-up letter

The Honorable Richard Cordray

May 22, 2015

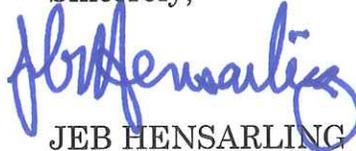
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13. Letter from Chairman Duffy dated April 27, 2015, requesting a copy of the report prepared for the Bureau by the firm of Hollowell, Foster, & Herring, P.C.¹²
14. Letter from Chairman Duffy dated May 1, 2015, seeking information regarding the Bureau's Congressional Inquiry Policy.¹³

Your failure to comply with the Committee's requests constitutes the improper withholding of information needed to aid the Committee's examination of the operation and effectiveness of laws or programs within the Committee's jurisdiction. To allow the Committee to fulfill its oversight responsibilities under the House Rules,¹⁴ please provide the Committee with unredacted copies of all requested information by June 5, 2015.¹⁵ If you do not fully comply by the specified date, I will authorize and issue a subpoena *duces tecum* to compel the production of the requested information pursuant to Committee Rule 3.

If you have any questions regarding this request, please have your staff contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services

cc: The Hon. Maxine Waters, Ranking Member

on May 15, 2015, requesting a complete response by not later than May 29, 2015. If the Bureau complies in full by that date, the Committee will consider its April 27th request satisfied.

¹² The Bureau's May 20, 2015, response improperly fails to comply with the Committee's request, and the Bureau has not cited any valid legal justification for failing to comply. *See generally supra* n.1 (the Committee would accept only a proper claim of the presidential communications privilege). The Committee will not be accepting your offer of *in camera* review of these records, which the Committee is legally entitled to obtain and control. *See generally supra* n.1.

¹³ The Bureau's May 19, 2015, response completely disregards the Committee's third question, and the Bureau has failed to produce any of the requested records.

¹⁴ Rule X, Rules of the House of Representatives, 114th Cong.

¹⁵ The Committee will not consider the Bureau's production as complete until a representative of the Bureau certifies in writing that the Bureau conducted a search reasonably calculated to locate all responsive records and that the Bureau produced to the Committee all known responsive records in its or any agent's custody or control. In addition, the Bureau's obligation to produce records is continuing in nature; if, after tendering the written certification required herein, the Bureau becomes aware of any responsive record in its or any agent's custody or control, the record should be promptly produced.

EXHIBIT C

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

June 29, 2015

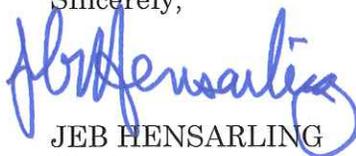
The Honorable Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Dear Director Cordray:

This is in response to your letter and document production of June 5, 2015. While your June 5th response satisfies six of the fourteen outstanding requests summarized in the Committee's letter of May 22, 2015, you have regrettably chosen to continue to withhold the records and information sought by the remaining eight requests, some of which are more than a year overdue.¹ Having carefully considered all of your reasons for refusing to timely produce the requested records and information, and seeing no constitutional interest asserted which would preclude the Committee's duty to fulfill its oversight responsibilities under the House Rules,² the Committee rejects all of your stated reasons for non-compliance and reiterates its request for full and complete responses by not later than July 13, 2015. If you do not fully comply by then, I will authorize and issue a subpoena *duces tecum* to compel the production of the requested information pursuant to Committee Rule 3.

If you have any questions regarding this request, please contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services

cc: The Hon. Maxine Waters, Ranking Member

¹ The Bureau has failed to comply with the following information requests outlined in the Committee's letter of May 22, 2015: 1, 2, 3, 4, 5, 6, 11, and 13. In its June 5th response, the Bureau failed to produce any records pertaining to the above overdue information requests, with the exception of a redacted—and, therefore, noncompliant—production of records pertaining to the Committee's December 11, 2014, request for unredacted, verbatim narrative comments of survey respondents of the 2014 CFPB Annual Employee Survey.

² Rule X, Rules of the House of Representatives, 114th Cong.