No. 22-448

In The
Supreme Court of the United States

CONSUMER FINANCIAL
PROTECTION BUREAU, ET AL.,

Petitioners,

v.

COMMUNITY FINANCIAL SERVICES ASSOCIATION
OF AMERICA, LIMITED, ET AL.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

BRIEF OF 90 STATE AND LOCAL NONPROFIT ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

SETH E. MERMIN
Counsel of Record
DAVID S. NAHMIAS
AYESHA K. RASHEED
CENTER FOR CONSUMER LAW &
ECONOMIC JUSTICE
UC BERKELEY SCHOOL OF LAW
308 Law Building
Berkeley, CA 94720-7200
(510) 393-8254
tmermin@law.berkeley.edu

May 15, 2023

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae submit this brief in support of Petitioners. *Amici* are ninety state and local nonprofit organizations located across the country. The legislatures of many of the States in which *amici* work have created and maintain regulatory agencies that are financially self-sufficient and do not receive funding through periodic spending legislation, much like the Consumer Financial Protection Bureau (CFPB). *Amici* appear in this Court to underscore that these agencies' funding regimes are unremarkable and reasonably common, and that they comply with the appropriations provisions of their respective state constitutions. Since those appropriations clauses are in relevant part identical to their federal counterpart, *amici* believe that the foundation and operation of these state-level agencies reflect a consensus among the States that constitutional appropriations provisions permit funding regimes like that of the CFPB. Further, since state courts may follow this Court's guidance in interpreting their own appropriations provisions, the outcome of this case may have significant consequences for similarly funded, essential state agencies around the nation.

All *amici* are listed in the Appendix.

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or the submission of this brief.

SUMMARY OF ARGUMENT

The funding architecture of the Consumer Financial Protection Bureau is neither exceptional nor exceptionable. It is echoed not only among other federal agencies but also, crucially, in dozens of state agencies around the country, from Indiana to Wyoming and Texas to Washington. Because the States have created these agencies in accordance with state constitutional appropriations provisions that substantially mirror the Appropriations Clause of the U.S. Constitution, the agencies' existence and continued unchallenged operations reflect an understanding that a funding structure like that of the CFPB is fully consonant with constitutional separation of powers principles.

States almost universally operate under the same appropriations framework as the federal Constitution.[2] *Compare* U.S. Const. art. I, § 9, cl. 7 ("No Money shall be drawn from the Treasury, but in Consequence

[2] Only Mississippi, Rhode Island, and Utah lack a similar provision in their state constitutions. And even in the absence of express appropriations provisions, the supreme courts of all three states have concluded that the state legislature holds the sole appropriations power. *See Op. to the Governor*, 88 A.2d 167, 169 (R.I. 1952) (stating that the framers of the Rhode Island Constitution "expressly vested" the "broad and great power" of appropriations in the legislature); *Chez ex rel. Weber Coll. v. Utah State Bldg. Comm'n*, 74 P.2d 687, 690 (Utah 1937) (declaring that "the power of the Legislature on the subject of appropriations is plenary"); *Colbert v. State*, 39 So. 65, 67 (Miss. 1905) (noting that although the Mississippi Constitution lacks an "express" appropriations clause, the "Constitution regards the Legislature as the sole repository of power to make appropriations of moneys to be paid out of the state treasury").

of Appropriations made by Law"), *with, e.g.*, Ind. Const. art. 10, § 3 ("No money shall be drawn from the Treasury, but in pursuance of appropriations made by law"), *and* Neb. Const. art. III, § 25 ("No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law"). Since long before the establishment of the CFPB, States have created regulatory agencies with self-sustaining funding mechanisms that do not require allocation of taxpayer money. Like the Bureau, these agencies' enabling laws make standing appropriations that designate a funding source and a purpose for the expenditure.

The Bureau's statutory funding scheme therefore reflects a regular practice, not only within the federal government but also among the States, of providing certain agencies a measure of fiscal autonomy. Funding an agency independent of periodic spending legislation is so unexceptional that, after reviewing records of all fifty States, *amici* have not found a single judicial decision disapproving of this type of funding mechanism as a violation of a State's appropriations clause.

The absence of such decisions, while not definitive, bolsters the conclusion that there exists a longstanding and widespread acceptance of agencies operating under statutory funding mechanisms akin to the Bureau's. Pursuant to their respective constitutional appropriations provisions, state legislatures have, like Congress, nearly plenary authority to determine the method of funding for the agencies they create. And just as state legislatures have exercised their discretion in determining the appropriate funding regime for

their own agencies, so Congress acted well within its appropriations authority in designing the CFPB.

ARGUMENT

I. State Constitutions' Appropriations Provisions Mirror The Text And Principles Of The U.S. Constitution.

The longstanding and widespread presence of independently funded regulatory agencies among the several States strongly suggests that the funding of the CFPB is neither uncommon nor problematic.[3] State legislatures have properly created self-sustaining funding streams for these agencies in accordance with state appropriations provisions, much as Congress did when it established the CFPB pursuant to the federal Appropriations Clause. Nearly every State's constitution contains a clause with language that conditions withdrawal of money from the state treasury on a statutory appropriation. *See*, *e.g.*, Or. Const. art. IX, § 4 ("No money shall be drawn from the treasury, but in pursuance of appropriations made by law"); Tex. Const. art. VIII, § 6 ("No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law"); *State ex rel. Noonan v.*

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[3] Examples also abound of similarly structured federal agencies dating back to the Founding, such as the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, U.S. Mint, and U.S. Post Office. 12 U.S.C. §§ 16, 243-244,481-482, 1815(d), 1820(e); 31 U.S.C. § 5134(c); 39 U.S.C. § 2401; *see* Pet'rs' Br. at 22-24.

King, 67 S.W. 812, 813 (Tenn. 1902) (noting various state "constitutional provisions to the effect that no money shall be drawn from the treasury but in pursuance of appropriations made by law").[4] State constitutions' appropriations provisions essentially match the text of the federal Constitution. *See*, *e.g.*, *Holmes v. Olcott*, 189 P. 202, 203 (Or. 1920) (Oregon's appropriations clause "is identical with that of the federal Constitution and the organic law of numerous states").[5] Like the federal Appropriations Clause, the state clauses "simply" consist of a "straightforward and explicit command" that "no money can be paid out of the [state] Treasury unless it has been appropriated by an act of [the legislature]." *OPM v. Richmond*, 496 U.S. 414, 424 (1990).

Laws creating independently funded state agencies therefore accord with the principle, including a centuries-long consensus among state courts, that a legislature properly makes an appropriation so long as

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[4] The States whose self-funded agencies are discussed below all have appropriations clauses essentially identical to that of the United States Constitution (as do nearly all the rest of the States). *See* Ind. Const. art. 10, § 3; Neb. Const. art. III, § 25; Tenn. Const. art. II, § 24; Wash. Const. art. VIII, § 4; Wyo. Const. art. 3, § 35.

[5] *Accord Fletcher v. Commonwealth*, 163 S.W.3d 852, 864 (Ky. 2005) ("Article I, Section 9, Clause 7 of the United States Constitution contains wording almost identical to that of [Kentucky Constitution] Section 230, and the United States Supreme Court has consistently given that provision its literal meaning"); *Meyer v. Riley*, 38 P.2d 405, 407 (Cal. 1934) ("The limitation that 'no money shall be drawn from the treasury but in consequence of appropriations made by law' is taken literally from the Constitution of the United States").

it specifies a funding source and authorizes an express purpose for the funding. *See*, *e.g.*, *Orbison v. Welsh*, 179 N.E.2d 727, 736 (Ind. 1962) ("The Legislature must merely indicate the purpose for which the money is to be used, the source from which it is to come, and indicate in some manner either the sum to be used or a method of ascertaining a maximum that may be used"); *Nat'l Biscuit Co. v. State*, 135 S.W.2d 687, 693 (Tex. 1940) ("It is sufficient if the Legislature authorizes the expenditure by law, and specifies the purpose for which the appropriation is made"); *State ex rel. Norfolk Beet-Sugar Co. v. Moore*, 69 N.W. 373, 373 (Neb. 1896) ("to 'appropriate' [under the constitution] is to set apart from the public revenue a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and for no other").[6] Legislation need not use particular words or form to constitute a valid appropriation of public funds. *See*, *e.g.*, *Pickle v. Finley*, 44 S.W. 480, 480-81 (Tex. 1898) ("[N]o specific words are necessary in order to make an appropriation; and it may be conceded, as contended, that an appropriation may be made by implication"); *Campbell v. Comm'rs of State Soldiers' & Sailors' Monument*, 18 N.E. 33, 34 (Ind. 1888) ("The use of technical words in a statute making an appropriation is not necessary. There may be an appropriation of

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[6] *See also Rios v. Symington*, 833 P.2d 20, 24 (Ariz. 1992) (appropriations "require the 'certain sum,' the 'specified object,' and the 'authority to spend' "); *State ex rel. Henderson v. Burdick*, 33 P. 125, 126 (Wyo. 1893) (considering "how, when, and for what purposes the public funds shall be applied").

public moneys to a given purpose without in any manner designating the act as an appropriation").[7] The legislatures retain "discretion in the matter of prescribing details of expenditures" to design the manner of their appropriations. *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321-22 (1937); *see also Ristine v. State*, 20 Ind. 328, 338 (1863) ("An appropriation may be made in different modes").

So, too, Congress properly effected an appropriation when it provided for the CFPB to achieve its statutory purpose through funds derived from the Federal Reserve. *See CFPB v. Law Offs. of Crystal Moroney, P.C.*, 63 F.4th 174, 183 (2d Cir. 2023) (concluding that Congress's specification of "'the purpose' (or 'object'), 'limit,' and 'fund' of its appropriation for the CFPB" is "[c]onsistent with the historical practices of English, colonial, and state governments" (quoting 7 Alexander Hamilton, The Works of Alexander Hamilton 532 (John C. Hamilton ed. 1851))[8]; GAO, *Principles of Federal Appropriations Law* 2-23 (4th ed. 2016) ("GAO Redbook") (explaining that Congress makes an appropriation "[i]f the statute contains a specific direction to pay and a

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[7] *Accord State v. Clausen*, 162 P. 1, 4 (Wash. 1917); *King*, 67 S.W. at 813 (Tenn. 1902); *Shattuck v. Kincaid*, 49 P. 758, 387 (Or. 1897); *Norfolk Beet-Sugar*, 69 N.W. at 376 (Neb. 1896); *Burdick*, 33 P. at 130 (Wyo. 1893).

[8] *See also* Kate Stith, *Congress' Power of the Purse*, 97 Yale L.J. 1343, 1352 (1988) ("The 'Appropriations' required by the Constitution are not only legislative specifications of money amounts, but also legislative specifications of the powers, activities, and Purposes . . . for which appropriated funds may be used.").

designation of the funds to be used"); Pet'rs' Br. at 25-26.[9]

In the same way that Congress exercised its constitutionally assigned power of the purse when it designated the funding mechanism for the CFPB, state legislatures exercise their constitutionally allocated authority when they set up independently funded state regulatory agencies. State constitutional appropriations provisions are grounded in the same separation of powers precepts that undergird the federal Appropriations Clause. *Compare Richmond*, 496 U.S. at 428 (explaining that Congress's constitutional appropriations power was intended to "assure that public funds will be spent according to the letter of the difficult judgments reached by Congress"), *with Burdick*, 33 P. at 126-27 (Wyo. 1893) (observing that appropriations clauses in "nearly every state in the Union . . . were 'obviously inserted to prevent the expenditure of the people's treasure without their consent'" (quoting *Thomas v. Owens*, 4 Md. 189, 225 (1853))).

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[9] *See also* GAO Redbook at 2-22 ("[A]ny time the Congress specifies the manner in which a Federal entity shall be funded and makes such funds available for obligation and expenditure, that constitutes an appropriation, whether the language is found in an appropriation act or in other legislation"). The GAO possesses an "accumulated experience and expertise in the field of government appropriations," and its opinions warrant "special weight." *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Donovan*, 746 F.2d 855, 861 (D.C. Cir. 1984) (Scalia, J.) (internal quotations omitted).

A final principle shared by federal and state appropriations provisions requires that the independently funded agency remain accountable to the legislature. *See INS v. Chadha*, 462 U.S. 919, 955 n.19 (1983) ("The Constitution provides Congress with abundant means to oversee and control its administrative creatures"); *Wash. State Legis. v. Inslee*, 498 P.3d 496, 587 (Wash. 2021) (explaining that legislative "conditions of expenditure" attached to appropriations "allow the legislature to fulfill its constitutional role and to check the power of the executive").[10] The CFPB, for example, must submit three distinct reports every year to Congress that provide details about its financial condition and budget request and undergo two separate annual audits; its director must also testify twice a year before House and Senate committees. Similarly, the laws that designate separate funding streams for state agencies also direct those agencies to furnish regular financial reports to the legislature and to undergo audits. Through such mechanisms, Congress and state

[10] The Statement and Account Clause that immediately follows the Appropriations Clause also "vest[s] in Congress plenary power to spell out the details of precisely when and with what specificity Executive agencies must report the expenditure of appropriated funds." *United States v. Richardson*, 418 U.S. 166, 178 n.11 (1974); *see* Const. art. I, § 9, cl. 7 ("[A] regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time"); Katherine Clark Harris, *The Statement and Account Clause: A Forgotten Constitutional Mandate for Federal Reporting*, 32 Yale L. & Pol'y Rev. 505, 512, 515 (2014) ("[T]he Clause embodies democratic accountability to the people" and "compels Congress to actively oversee how the executive uses public funds, thereby effectuating the carefully designed balance of power between the branches").

legislatures fulfill the fundamental oversight role over public funds that is core to the appropriations power.

II. Numerous State Agencies Across The Nation Mirror The CFPB In Their Funding Structure And Ultimate Accountability To The Legislature.

Like the shared text and principles of the U.S. Constitution and the constitutions of the several States, the prevalence and persistence of independently funded state agencies militate for the validity of the appropriations model that characterizes the CFPB. *See Chiafalo v. Washington*, 140 S. Ct. 2316, 2326 (2020) (explaining that "[l]ong settled and established practice may have great weight in a proper interpretation of constitutional provisions" (internal quotations omitted)); *NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014) (confirming that "[t]his Court has treated practice as an important interpretive factor . . . even when that practice began after the founding era"). Despite the variety of roles undertaken by these state agencies and the geographical and political differences among the several States, all of the agencies discussed below are—like the CFPB—funded by appropriations that specify a source of public funds and designate the particular purposes for which those funds may be spent. The agencies remain accountable to the legislature—as does the CFPB—through a detailed series of reporting and auditing requirements.

A. State Legislatures Regularly Establish Independently Funded Agencies that Fully Accord With the Requirements of the State's Appropriations Clause.

The States have created independently funded agencies to regulate critical sectors of the economy and enabled them, as Congress enabled the CFPB, to promulgate regulations, enforce relevant laws, and supervise their particular industries. These agencies operate via stable independent funding, like the CFPB, without necessitating periodic appropriations legislation. And each of their statutory funding mechanisms complies, as does that of the CFPB, with the relevant constitutional appropriations requirements.

1. Many state financial regulators are independently funded to protect financial institutions and consumers.

For decades, numerous States have chosen to uncouple their financial regulatory agencies from legislative budget cycles and instead have designated that the agencies' funding come from revenue raised from financial institutions under their supervision. The laws enabling these funding mechanisms constitute proper appropriations and fully adhere to state constitutional appropriations provisions.

For example, the Indiana Department of Financial Institutions issues rules, investigates consumer complaints, monitors financial institutions, and brings enforcement actions when institutions have engaged in

"unsafe or unsound" financial practices. *See* Ind. Code §§ 28-11-1-1, 28-11-1-12, 28-11-3-1, 28-11-4-2; *Carey v. State ex rel. Dep't of Fin. Insts.*, 213 N.E.2d 131, 133 (Ind. 1938) (affirming that it was within "legislative discretion" to vest the Department with authority to "inspect, supervise, and liquidate financial institutions" in order to "supervise activities that affect the public welfare").[11] The Department is wholly self-funded through fees paid by supervised financial institutions. Ind. Code §§ 28-11-1-1(c); 28-11-3-5.[12] In fact, the 1932 legislative Study Commission for Indiana Financial Institutions, whose recommendations led to the Department's creation, called for funding to come from "examination and license fees charged the various financial institutions" where "not one cent of the cost . . . is to be paid by the public" so that the department could "function flexibly and freely."[13] The

[11] *See also* Ind. Dep't of Fin. Insts., *2021 Annual Report* 6, 17, 20 (2021), https://perma.cc/Q8EH-SCKT.

[12] Ind. Dep't of Fin. Insts., *2021 Annual Report*, *supra* note 11, at 17 (explaining that the Department "remains a self-funded (dedicated funds) agency that is entirely supported by fees paid by the institutions that are regulated and supervised by the Department. . . . Revenue is driven solely from supervision, examination, and license fees that are assessed to those financial institutions that are regulated by the Department").

[13] Report of Study Comm'n for Ind. Fin. Insts., 77th Gen. Assemb., at 81, 86 (Ind. 1932); *see also* 1947 Ind. Op. Att'y Gen. No. 34, 167 (June 18, 1947), https://perma.cc/XLA8-KEME (explaining that the "obvious intention of the Financial Institutions Act [that created the Department] is to protect the public. Recent cases have sustained this theory and have justified the action of the legislature in establishing a method of supervision and

Commission took note of a "custom[] among our states to segregate" banking regulators from other influences and recommended "[t]he removal of supervision from partisan control."[14]

Texas has nine "self-directed semi-independent agencies"—of which four are financial regulatory agencies—that set their own fees, budgets, and performance metrics without funding from periodic spending legislation. Tex. Fin. Code §§ 16.001-16.002; Tex. Gov't Code §§ 472.001, 472.051; Tex. Occ. Code §§ 1105.001-1105.002.[15] One such self-directed semi-independent financial regulator, the Office of Consumer Credit Commissioner, like the CFPB enforces consumer financial protection and conducts consumer education. Tex. Fin. Code §§ 14.052, 14.103, 14.201-.209, 16.002.[16] Texas's financial regulators are

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regulation for all the financial institutions organized under the laws of this state").

[14] Report of Study Comm'n for Ind. Fin. Insts., *supra* note 13, at 79-80; *see also id.* at 84 (designing the department to be "safeguarded from political domination").

[15] *See also* Tex. Legis. Budget Bd., *Funds Outside the Treasury: Legislative Policy Report* 1 (Feb. 2021), https://perma.cc/9ZQG-JNFF (noting that state law authorizes funds held outside of the treasury, including those from self-directed semi-independent agencies "without legislative appropriation").

[16] *See also* Tex. Office of Consumer Credit Comm'r, *About Us*, https://perma.cc/4SUY-VAZQ (last visited May 9, 2023) ("[A]ll operating funds are received directly from regulated industries; revenues are used to fund direct and indirect costs"). The other financial regulators in Texas that are self-directed, semi-independent agencies are the Texas Department of Banking, Department of Savings and Mortgage Lending, and the Credit Union Department. Tex. Fin. Code § 16.001(a).

responsible for covering all their "direct and indirect costs" through the fees, penalties, and charges they assess, and they "may not directly or indirectly cause the general revenue fund to incur any cost." *Id.* § 16.003(b)-(d).

Likewise, both the Nebraska Department of Banking and Tennessee Department of Financial Institutions finance their operations regulating those States' financial industries solely through service fees and assessments levied on banks. Neb. Rev. Stat. §§ 8-601–8-606; Tenn. Code §§ 45-1-118(d), (i)(9).[17] *See also Haw. Insurers Council v. Lingle*, 201 P.3d 564, 567-68 (Haw. 2008) (approving structure of Hawaii Department of Commerce and Consumer Affairs, which was designed to be "financially self-sufficient" and funded by "persons and entities regulated by the [Department] or who received services from the [Department]" including "assessments, fees, fines, penalties, and reimbursements" that were "not allowed to revert to the general fund").

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[17] *See also* Neb. Dep't of Banking & Fin., *Annual Report: July 1, 2021—June 30, 2022*, at 5 (2022) https://perma.cc/MAP3-B882 ("[T]he Department does not use taxpayer money; rather we are cash-funded from assessments and fees for the services we perform"); *id.* at 14 ("The Department is fully funded by fees received from the industries it regulates"); Tenn. Dep't of Fin. Insts., *2021 Annual Report* 10 (2022), https://perma.cc/87EB-DD5D ("The Department of Financial Institutions receives no federal or state taxpayer funds and is fully funded by the fees assessed to the financial institutions regulated and supervised by the Department").

Notably, revenues earned from independently funded financial regulatory agencies in Indiana, Nebraska, Tennessee, and Texas all accrue in dedicated funds apart from the state treasury that only the regulatory agencies may access. Ind. Code. §§ 28-11-2-9(c)-(f); Neb. Rev. Stat. §§ 8-603, 8-604; Tenn. Code § 45-1-118(d); Tex. Fin. Code § 16.003(d).

With respect to all the foregoing agencies, the state legislature made an appropriation and fulfilled its constitutional appropriations responsibilities—as Congress did with the CFPB—by selecting a funding source for the agencies' operations and directing how the agencies must use those funds. Those States' appropriations clauses, like their federal counterpart, require that the legislature designate a purpose for the use of funds raised by a government agency. *See*, *e.g.*, *Orbison*, 179 N.E.2d at 736 (Ind. 1962); *Nat'l Biscuit*, 135 S.W.2d at 693 (Tex. 1940). The Nebraska legislature, for instance, acted in accordance with the State's appropriations clause, *see* Neb. Const. art. III, § 25, when it directed the Department of Banking and Finance to supervise banks, trust companies, credit unions, building and loan associations, savings and loan associations, and digital asset depositories; levy assessments on those entities, and conduct rulemaking, investigations, and other compliance activities with the funds collected. Neb. Rev. Stat. §§ 8-102–8-108, 8-601. Likewise, the Texas legislature complied with the Texas appropriations clause, *see* Tex. Const. art. VIII, § 6, when it authorized the Consumer Credit Commissioner to use the fees it assesses to carry out

its consumer education, rulemaking, investigation and enforcement activities. Tex. Fin. Code § 14.107(a); *see id.* §§ 14.101-14.103, 14.110, 14.201, 16.003. *See also* Ind. Const. art. 10, § 3 and Ind. Code §§ 28-11-1-1(c), 28-11-1-2 (authorizing state financial institutions' regulator to administer all relevant laws using fees collected from regulated entities); Tenn. Const. art. II, § 24 and Tenn. Code §§ 45-1-104, 45-1-118 (same).

2. Many natural resources and agricultural regulators are independently funded to promote farming, recreation, and conservation.

Congress's decision to structure the CFPB's funding through the Federal Reserve system is also consistent with practices among the States that authorize stand-alone funding mechanisms for their agencies enforcing public rights in the natural resources and agricultural sectors. The Wyoming Game and Fish Commission, for instance, is granted sweeping authority to regulate hunting and fishing and is "not financed by state appropriated funds, but primarily from hunting and fishing license fees and some federal grants." *O'Brien v. State*, 711 P.2d 1144, 1149 (Wyo. 1986); *see* Wyo. Stat. §§ 23-1-103, 23-1-201; Wyo. Stat. tit. 23, ch. 2 (setting forth license and other fees for various hunting and game-related activities).[18] The Wyoming

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[18] *See also* Wyo. Game & Fish Comm'n, *Wyoming Game and Fish Commission Revenue* (Sept. 2020), https://perma.cc/QS9Q-YJW6 ("The [Commission's] revenue is generated from fish and wildlife constituents, associated federal funding sources, grants,

legislature authorized the Commission to deposit all revenues collected from fees, licenses, and penalties into a dedicated "Wyoming game and fish fund." Wyo. Stat. §§ 23-1-501(b), 23-6-204(e).

Similarly, the twenty-one agricultural commodity commissions in the State of Washington are independently funded regulators that develop and promote agricultural products through coordinated research, marketing, education, and auditing efforts. Wash. Rev. Code §§ 15.66.015, 15.66.140.[19] The commissions can also investigate violations of unfair trade practices under federal and state law, and conduct enforcement actions. *See id.* §§15.66.010(23) (defining "unfair trade practice"), 15.66.030(4) (enabling agricultural marketing orders to authorize such investigations), 15.66.140(3) (empowering commissions to enforce

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donations, and from Commission owned property. The Commission receives no State General Funds").

[19] *See also* Office of the Wash. State Auditor, *Washington's Agricultural Commodity Commissions: An Assessment of Effectiveness* 7 (2023), https://perma.cc/3ZMB-CMLT ("Wash. Auditor's Report") (explaining that "Washington's commodity commissions support the agriculture industry primarily through promotion, research and education"). The legislature established certain commissions by statute—including the first commission, the Apple Commission, in 1937, and the Grain Commission, today the state's largest commission. *See id.*; Wash. Rev. Code § 15.24.015 (creating the Washington Apple Commission "to speak on behalf of the Washington state government with regard to apples and apple-related issues"); Wash. Rev. Code § 15.115.010 (creating the Washington Grain Commission). Alternatively, the Washington State Director of Agriculture is authorized to issue marketing orders that create specific commissions. Wash. Rev. Code §§ 15.66.030; 15.66.055(1).

those orders). The commissions are funded almost exclusively by annual assessments on producers. *Id.* §§ 15.66.100, 15.66.275, 15.66.150.[20] After the commissions collect each assessment, they can spend revenue only to carry out prescribed activities. *Id.* §§ 15.66.275, 15.66.160; *see Robison v. Dwyer*, 364 P.2d 521, 526 (Wash. 1961) (affirming the constitutionality of the commissions' direct collection of commodity assessments).

Like the state financial regulators mentioned earlier, the Wyoming and Washington legislatures acted in accordance with their States' constitutional appropriations clauses, *see* Wash. Const. art. VIII, § 4; Wyo. Const. art. 3, § 35, when they created the Game and Fish Commission and the commodities commissions, respectively. *See* Wash. Rev. Code § 15.66.015 (empowering Washington commodity commissions to regulate agricultural activities), *id.* § 15.66.180 (authorizing the commissions to spend their assessment revenues "without the necessity of a specific legislative appropriation"); Wyo. Stat. §§ 23-1-302(a) (setting forth Wyoming Game and Fish Commission's powers and duties to protect wildlife), *id.* § 23-1-501(b) (empowering the commission to deploy its funds to effectuate its statutory duties "and for no other purpose").

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[20] *See also* Wash. Auditor's Report, *supra* note 19, at 7 ("Producers are the commissions' primary source of funding through the assessments they pay").

3. Many occupational regulators are independently funded to supervise the professions.

Finally, at least two States have established whole classifications of self-funded professional boards, none of which has run afoul of constitutional appropriations provisions. These boards include five of Texas's "self-directed semi-independent agencies," which like Texas's financial regulators are funded solely through fees and assessments on regulated professions. Tex. Gov't Code §§ 472.001-472.002, 472.051, 471.110; Tex. Occ. Code §§ 1105.001-1105.003.[21] The boards license professionals working in the relevant industries, promulgate regulations, and conduct investigative and disciplinary actions. Although they are defined in their organic statutes as "state agencies," none of these self-directed semi-independent agencies may incur costs accruing to the Texas general fund. Tex. Gov't Code §§ 472.051(b), 472.102(a); Tex. Occ. Code §§ 1105.003(b), 1105.011; *see*, *e.g.*, Tex. Occ. Code § 1001.204 (requiring the Texas Board of Professional Engineers and Land Surveyors to set fees at a reasonable rate to cover its expenses); *id.* § 1103.156 (same for the Appraiser Licensing and Certification Board).

Oregon has similarly established "semi-independent state agencies," which are self-funded through

[21] These boards include the Texas State Board of Public Accountancy, the Board of Professional Engineers and Land Surveyors, the Board of Architectural Examiners, the Appraiser Licensing and Certification Board, and the Real Estate Commission. Tex. Gov't Code § 472.001; Tex. Occ. Code § 1105.001.

earned license fees and assessments. Or. Rev. Stat. §§ 182.454, 182.466(4).[22] These agencies also set and collect fees to carry out their activities after conducting a public hearing. *Id.* § 182.466(4). The Oregon State Board of Geologist Examiners, for example, is a semi-independent state agency that licenses, regulates, and disciplines geologists in the state; it is funded solely by fees and civil penalties it exacts in disciplinary actions. *Id.* §§ 672.515, 672.615(1), 672.705.[23]

By specifying that these semi-independent agencies must raise their own revenue for the purposes of carrying out their statutory responsibilities, the Texas and Oregon legislatures fulfilled their basic constitutional appropriations mandate. *See* Or. Const. art. IX, § 4; Or. Rev. Stat. § 182.466(4); Tex. Const. art. VIII, § 6; Tex. Gov't Code § 472.110(a); Tex. Occ. Code § 1105.003(b)-(c).

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[22] *See also* Or. Legis. Fiscal Office, *Review of Semi-Independent Agency Reports* 1-2 (2022), https://perma.cc/S28K-E6WZ ("Or. Semi-Independent Agency Report"). Of the agencies, nine are totally self-funded; two are funded in part through fee assessment and some general fund revenues or taxes, and one is dependent on charitable contributions only. *Id.*

[23] *See* Or. Semi-Independent Agency Report, *supra* note 22, at B-8 (reporting that "[t]he Board [of Geologist Examiners] is funded by revenue generated from annual renewal fees for registrants, initial registration fees, and application review fees"); Or. State Bd. of Geologist Exam'rs, *About the Board*, https://perma.cc/7ESR-XSEZ (last visited May 9, 2022) ("The Board is a stand-alone, semi-independent board that operates entirely off fee revenues. The Board does not receive any state general funds").

4. Just as the laws creating these independently funded agencies comply with the relevant state appropriations clauses, so the Dodd-Frank Act establishing the CFPB complies with the Appropriations Clause of the U.S. Constitution.

The statutory funding structures of all of these independently financed agencies, spanning multiple States and industries, are ordinary, unremarkable, and fully in accord with constitutional appropriations requirements. They also are notably similar to the structure Congress dictated in the Dodd-Frank Act for the funding of the CFPB.

Congress authorized the Bureau to seek annual funding up to a specified limit from the Federal Reserve System—which itself raises funds from semiannual assessments levied on banks at a rate "sufficient to pay its estimated expenses and salaries." 12 U.S.C. §§ 243, 5497(a)(1)-(4),(c); *see Richmond*, 496 U.S. at 424 ("[T]he payment of money from the Treasury must be authorized by a statute"); GAO Redbook at 2-23.[24]

[24] The Dodd-Frank Act defines three principal funding sources for the Bureau: (1) through a transfer of the Bureau's requested annual budget up to twelve percent of the Federal Reserve's total expenses from the Federal Reserve Board of Governors to the CFPB Fund, which is held at the New York Federal Reserve Bank and from which the Bureau can request funds on a quarterly basis, 12 U.S.C. § 5497(a)(1), (b)(1)-(2), (c)(1); (2) through penalties collected from violators of federal consumer financial laws that are deposited in the CFPB's Civil Penalty Fund, which is also held at the New York Federal Reserve, 12 U.S.C. § 5497(d)(1); and (3) through developer fees assessed pursuant to

Congress also directed the Bureau to expend those funds for its investigation, rulemaking, education, and enforcement initiatives to "ensur[e] that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. §§ 5497(a)(1), 5511; *see Crystal Moroney*, 63 F.3d at 182 ("Congress prescribed the purpose (or object), limit, and fund of its appropriation for the CFPB" (internal quotations omitted)). The Dodd-Frank Act further ordered the Bureau to keep its funds in the New York Federal Reserve bank, much as the independent state federal regulators discussed above are required to segregate their funds from the state treasury. 12 U.S.C. § 5497(b)(1), (d)(1). Accordingly, the CFPB's funding structure matches a widespread funding mechanism enabled by legislatures across the States.

B. Consistent With Constitutional Requirements, States Ensure that Independently Funded Agencies Remain Accountable to the Legislature.

The laws creating the financial, natural resources, agricultural, and occupational regulatory agencies discussed above comply, as does the Dodd-Frank Act, with the straightforward constitutional requirements for an

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the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1704(b). *See also* CFPB, *Financial Report of the Consumer Financial Protection Bureau: Fiscal Year 2022*, at 74-76 (2022), https://perma.cc/9UMX-9A5J; Pet'rs' Br. at 3-4, 25-26.

appropriation: the enabling legislation specifies the agency's funding source and the purpose of its spending. The statutes governing these state agencies also comport, as does Dodd-Frank, with the overarching separations-of-powers principle at the core of the appropriations power because the laws that created the agencies ensure that the legislature retains oversight over the agencies' operations.

To assure transparency and accountability, independently funded state regulatory agencies are generally required to submit annual or biennial reports to the legislature detailing their activities and finances. For example, all nine of Texas's self-directed semi-independent agencies must furnish biennial reports, including financial audits, and annual budgets to the legislature and governor. Tex. Fin. Code § 16.005(b)-(c); Tex. Gov't Code § 472.104(a)-(b); Tex. Occ. Code § 1105.005(b)-(c); *see also* Or. Rev. Stat. § 182.472 (requiring "semi-independent state agencies" to submit biennial reports including financial data and budgets to the Oregon legislature). Other agencies must prepare publicly available annual reports with budget information. *See*, *e.g.*, Tenn. Code § 45-1-119(b); Wash. Rev. Code § 43.23.130; Wyo. Stat. § 23-1-503.[25] The regulatory agencies also must undergo routine audits. *See*, *e.g.*, Or. Rev. Stat. § 182.464; Ind. Code

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[25] *See also* Ind. Dep't of Fin. Insts., *2021 Annual Report*, *supra* note 11, at 17 (declaring that the Indiana Department of Financial Institutions is "subject to legislative oversight").

§ 28-11-1-1(e); Tex. Fin. Code § 16.004; Tex. Gov't Code § 472.103; Tex. Occ. § 1105.004.

Just like these state legislatures, Congress directed the CFPB to comply with specific (and analogous) accountability provisions to ensure the necessary legislative oversight over the Bureau's activities and finances. For example, the Dodd-Frank Act requires the Bureau to annually furnish financial reports to the House and Senate appropriations committees that detail its financial operating plans and forecasts, its financial condition, and the sources and application of its funds. 12 U.S.C. § 5497(e)(4); *see* Pet'rs' Br. at 4. The Bureau must also prepare a report twice a year for two other congressional committees that includes a justification of the previous year's budget request; the Bureau's Director must then testify before those committees about the report. 12 U.S.C. § 5496. Finally, the Bureau must order and conduct its own annual independent audit and undergo a separate audit from the Comptroller General, the latter of which is also submitted to Congress. *Id*. §§ 5496a, 5497(a)(5).

In addition to its ongoing oversight of the Bureau, Congress can, of course, alter the Bureau's funding scheme through future legislation. *See Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 563-64 (2005) ("Congress, of course, retains oversight authority, not to mention the ability to reform the program at any time"); *Chadha*, 462 U.S. at 955 n.19 ("Congress ultimately controls administrative agencies in the legislation that creates them"). Thus, the CFPB's budget is not "double-insulated" from Congress's reach, *see*

Cmty. Fin. Servs. Ass'n of Am., Ltd. v. CFPB, 51 F.4th 616, 639-40 (5th Cir. 2022); to the contrary, Congress dictated clear procedures to review how the Bureau uses the funds it generates, *see Lincoln v. Vigil*, 508 U.S. 182, 193 (1993) ("Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes"). Those procedures are equivalent to the methods of oversight that independently funded state regulators must follow so that they remain accountable to the legislature. Accordingly, both Congress and state legislatures properly exercise the oversight implicit in their constitutional appropriations responsibilities.

In sum, when it created the Bureau, Congress hewed to a path familiar both to the federal government and the States. Like Congress, the States regularly create independently funded regulatory agencies. And like the Dodd-Frank Act, the laws funding these agencies satisfy the straightforward dictates of state constitutional appropriations provisions because they designate independent revenue streams and direct the agencies to use the funds to fulfill an express statutory mandate. The enabling statutes also provide mechanisms to ensure that the agencies remain accountable to the legislature.

Just as the state agencies discussed above conform to the appropriations requirements of their respective constitutions, so the funding mechanism of the CFPB adheres to the mandate of the U.S. Constitution's Appropriations Clause.

III. Because State Courts Interpreting Their Own Constitutions Follow This Court's Appropriations Jurisprudence, A Ruling Disapproving The CFPB's Funding Structure Could Hobble Agencies Throughout The States.

Considering the shared text and history of the federal Appropriations Clause and its analogues in state constitutions, this Court's construction of the Appropriations Clause as it applies to the CFPB's funding scheme may generate similar interpretations among the States of their own appropriations provisions. On separation-of-powers questions, state courts often look to this Court's interpretation of the U.S. Constitution to elucidate their own constitutions. *See*, *e.g.*, *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 778 (Tex. 2005) (considering this Court's precedent for "purposes of demarcating the separation of powers in the federal government under the United States Constitution" and "[a]ssuming that the same tests would serve equally well in defining the separation of powers in the state government under the Texas Constitution"); *Book v. State Off. Bldg. Comm'n*, 149 N.E.2d 273, 293-96 (Ind. 1958) (observing that the separation of powers is "safeguarded in our Federal Constitution and in the Constitution of every State of the Union" and applying this Court's jurisprudence to interpret Indiana law).[26]

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[26] *See also Commonwealth v. Sessoms*, 532 A.2d 775, 778 (Pa. 1987) (restating analogous provisions in the federal and Pennsylvania constitutions and concluding that "the foregoing

State courts have historically paid particular heed to this Court's appropriations jurisprudence. *See*, *e.g.*, *Mandel v. Myers*, 629 P.2d 935, 940-41 (Cal. 1981) (evaluating decisions of this Court to determine that the judiciary may order payment of funds if already appropriated by the legislature); *Journal Pub. Co. v. Kenney*, 24 P. 96, 97-98 (Mont. 1890) (concluding that judicial determinations about appropriations principles are "in harmony" with this Court's then "leading case" on the matter (interpreting *Reeside v. Walker*, 52 U.S. 272 (1850))). Given the uniformity of the text and history of their appropriations clauses, state courts also have long looked to one another's constitutional appropriations precedent. *See*, *e.g.*, *Holmes*, 189 P. at 203-04 (Or. 1920) (determining whether an appropriation fulfills the Oregon constitution's requirements based on reasoning from the Arkansas, California, Indiana, Nebraska, and Nevada supreme courts); *Burdick*, 33 P. 127-30 (Wyo. 1893) (consulting cases interpreting state appropriations provisions by the Alabama, California, Colorado, Indiana, Louisiana, Maryland, Montana, and Nebraska supreme courts). Accordingly, a decision disapproving the funding structure of the CFPB could prompt a seismic shift in over

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provisions 'are integral parts of the constitutional design for the separation of powers.' The Supreme Court's summary of the purpose of these sections may equally be applied to the design of our Commonwealth government" (quoting *Chadha*, 462 U.S. at 946)); Robert A. Schapiro, *Contingency and Universalism in State Separation of Powers Discourse*, 4 Roger Williams U. L. Rev. 79, 87 (1998) ("[S]tate courts often rely heavily on federal precedent and modes of analysis in addressing the distribution of powers under state constitutions").

a century of settled law and careful calibration among the States.

That States spanning the country, and Congress with the CFPB and other federal agencies, have each separately chosen to establish independently funded agencies to regulate important industries lends credence to the wisdom and propriety of the practice. The text and principles of the nation's appropriations clauses, federal and state alike, afford legislatures the flexibility to determine different methods for funding a particular agency and for providing legislative oversight. The evidence from the States suggests that the Bureau's funding structure is thus perfectly consistent with constitutional principles governing appropriations and the power of the purse.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment of the Court of Appeals.

Respectfully submitted,

SETH E. MERMIN
Counsel of Record
DAVID S. NAHMIAS
AYESHA K. RASHEED
CENTER FOR CONSUMER LAW & ECONOMIC JUSTICE
UC BERKELEY SCHOOL OF LAW
308 Law Building
Berkeley, CA 94720-7200
(510) 393-8254
tmermin@law.berkeley.edu
Counsel for Amici Curiae

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84. Virginia Organizing
85. Virginia Poverty Law Center
86. Voices Organized in Civic Engagement (Oklahoma)
87. Washington State Public Interest Research Group, Inc.
88. William E. Morris Institute for Justice (Arizona)

89. Wisconsin Public Interest Research Group, Inc.
90. Woodstock Institute (Illinois)