

No. 22-_____

IN THE
Supreme Court of the United States

LAW OFFICES OF CRYSTAL MORONEY, P.C.,

Petitioner,

v.

CONSUMER FINANCIAL PROTECTION BUREAU,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010), created the Consumer Financial Protection Bureau (CFPB or Bureau) to serve as “an independent financial regulator” responsible for “implementing and enforcing a large body of financial consumer protection laws.” *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2193 (2020). Congress structured the Bureau in a manner explicitly designed to insulate CFPB from oversight by future Congresses, particularly with respect to funding. The Act exempts CFPB from reliance on annual appropriations for funding; it authorizes CFPB instead to requisition from the Federal Reserve Board any amount (up to 12% of the Federal Reserve’s total operating expenses) “determined by [CFPB’s] Director to be reasonably necessary to carry out” the Bureau’s functions. 12 U.S.C. § 5497(a). In proceedings below, the Second Circuit held that CFPB’s unique funding structure is consistent with the Constitution’s separation-of-powers principles. The court expressly disagreed with the Fifth Circuit’s contrary holding. Based on its holding, the Second Circuit enforced the Civil Investigative Demand (CID) issued by CFPB to Petitioner.

The Question Presented is as follows:

Whether the Consumer Financial Protection Agency’s funding structure—which imposes no meaningful constraints on the authority of the President or CFPB to choose the Bureau’s amount of annual public funding—violates the Appropriations Clause, U.S. Const. Art. I, Sec. 9, Cl. 7, and renders unenforceable the CID issued in this case.

PARTIES TO THE PROCEEDING

Petitioner Law Offices of Crystal Moroney, P.C. was the respondent in the district court and appellant in the court of appeals. Pursuant to Rule 29.6, Petitioner states that it is a professional corporation; it has no parent corporation, and no publicly held company has a 10% or greater ownership interest.

Respondent Consumer Financial Protection Bureau was the petitioner in the district court and appellee in the court of appeals.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C., No. 20-cv-3240 (KMK) (Aug. 19, 2020)

United States Court of Appeals (2d Cir.):

Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C., No. 20-3471 (March 23, 2023)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit. Petitioner requests that the Court hold the petition pending its decision in *Consumer Financial Protection Bureau v. Community Financial Services Assoc. of America, Ltd.*, No. 22-448, and then dispose of the petition as appropriate in light of that decision.

OPINIONS BELOW

The opinion of the court of appeals is reported at 63 F.4th 174 and is reproduced at App.1a-21a. The district court's order granting Respondent's "Petition to Enforce the Civil Investigative Demand" is unreported and is reproduced at App.22a. The transcript of the hearing at which the district court explained its reasons for granting that petition is reproduced at App.23a-52a.

JURISDICTION

The court of appeals issued its judgment on March 23, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art. I, § 9, Cl. 7 provides:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a

regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Relevant statutory provisions are reproduced at App.53a-63a.

INTRODUCTION

Petitioner Law Offices of Crystal Moroney, P.C. is a defunct law firm that for many years assisted its clients in resolving debt accounts by offering debtors alternative ways to amicably resolve their delinquencies. At all times, the firm's President, Managing Officer, and sole attorney has been Crystal Moroney. This case involves efforts by Respondent Consumer Financial Protection Bureau (CFPB) to enforce a Civil Investigative Demand (the "Second CID") issued to Petitioner on November 14, 2019. The Second CID directed Petitioner to answer interrogatories, produce a massive number of documents and tangible things (including many attorney-client privileged documents), and submit detailed written reports.¹

Believing that it had already provided CFPB with all the information the Bureau reasonably could ask for, Petitioner declined to comply with the Second CID. In defending against CFPB's enforcement action,

¹ CFPB directed its first CID to Petitioner in June 2017. Petitioner spent countless hours and \$75,000 responding to the first CID and supplied CFPB with a large quantity of material, but CFPB was not satisfied with the response—as evidenced by its Second CID and two subsequent CIDs not at issue in this Petition.

Petitioner asserted (among other defenses) that the Second CID is unenforceable because the Bureau's funding structure violates the Constitution's Appropriations Clause. U.S. Const. Art. I, § 9, Cl. 7.

When CFPB filed an action to enforce the Second CID, Petitioner warned that the cost of compliance would force it to shutter its operations. CFPB nonetheless persisted, and the district court granted CFPB's enforcement petition in August 2020. App.22a. After the Second Circuit denied Petitioner's motion for a stay pending appeal, Petitioner concluded that continuing to operate while complying fully with the Second CID was not financially feasible. Petitioner ceased operations at the end of August 2021 and provided what additional documents it could to CFPB, all the while continuing to pursue its Second Circuit appeal. Crystal Moroney moved away from New York and no longer is engaged in the private practice of law.

The experiences of Petitioner and Crystal Moroney well illustrate the abuses that can arise when an Executive Branch agency is funded outside the congressional appropriations process and thus faces no budgetary constraints. CFPB has been hounding Petitioner and Moroney to respond to discovery requests since 2017; those requests were a major factor in Petitioner's decision to close its doors. CFPB required Moroney to sit for a deposition in 2022. It has not told Petitioner and Moroney that it is satisfied with the response to the Second CID or that it has completed its investigation of their activities. Yet throughout the past six years, it has told neither Petitioner nor Moroney that either is suspected of violating any federal debt-collection law. It is difficult

to imagine that an agency would squander its resources so profligately if it were subject to normal budgetary constraints.

The Second Circuit affirmed the enforcement order in March 2023, rejecting Petitioner’s contention that CFPB’s funding structure violates the Appropriations Clause. The appeals court acknowledged that its decision directly conflicts with the Fifth Circuit’s decision in *Community Financial Services Assoc. of America, Ltd. v. CFPB*, 51 F.4th 616 (5th Cir. 2022) (“*CFSA*”), and stated, “we respectfully decline to follow the Fifth Circuit’s decision.” App.16a. The Court later granted CFPB’s petition to review *CFSA*. No. 22-448, 143 S. Ct. 978 (2023). The filing of briefs in No. 22-448 is well advanced. The Court should therefore hold this petition for a writ of certiorari pending the decision in *CFSA*, and then dispose of the petition as appropriate in light of that decision.

STATEMENT OF THE CASE

I. Statutory Background

In 2010, in response to the 2008 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* Pub. L. No. 111-203, 124 Stat. 1376 (2010). Title X of that statute, the Consumer Financial Protection Act (CFPA), created CFPB and consolidated the regulation of consumer financial products and services in a single agency. *See* CFPA, 124 Stat. at 1955-2113, 12 U.S.C. §§ 5481-5603. CFPB’s sweeping regulatory mandate includes enforcing laws involving debt-collection practices.

Congress also tasked CFPB with enforcing a new statutory ban on “any unfair, deceptive, or abusive act or practice” by entities engaged in consumer finance. 12 U.S.C. § 5536(a)(1)(B).

Congress also granted CFPB “potent enforcement powers.” *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2193 (2020). The Bureau “has the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, and prosecute civil actions in federal court.” *Ibid.* It “may seek restitution, disgorgement, and injunctive relief, as well as civil penalties of up to \$1,000,000 (inflation adjusted) for each day that a violation occurs.” *Ibid.*

While vesting CFPB with these broad powers, the 2010 Congress took unprecedented steps to insulate the Bureau from oversight by the President and future Congresses. It placed CFPB leadership under a single Director appointed to a five-year term, 12 U.S.C. §§ 5491(b)(1) & (c)(1), and limited the President’s authority to remove the Director to cases of “inefficiency, neglect of duty, or malfeasance in office.” 12 U.S.C. § 5491(c)(3). Such removal restrictions had rarely before been extended beyond multi-member expert agencies that exercised no executive power. *Seila Law*, 140 S. Ct. at 2198-99.²

² In *Seila Law*, the Court held that the Director’s removal protection was unconstitutional; it severed that removal protection from other CFPB provisions and held that while CFPB may “continue to operate,” the Director would henceforth “be removable by the President at will.” *Id.* at 2192.

To shield CFPB from oversight by future Congresses, the CFPB provided that CFPB would not have to “rely on the annual appropriations process for funding.” *Id.* at 2193-94. Instead, it established the Bureau as an independent regulatory agency housed within the Federal Reserve System and provided that CFPB would receive funding “directly from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments.” *Id.* at 2194. Each quarter, CFPB simply requests funding in an amount “determined by the Director to be reasonably necessary to carry out the” Bureau’s functions. 12 U.S.C. § 5497(a)(1). The Federal Reserve must then transfer that amount so long as it does not exceed 12% of the Federal Reserve’s “total operating expenses.” *Id.* § 5497(a)(1)-(2).

Other features of the CFPB that ensure CFPB’s independence from fiscal control by future Congresses include provisions: (1) mandating that the Bureau’s “funds derived from the Federal Reserve System ... shall not be subject to review by the Committees of Appropriations of the House of Representatives and the Senate,” *id.* § 5497(a)(2)(C); (2) authorizing CFPB to accumulate a financial nest egg by providing that unused funds “shall remain available” to the Bureau “until expended” in future years, *id.* § 5497(c)(1); and (3) providing that rather than being deposited in a Treasury fund, the Bureau’s money is to be maintained in a separate fund under the sole control of CFPB’s Director. *Id.* § 5497(b) & (c). To underscore the Bureau’s financial independence, the CFPB states that money “obtained by or transferred to” CFPB’s separate fund “shall not be construed to be Government funds or appropriated monies.” *Id.* § 5497(c)(2).

II. The First and Second CIDs

Petitioner Law Offices of Crystal Moroney, P.C. is a small law firm that, during its period of active operations, principally provided legal advice and services to clients seeking to collect debt. App.3a.³ Its principal attorney, Crystal G. Moroney, is licensed to practice law in New York and New Jersey. CFPB has not alleged that either Petitioner or Moroney ever violated any federal statute governing debt-collection practices.

On June 23, 2017, CFPB served a Civil Investigative Demand on Petitioner, the first of four CIDs it served on Petitioner between 2017 and 2021. The CID made clear that CFPB was not accusing Petitioner of any legal infractions. Rather, it stated that CFPB was undertaking an investigation to determine whether “debt collectors, furnishers or other persons in connection with collection of debt and furnishing of information” had violated the CFPA; the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*; or the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* The CID demanded that Petitioner provide extensive information regarding its business operations for the previous 3½ years; it directed Petitioner to answer interrogatories, produce a massive

³ Most of Petitioner’s clients were debt-recovery agencies seeking soft-collection debt recovery solutions. *See* Affidavit of Crystal G. Moroney at 2 (“Moroney Aff.”), ECF23-8, No. 20-3471 (2d Cir., Jan. 11, 2021). Soft-collection debt recovery is the practice of offering debtors affordable repayment terms to cure their defaulted accounts and rehabilitate their credit scores without litigation.

number of documents and tangible things, and submit detailed written reports.

In the ensuing months, Moroney and Petitioner's other employees devoted much of their time to responding to the First CID. Between June and October 2017 alone, Moroney spent about seven hours *every* workday and three hours *every* weekend day—a total of about 650 hours—“reviewing the First CID, sorting responsive and nonresponsive documents, identifying privileged materials, conferring with my attorneys, conferring with my clients, conferring with my in-house IT manager, coordinating with outside IT consultants, and preparing answers to interrogatories.” Moroney Aff. at 3. The time devoted to responding to the First CID “had a significant negative impact on law firm revenue and expenses” because Moroney “could not spend this time providing legal services or managing the business.” *Ibid.* Petitioner incurred \$75,000 in legal fees and costs “negotiating, complying with, and defending against the First CID.” *Ibid.*

Although Petitioner “produced thousands of pages of documents and other data,” it “withheld a subset of documents, claiming that producing those documents would compromise its obligations to its clients,” including ethical obligations not to disclose confidential client information. App.6a. CFPB filed a petition to enforce full compliance with the CID but later withdrew the CID, and the district court denied the petition to enforce as moot. *Ibid.*

Inexplicably, CFPB served Petitioner with the Second CID on November 14, 2019, just days after withdrawing the first one. *Ibid.* The Second CID

sought information substantially similar to its predecessor, except that it demanded information spanning a far greater period of time—nearly seven years. Moreover, CFPB demanded that Petitioner again provide the very same information it had already supplied in connection with the First CID.

Negotiations between the parties eventually broke down, and Petitioner informed CFPB in March 2020 that it would not provide any additional material. App.26a. Petitioner stated, among other things, that the Second CID was invalid because CFPB was unconstitutionally structured—citing both the tenure protection afforded the Bureau’s Director and the funding structure that permits CFPB to choose its own funding level without seeking congressional appropriations. Petitioner also warned that the further costs of complying with the Second CID would likely force it to shut down.

III. Petition to Enforce the Second CID

CFPB filed a petition to enforce the Second CID on April 24, 2020. Two months later, this Court issued its *Seila Law* decision, which vindicated Petitioner’s contention that the CFPA provision granting tenure protection to the Director was unconstitutional. *See* 140 S. Ct. at 2211. On July 2, 2020 (three days after release of *Seila Law*), CFPB issued a notice purporting to ratify its pending enforcement petition. App.6a.

In August 2020, the district court granted CFPB’s enforcement petition. App.22a. In particular, the court rejected Petitioner’s constitutional challenge to CFPB’s funding structure. *Id.* 31a-34a. The court

concluded that Congress maintains control over CFPB's budget because Congress "remains free to change how CFPB is funded at any time." *Id.* at 34a.

Petitioner appealed to the Second Circuit, where it sought a stay pending appeal. Petitioner's stay motion stated that the costs of fully complying with the Second CID would force it to cease operations. Moroney Aff. at 7. The Second Circuit denied the motion for a stay in March 2021. Petitioner thereafter ceased active operations in the summer of 2021 and complied as best it could with the Second CID.⁴

The Second Circuit affirmed the district court's enforcement order in March 2023. App.1a-21a. The appeals court rejected Petitioner's constitutional challenge to CFPB's funding structure, holding that the structure does not violate the Constitution's Appropriations Clause. *Id.* at 11a-12a. The court stated that the funding structure satisfied Appropriations Clause requirements because: (1) it was "authorized by Congress"; and (2) the CFPA imposes clear limits on CFPB spending: no more than "twelve percent of the Federal Reserve System's 2009 Operating Expenses with adjustments for increases in labor costs." *Id.* at 12a (citing 12 U.S.C. §§ 5497(c)(1) & 5497(a)(2)(A)-(B)).

⁴ In September 2021, Petitioner fully responded to a third CID, which sought consumer information with respect to 52 specific accounts, including consumer identification information and copies of all documents associated with those accounts. Pursuant to a fourth CID, CFPB deposed Moroney in 2022.

The appeals court recognized that its decision conflicted with the Fifth Circuit’s *CFSA* decision but stated that it “decline[d] to follow” *CFSA*. App.12a-16a. The court stated that *CFSA*’s holding—that CFPB’s funding structure “runs afoul of the separation of powers embodied in the Appropriations Clause”—finds support in neither “Supreme Court precedent” nor “the Constitution’s text.” *Id.* at 13a, 14a (quoting *CFSA*, 51 F.4th at 639). The appeals court stated, “Nothing in the Constitution ... requires that agency appropriations be ‘time limited’ or that appropriated funds be drawn from a particular ‘source.’” *Id.* at 14a (quoting *CFSA*, 51 F.4th at 639).

The Second Circuit held further that “the history of the Appropriations Clause” does not support the Fifth Circuit’s constitutional analysis. *Id.* at 15a-16a. According to the appeals court, the Founders adopted the Appropriations Clause to ensure that Congress prescribed the “purpose,” “limit,” and “fund” of every federal expenditure; and the CFPB satisfies each of those three criteria. *Ibid.*⁵

⁵ The appeals court also rejected Petitioner’s other challenges to enforcement of the Second CID, including Petitioner’s claim that CFPB’s enforcement petition was void because CFPB did not properly ratify it following release of this Court’s decision in *Seila Law*. *Id.* at 7a-11a.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS WARRANTED TO RESOLVE THE ACKNOWLEDGED CONFLICT AMONG THE FEDERAL APPEALS COURTS

The court below rejected Petitioner's claim that the CFPB funding structure created by the CFPA violates the Appropriations Clause. As the court acknowledged, its holding directly conflicts with the Fifth Circuit's holding that the funding structure is unconstitutional. App.12a-16a. It made no effort to distinguish *CFSA*; it simply stated that it "decline[d] to follow the Fifth Circuit's decision." *Id.* at 12a. Review is warranted to resolve the acknowledged and irreconcilable conflict between the two decisions.

The Fifth Circuit held that CFPB's "funding apparatus cannot be reconciled with the Appropriations Clause and the clause's underpinning, the constitutional separation of powers." *CFSA*, 51 F.4th at 642. The court explained that the Framers "viewed Congress's exclusive 'power over the purse' as an indispensable check on 'the overgrown prerogatives of the other branches of government,'" *id.* at 636 (quoting *The Federalist* No. 58 (J. Madison)), and "believed that vesting Congress with control over fiscal matters was the best means of ensuring transparency and accountability to the people." *Ibid.* (citing *The Federalist* No. 48 (J. Madison)). To safeguard those principles, The Framers adopted the Appropriations Clause, whose "straightforward and explicit command ensures Congress's *exclusive* power over the federal purse" and "takes away from Congress the option *not* to require legislative appropriations prior to

expenditure.” *Id.* at 637 (quoting Kate Stith, *Congress’ Power of the Purse*, 97 YALE L.J. 1343, 1349 (1988) (emphasis in original)).

The Fifth Circuit concluded that the CFPB funding structure established by the 2010 Congress fails to meet those standards:

Congress did not merely cede *direct* control over the Bureau’s budget by insulating it from annual or other time limited appropriations. It also ceded *indirect control* by providing that the Bureau’s self-determined funding be drawn from a source that is itself outside the appropriations process—a double insulation from Congress’s purse strings that is “unprecedented” across the government.

Id. at 638-39 (quoting *CFPB v. All American Check Cashing, Inc.*, 33 F.4th 218, 225 (5th Cir. 2022) (*en banc*) (Jones, J., concurring)) (emphasis in original). The court held, “Wherever the line between a constitutionally and unconstitutionally funded agency may be, this unprecedented arrangement crosses it.” *Id.* at 639. As a remedy for the constitutional violation, the court vacated the regulation challenged by the plaintiffs. *Id.* at 643-44.

On the other side of the ledger is the D.C. Circuit, which agrees with the decision below that CFPB’s funding structure does not run afoul of the Appropriations Clause mandate. *PHH Corp. v. CFPB*,

881 F.3d 75, 95-96 (D.C. Cir. 2018) (*en banc*). The conflict between the decision below and *PHH Corp.* on the one hand, and the Fifth Circuit decision on the other, is direct, acknowledged, and irreconcilable. The Court agreed to review the Fifth Circuit decision to resolve the conflict between the Fifth Circuit decision and *PHH Corp.* *CFPB v. CFSA*, 143 S. Ct. at 978.⁶ The Court should hold this petition pending the decision in *CFSA*, and then dispose of it as appropriate in light of that decision.

II. PETITIONER HAS APPROPRIATELY RAISED THE FUNDING-STRUCTURE ISSUE AND HAS A SIGNIFICANT INTEREST IN ITS RESOLUTION

As the Government’s certiorari petition in *CFSA* indicates, whether CFPB’s funding structure complies with Appropriations Clause strictures is an issue of exceptional importance. Congress “has vested the CFPB with potent enforcement powers,” *Seila Law*, 140 S. Ct. at 2193, powers it exercised with a vengeance in this case. Whether a federal agency should be permitted to wield that degree of power without being subject to normal budgetary constraints is an issue of concern to all citizens.

Throughout these proceedings, Petitioner has challenged CFPB’s funding structure and its constitutional authority to demand discovery, including in the district court. *See* App.31a (district court notes Petitioner’s argument that “the Bureau itself is

⁶ Briefing in *CFSA* is well under way, and the case is likely to be scheduled for oral argument in the fall.

unconstitutional because it doesn't receive appropriations from Congress, instead ceding Congress's funding authority to the Bureau itself and to the President, which violates, in [Petitioner's] view, the Appropriations Clause."). The district court rejected that constitutional argument, concluding that Congress had not ceded its control over CFPB's funding because "Congress can always alter the CFPB's funding in any appropriations cycle or at any other time." *Id.* at 34a (quoting *PHH Corp. v. CFPB*, 839 F.3d 1, 36 n.16 (D.C. Cir. 2016)).

Petitioner raised its constitutional objection again in the Second Circuit. *See* App.11a (stating that Petitioner "contends that the CID is not enforceable because the CFPB funding structure violates the Appropriations Clause of the Constitution"). The appeals court rejected that contention "[b]ecause the CFPB's funding structure was authorized by Congress and bound by specific statutory provisions." *Id.* at 12a.

Petitioner has a significant stake in the Court's resolution of the question presented. First, although Petitioner sought to comply with the Second CID by providing CFPB a large quantity of material in the summer of 2021 (after the appeals court denied its motion for a stay of enforcement pending appeal and effectively forced Petitioner to shutter its operations), CFPB has never stated that Petitioner has adequately responded to the Second CID. Indeed, when CFPB investigators last communicated with Petitioner in 2022, they indicated that their investigation was ongoing. A ruling that CFPB may not enforce the Second CID because its funding structure is unconstitutional would relieve Petitioner of any

ongoing obligation to provide additional documents and information to CFPB.

Nor would a future statement by CFPB that it does not seek additional documents alter the situation. CFPB continues to possess massive amounts of information regarding Petitioner's operations. A holding that the Bureau lacked authority to issue the Second CID because its funding structure is unconstitutional would entitle Petitioner to an order requiring CFPB to return or destroy the information—including attorney-client privileged information—still in its possession.

III. THE DECISION BELOW IS INCORRECT AND CONTRIBUTED DIRECTLY TO THE DESTRUCTION OF PETITIONER'S BUSINESS OPERATIONS

Review is also warranted because the decision below is incorrect. In rejecting Petitioner's constitutional challenge, the Second Circuit relied on this Court's statement that the Appropriations Clause "means simply that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress." App.11a (quoting *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321 (1937)). The appeals court reasoned that CFPB funding satisfies the *Cincinnati Soap* standard because "[t]here can be no dispute that the CFPB's funding structure was authorized by the CFPA—a statute passed by Congress and signed into law by the President." *Ibid.*

But, as the Fifth Circuit observed, Congress's mere enactment of a law does not, by itself, satisfy the Appropriations Clause's requirements. Were it

otherwise, “no federal statute could ever violate the Appropriations Clause because Congress, by definition, enacts them.” *CFSA*, 51 F.4th at 640. The improper concentration of power within the Executive Branch is no less a separation-of-powers violation simply because Congress itself has acquiesced in the violation. *Gundy v. United States*, 139 S. Ct. 2116, 2135 (2019) (Gorsuch, J., dissenting). As Justice Gorsuch explained, “[E]nforcing the separation of powers isn’t about protecting institutional prerogatives or governmental turf. It’s about respecting the people’s sovereign choice to vest the legislative power in Congress alone.” *Ibid.*

The Appropriations Clause provides that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. Art. I, § 9, Cl. 7. CFPB’s funding structure cannot be squared with that language. The Bureau does not obtain its funds “in consequence of Appropriations made by Law.” Rather, the 2010 Congress handed CFPB a blank check and authorized the Bureau in perpetuity to fill in virtually any amount it deems appropriate. The ability of later Congresses to rescind that authority is quite limited. The CFPA (as revised by *Seila Law*) grants the President broad power to unilaterally expand CFPB’s funding as he or she sees fit; the President thus can be expected to veto any legislation designed to restore Congress’s appropriations authority over the Bureau. The district court’s assertion that “Congress can always alter the CFPB’s funding in any appropriations cycle or at any other time,” App.34a, simply ignores the substantial obstacle to change imposed by the President’s veto power. *See* U.S. Const. Art. I, § 7, Cl. 2 (requiring a 2/3

vote of both the Senate and House of Representatives to override a presidential veto).

The facts of this case provide a cautionary tale of what can happen when, in violation of the Appropriations Clause, an administrative agency is freed from normal budgetary restraints. Congressional control over an agency's funding constrains agency overreach in two distinct ways. First, because the agency must live within the budget determined by Congress, agency officials are forced to limit their regulatory activities by prioritizing those cases they consider to be the most pressing. Second, a cautious agency official will avoid overly aggressive enforcement activity that might aggravate some Members of Congress and result in reduced future appropriations.

But both of those constraints are absent when, as here, an agency is granted perpetual authority to determine its own funding. The lack of those constraints likely contributed significantly to CFPB's heavy-handed pursuit of Petitioner, a pursuit which ultimately forced the small law firm to cease operations. Both the First and Second CIDs sought a massive quantity of information from Petitioners (including the preparation of lengthy reports in formats dictated by the Bureau), and CFPB had to have been aware that being required to respond to such demands could cripple or destroy any small firm. Indeed, that is precisely what occurred here. CFPB persisted with its burdensome discovery requests from Petitioner despite repeated, prescient warnings that the small firm could not continue operations if forced to bear the burden of a full response.

CFPB has repeatedly pointed out that it is authorized under various debt-collection statutes to investigate whether debt-collection firms are complying with those statutes, and it insists that it was well within its statutory rights to undertake an investigation of Petitioner even in the absence of evidence of wrongdoing. Maybe so. But the scope of that investigation—particularly in the absence of any claim that Petitioner was suspected of violating debt-collection statutes—was wholly unwarranted.⁷ The Court can help to limit such abuses by granting review and ruling that CFPB’s funding structure violates the Appropriations Clause.

⁷ CFPB has not identified any consumer complaints against Petitioner. During the course of CFPB’s investigation, the Better Business Bureau upgraded Petitioner’s rating from A- to A. Moroney Aff. at 2.

CONCLUSION

Petitioner requests that the Court hold the petition for a writ of certiorari pending its decision in *Consumer Financial Protection Bureau v. Community Financial Services Assoc. of America, Ltd.*, No. 22-448, and then dispose of the petition as appropriate in light of that decision.

Respectfully submitted,

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