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 *AMICI CURIAE* STATE OF WEST VIRGINIA AND 26 OTHER STATES IN SUPPORT OF RESPONDENTS

PATRICK MORRISEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
lindsay.s.see@wvago.gov
(304) 558-2021

LINDSAY S. SEE
Solicitor General
Counsel of Record

MICHAEL R. WILLIAMS
Principal Deputy Solicitor General

Counsel for Amicus Curiae *State of West Virginia*
[additional counsel listed after signature page]

QUESTION PRESENTED

Whether the court of appeals erred in holding that the statute that describes how the Consumer Financial Protection Bureau is funded, 12 U.S.C. § 5497, violates the Appropriations Clause, U.S. CONST. art. I, § 9, cl. 7, and in vacating a regulation promulgated at a time when the CFPB was receiving such funding.

TABLE OF CONTENTS

Question Presented I

Introduction and Interests of *Amici Curiae* 1

Summary of Argument 4

Argument 5

I. The Appropriations Clause Matters, Especially To The States 5

II. Lacking An Appropriation, The CFPB Has Avoided Real Accountability 18

III. The Court Should Ignore Doomsaying About The Consequences Of Providing Relief 32

Conclusion 33

TABLE OF AUTHORITIES

Page(s)

Cases

Am. Fed'n of Gov't Emps., AFL-CIO, Loc. 1647 v. *FLRA*,
388 F.3d 405 (3d Cir. 2004) 6

Atherton v. *FDIC*,
519 U.S. 213 (1997) 22

Axon Enter., Inc. v. *FTC*,
143 S. Ct. 890 (2023) 28

Biden v. *Nebraska*,
No. 22-506, slip op. (U.S. June 30, 2023), 2023 WL 4277210 22

Bond v. *United States*,
564 U.S. 211 (2011) 13

CFPB v. *Access Funding, LLC*,
No. CV ELH-16-3759, 2021 WL 2915118 (D. Md. July 12, 2021) 31

CFPB v. *Accrediting Council for Indep. Colleges & Sch.*,
183 F. Supp. 3d 79 (D.D.C. 2016) 31

CFPB v. *All Am. Check Cashing, Inc.*,
33 F.4th 218 (5th Cir. 2022) 10, 16

CFPB v. *Borders & Borders, PLC*,
No. 3:13-CV-1047-CRS, 2016 WL 9460472 (W.D. Ky. June 29, 2016) 31

CFPB v. Brown,
No. 21-14468, 2023 WL 3939432 (11th Cir. June 12, 2023) 31

TABLE OF AUTHORITIES
(*continued*)

Page(s)

CFPB v. *Great Plains Lending, LLC*,
846 F.3d 1049 (9th Cir. 2017) 29

City of Arlington v. *FCC*,
569 U.S. 290 (2013) 3

Clinton v. *City of New York*,
524 U.S. 417 (1998) 13

Free Enter. Fund v. *Pub. Co. Acct. Oversight Bd.*,
561 U.S. 477 (2010) 9

Garcia v. *San Antonio Metro. Transit Auth.*,
469 U.S. 528 (1985) 13

Geier v. *Am. Honda Motor Co.*,
529 U.S. 861 (2000) 15

INS v. *Chadha*,
462 U.S. 919 (1983) 3

Laird v. *Tatum*,
408 U.S. 1 (1972) 7

Lewis v. *BT Inv. Managers, Inc.*,
447 U.S. 27 (1980) 33

Nat'l Fed'n of Indep. Bus. v. *Sebelius*,
567 U.S. 519 (2012) 13

OPM v. *Richmond*,
496 U.S. 414 (1990) 5, 6

Pennsylvania v. *Navient Corp.*,
967 F.3d 273 (3d Cir. 2020) 22

TABLE OF AUTHORITIES
(*continued*)

Page(s)

PHH Corp. v. *CFPB*,
881 F.3d 75 (D.C. Cir. 2018) 24

Ring v. *Maxwell*,
58 U.S. 147 (1854) 6

Seila Law LLC v. *CFPB*,
140 S. Ct. 2183 (2020) 21, 22

U.S. Dep't of Navy v. *FLRA*,
665 F.3d 1339 (D.C. Cir. 2012) 6, 9

United States v. *McIntosh*,
833 F.3d 1163 (9th Cir. 2016)... 9

United States v. *Texas*,
No. 22-58, slip op. (U.S. June 23, 2023),
2023 WL 4139000... 21

Watters v. *Wachovia Bank, N.A.*,
550 U.S. 1 (2007) 33

Wayman v. *Southard*,
10 Wheat. 1 (1825) 9

Constitutional Provisions

U.S. Const. art. I, § 9, cl. 7.. 1

U.S. CONST. art. I, § 9, cl. 8... 8

Statutes

12 U.S.C. § 5492 20

TABLE OF AUTHORITIES
(*continued*)

Page(s)

12 U.S.C. § 5497 .... 2, 19, 26

12 U.S.C. § 5531 27

12 U.S.C. § 5552 33

31 U.S.C. § 1301 2

Regulations

88 Fed. Reg. 6,088 (Jan. 30, 2023) 29

88 Fed. Reg. 18,382 (Mar. 29, 2023) 28

Other Authorities

156 Cong. Rec. S4140 (2010) 20

Abner J. Mikva,
Congress: The Purse,
the Purpose, and the Power,
21 GA. L. REV. 1 (1986) 6

Adam C. Smith & Todd Zywicki,
Behavior, Paternalism, and Policy:
Evaluating Consumer Financial
Protection,
9 N.Y.U. J.L. & LIBERTY 201 (2015) 21

Amanda Frost,
Judicial Review of FDA Preemption
Determinations,
54 FOOD & DRUG L.J. 367 (1999) 15

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Aubry D. Smith,
Executive-Branch Rulemaking and Dispute Settlement in the World Trade Organization: A Proposal to Increase Public Participation,
94 MICH. L. REV. 1267 (1996) 7

Bradford R. Clark,
Separation of Powers As A Safeguard of Federalism,
79 TEX. L. REV. 1321 (2001)... 13

C. Boyden Gray,
Extra Icing on an Unconstitutional Cake Already Frosted? A Constitutional Recipe for the CFPB,
24 GEO. MASON L. REV. 1213 (2017) 8, 21, 22

Calvin R. Massey,
The Tao of Federalism,
20 HARV. J.L. & PUB. POL'Y 887 (1997) 13

CFPB, CFPB FINANCIAL REPORT: FISCAL YEAR 2022 (2022) 1

CFPB, CFPB STRATEGIC PLAN: FY2013-FY2017 (2013) 1

Chad Squitieri,
The Appropriate Appropriations Inquiry,
74 FLA. L. REV. 1 (2023).. 8

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Charles Davant IV,
Sorcerer or Sorcerer's Apprentice?: Federal Agencies and the Creation of Individual Rights,
2003 WIS. L. REV. 613 (2003) 15

Charles Kruly,
Self-Funding and Agency Independence,
81 GEO. WASH. L. REV. 1733 (2013) 20, 25

Christopher C. DeMuth & Michael S. Greve,
Agency Finance in the Age of Executive Government,
24 GEO. MASON L. REV. 555 (2017) 23

Consumer Financial Protection Bureau Semiannual Report, C-SPAN
(Oct. 28, 2021) 1

D. Bruce La Pierre,
Political Accountability in the National Political Process—the Alternative to Judicial Review of Federalism Issues,
80 NW. U. L. REV. 577 (1985) 14

Daniel Martin,
The Duty to Appropriate: Why Congress Has A Constitutional Obligation to Fund Criminal Law Enforcement,
106 CAL. L. REV. 511 (2018) 8

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Daniel Press,
The Myth of Independence at the Consumer Financial Protection Bureau, COMPETITIVE ENTER. INSTIT. (Feb. 5, 2018) 25

David A. Herrman,
To Delegate or Not to Delegate—That Is the Preemption: The Lack of Political Accountability in Administrative Preemption Defies Federalism Constraints on Government Power, 28 PAC. L.J. 1157 (1997) 15

David B. Spence & Frank Cross,
A Public Choice Case for the Administrative State, 89 GEO. L.J. 97 (2000) 11

Debra L. Lowman,
A Call for Judicial Restraint: Federal Taxpayer Grievances Challenging Executive Action, 30 SEATTLE U. L. REV. 651 (2007) 10

Edward Wyatt,
Decorum Breaks Down at House Hearing, N.Y. TIMES (May 24, 2011) 29

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Elizabeth Warren,
Republicans Remain Silent As Mulvaney's CFPB Ducks Oversight, WALL ST. J. (Mar. 28, 2018, 5:48 p.m.) 30

Eloise Pasachoff,
The President's Budget As A Source of Agency Policy Control, 125 YALE L.J. 2182 (2016) 10

Eric Pearson,
A Brief Essay on the Constitutionality of the Consumer Financial Protection Bureau, 47 CREIGHTON L. REV. 99 (2013) 23

Federalism: Hearings Before the S. Comm. on Governmental Affs., 106th Cong. 15 (1999) 14, 15

Gillian E. Metzger,
Agencies, Polarization, and the States, 115 COLUM. L. REV. 1739 (2015) 12

How Will The CFPB Function Under Richard Cordray, Hearing before the H. Oversight Comm., Subcomm. on TARP, Fin. Servs., and Bailouts of Pub. and Priv. Programs, 112th Cong. 69 (2012) 27

TABLE OF AUTHORITIES
(*continued*)

Page(s)

H.R. Comm. on Fin. Servs., *Committee Pushes for Accountability and Transparency at the CFPB*, YOUTUBE (Mar. 6, 2015) 30

J.R. DeShazo & Jody Freeman, *The Congressional Competition to Control Delegated Power*, 81 TEX. L. REV. 1443 (2003) 12

Jack M. Beermann, *Congressional Administration*, 43 SAN DIEGO L. REV. 61 (2006) 12, 15

James V. DeLong, *New Wine for A New Bottle: Judicial Review in the Regulatory State*, 72 VA. L. REV. 399 (1986) 26

JAMES V. SATURNO, ET AL., CONG. RSCH. SERV., R42388, THE CONGRESSIONAL APPROPRIATIONS PROCESS: AN INTRODUCTION (2016) 16

James B. Stewart, *As A Watchdog Starves, Wall Street Is Tossed a Bone*, N.Y. TIMES (July 15, 2011) 11

Jed S. Rakoff, *The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?*, N.Y. REV. BOOKS (Jan. 9, 2014) 24

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Jennifer Nou & Edward H. Stiglitz,
Strategic Rulemaking Disclosure,
89 S. CAL. L. REV. 733 (2016) 18

Jeremy Rabkin,
Micromanaging the Administrative Agencies,
100 PUB. INT. 116 (1990) 11

Jim Puzzanghera,
CFPB Chief Mick Mulvaney Says He Could Just 'Twiddle My Thumbs' Before Congress To Highlight Agency's Flaws, L.A. TIMES
(Apr. 11, 2018, 11:55 a.m.)... 30

Jolina C. Cuaresma,
Commissioning the Consumer Financial Protection Bureau,
31 LOY. CONSUMER L. REV. 426 (2019) 26

Jonathan H. Adler,
The Ducks Stop Here? The Environmental Challenge to Federalism,
9 SUP. CT. ECON. REV. 205 (2001)................................ 14

Jonathan Masur,
Judicial Deference and the Credibility of Agency Commitments,
60 VAND. L. REV. 1021 (2007)...................................... 26

TABLE OF AUTHORITIES
(*continued*)

Page(s)

JOSEPH STORY,
COMMENTARIES ON THE CONSTITUTION
OF THE UNITED STATES (1833) 7

Julia Patterson Forrester,
Still Mortgaging the American Dream: Predatory Lending, Preemption, and Federally Supported Lenders,
74 U. CIN. L. REV. 1303 (2006) 22

Kate Stith,
Congress' Power of the Purse,
97 YALE L.J. 1343 (1988) 8, 9

Keeping Up With the Codes—Using AI For Effective RegTech, Hearing before H. Fin. Servs. Comm. A.I. Task Force of the H. Comm. on Fin. Servs.,
117th Cong. 2 (2022) 32

Laura E. Dolbow,
Agency Adherence to Legislative History,
70 ADMIN. L. REV. 569 (2018) 16

Laurence H. Tribe,
Intergovernmental Immunities in Litigation, Taxation, and Regulation: Separation of Powers Issues in Controversies About Federalism,
89 HARV. L. REV. 682 (1976) 14

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Lauren Sanders,
THE ROLE OF THE STATES UNDER THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2010 (2010) 22

Letter from Rep. Patrick McHenry, H.R. Comm. on Fin. Servs., Republican Leader, et al. to Rohit Chopra, Dir., CFPB (Sept. 20, 2022) 28

Letter from Rep. Randy Neugebauer, Chairman, H.R. Comm. on Fin. Servs., Subcomm. on Oversight and Investigations, et al. to Richard Cordray, Dir., CFPB (May 2, 2012) 30

Letter from Rohit Chopra, Dir., CFPB, to Jerome Powell, Chair, Bd. of Governors of the Fed. Rsrv. Sys. (Apr. 6, 2023) 19

Letter from Sen. Mike Enzi, Chairman, S. Budget Comm. & Richard Shelby, Chairman, S. Comm. On Banking, Hous. & Urban Affairs, to Richard Cordray, Dir., CFPB (Mar. 9, 2015) 30

Letter from Sen. Rob Portman, et al. to Richard Cordray, Dir., CFPB (Oct. 30, 2013) 30

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Marie Plicka,
Mr. Peanut Goes to Court: Accommodating an Individual's Peanut Allergy in Schools and Day Care Centers Under the Americans with Disabilities Act,
14 J.L. & HEALTH 87 (2000) 11

Markham S. Chenoweth & Michael P. DeGrandis,
How the Court's Decision in Seila Law *Makes CFPB's Unlawful Structure Even Worse*,
8/27/2020 U. CHI. L. REV. ONLINE 55 (2020) 9

Martin Baily,
Dodd Bill Offers Progress At Last,
POLITICO (Mar. 29, 2010 5:17 a.m.) 18

MARTIN H. REDISH,
THE CONSTITUTION AS POLITICAL STRUCTURE (1995) 14

Mathew D. McCubbins & Daniel B. Rodriguez,
Canonical Construction and Statutory Revisionism: The Strange Case of the Appropriations Canon,
14 J. CONTEMP. LEGAL ISSUES 669 (2005) 16, 17

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Matthew B. Lawrence,
Congress's Domain: Appropriations, Time, and Chevron,
70 DUKE L.J. 1057 (2021) 10, 12

Michael Doran,
Legislative Entrenchment and Federal Fiscal Policy,
81 LAW & CONTEMP. PROBS. 27 (2018) 12

Michael Patrick Wilt,
Evaluating "Consumer Relief" Payments in Recent Bank Settlement Agreements,
17 J. BUS. & SEC. L. 253 (2017) 8

Michael R. Faz,
Scouring Muddied Waters: Towards Clarifying the CFPB's "Abusive" Practices,
32 LOY. CONSUMER L. REV. 45 (2019) 27

Michele E. Gilman,
Presidents, Preemption, and the States,
26 CONST. COMMENT. 339 (2010) 16

Note, *Independence, Congressional Weakness, and the Importance of Appointment: The Impact of Combining Budgetary Autonomy with Removal Protection*,
125 HARV. L. REV. 1822 (2012) 10

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Paul F. Figley & Jay Tidmarsh,
The Appropriations Power and Sovereign Immunity,
107 MICH. L. REV. 1207 (2009) 5

Paul Larkin, Jr. & Zack Smith,
"Brother, Can You Spare A Million Dollars?": Resurrecting the Justice Department's "Slush Fund,"
19 GEO. J.L. & PUB. POL'Y 447 (2021) 6

Press Release, CFPB, CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers (Apr. 25, 2022) 28

Rachel E. Barkow,
Insulating Agencies: Avoiding Capture Through Institutional Design,
89 TEX. L. REV. 15 (2010) 24

Robert C. Byrd,
The Control of the Purse and the Line Item Veto Act,
35 HARV. J. ON LEGIS. 297 (1998) 6

Roberta Romano,
Does Agency Structure Affect Agency Decisionmaking? Implications of the CFPB's Design for Administrative Governance,
36 YALE J. ON REG. 273 (2019) 20

TABLE OF AUTHORITIES
(*continued*)

Page(s)

ROBERT E. CUSHMAN,
THE INDEPENDENT REGULATORY
COMMISSIONS (1972) 10

S. REP. NO. 111-176 (2010)... 22, 33

Steven G. Calabresi,
A Critical Introduction to the
Originalism Debate,
31 HARV. J.L. & PUB. POL'Y 875 (2008) 7

Taking Account of Bureaucrats' Spending
Act of 2023, H.R. 1382, 118th Cong.
(2023)... 32

Tara Leigh Grove,
Government Standing and the Fallacy
of Institutional Injury,
167 U. PA. L. REV. 611 (2019) 21

THE FEDERALIST, NO. 58 6

Thomas Arning,
The Consumer Financial Protection
Bureau: A Novel Agency Design with
Familiar Issues,
24 FORDHAM J. CORP. & FIN. L. 153
(2018)... 20

Thomas W. Merrill,
Preemption and Institutional Choice,
102 NW. U. L. REV. 727 (2008)..................................... 24

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Todd Zywicki, *The Consumer Financial Protection Bureau: Savior or Menace?*, 81 GEO. WASH. L. REV. 856 (2013) 18, 24

U.S. DEP'T OF THE TREASURY, A FINANCIAL SYSTEM THAT CREATES ECONOMIC OPPORTUNITIES: BANKS AND CREDIT UNIONS (2017) 28

U.S. GOV'T ACCOUNTABILITY OFF., GOVERNMENT-WIDE INVENTORY OF ACCOUNTS WITH SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS, FISCAL YEARS 1995 TO 2015 (2018) 1

Wentong Zheng, *The Revolving Door*, 90 NOTRE DAME L. REV. 1265 (2015) 24

William Simpson, *Above Reproach: How the Consumer Financial Protection Bureau Escapes Constitutional Checks & Balances*, 36 REV. BANKING & FIN. L. 343 (2016) 26

INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

In many ways, the question here—whether the Consumer Financial Protection Bureau has received a proper appropriation—is an easy one. Article 1, Section 9, Clause 7 of the Constitution says that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Before this Court, the CFPB concedes that it needs to identify an appropriation but insists that its "funding statute indisputably establishes" one. Pet.18. It thinks Congress did so by "authorizing [the] agenc[y] to spend money indefinitely." CFPB.Br.27.

Until now, the CFPB has said just the opposite: It does *not* receive appropriations. An early strategic plan hyped the Bureau's "full independence" in operating "outside of the congressional appropriations process." CFPB, CFPB STRATEGIC PLAN: FY2013-FY2017 36 (2013), https://bit.ly/3hiawEm. Its financial reports have called the agency "an independent, non-appropriated bureau." CFPB, CFPB FINANCIAL REPORT: FISCAL YEAR 2022, at 38 (2022), https://bit.ly/3HwmCVq. And the current director told Congress that the CFPB's "base level of funding" is "guaranteed." *Consumer Financial Protection Bureau Semiannual Report*, C-SPAN (Oct. 28, 2021), https://bit.ly/3iGFC93. The agency would be "subject to the normal appropriations process," he declared, only if it needed more than the hundreds of millions it already gets on demand. *Id.*; see also, *e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GOVERNMENT-WIDE INVENTORY OF ACCOUNTS WITH SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS, FISCAL YEARS 1995 TO 2015 (2018), https://bit.ly/3phKYLT (omitting CFPB from list of agencies with permanent appropriations).

More importantly, Congress commanded that the Bureau's ordinary funding flows "shall not be construed to be … appropriated monies." 12 U.S.C. § 5497(c)(2). Congress distinguished the Bureau's automatic funding—which this year can tally up to about $734 million—from the "appropriated funds" that the CFPB could separately seek. *Id.* § 5497(e). The protections that ordinarily cover congressional spending apply to only the supplemental funds, which the Bureau has never needed. *Id.* Leaving no doubt, Congress stressed that the Bureau's regular funding scheme is not "subject to review" by the congressional appropriations committees or subject to approval from the Director of the Office of Management and Budget. *Id.* § 5497(a)(2)(C), (4)(E).

So both the Bureau and Congress have recognized that the Bureau does not receive appropriations. And were that not clear enough, another key principle drives the point home: "A law may be construed to make an appropriation out of the Treasury … only if the law specifically states that an appropriation is made." 31 U.S.C. § 1301(d). The CFPB's funding statute contains no statement of that kind. And lacking anything that can rightfully be called an appropriation, the Bureau's funding structure is unconstitutional.

Faced with unyielding law and difficult facts like these, the Bureau and its allies look elsewhere for help. They maintain that other agencies have similar funding structures, for instance. But the list of self-funded agencies is short, and a potential constitutional violation elsewhere doesn't immunize one here, anyway. Supporters also catalog the good things that they feel the agency has done. See, *e.g.*, AARP.Amici.Br.3 ("[T]he CFPB has improved the financial services marketplace."). Even if the CFPB has done some good—and some would

even dispute that premise—it wouldn't matter. "[P]olicy arguments supporting even useful 'political inventions' are subject to the demands of the Constitution which defines powers and … sets out just how those powers are to be exercised." *INS* v. *Chadha*, 462 U.S. 919, 945 (1983). And maybe worst of all, the Bureau and its friends downplay the appropriations power's importance while minimizing the harm that comes from diluting it.

The Amici States focus on this last flawed argument—that is, the idea that the benefits of enforcing the Appropriations Clause are too small and the potential costs too great to justify upholding the Fifth Circuit's decision. The Constitution isn't subject to a cost-benefit analysis. Yet even taking the argument on its own terms, the Appropriations Clause is one of the Constitution's most powerful tools to curb the administrative state's abuses and preserve federalism's values. Experience with the CFPB has shown that sidelining Congress can greenlight an agency to wreak havoc. Even more so when, as here, the agency wields broad regulatory and enforcement powers over the entire U.S. financial system, acts under the control of a single powerful figure, and lacks other protections from meaningful oversight. In other words, the Post Office this is not. Contra CFPB.Br.29.

"[W]ith hundreds of federal agencies poking into every nook and cranny of daily life," it's no longer enough to point to presidential oversight and hope for the best—if it ever were. *City of Arlington* v. *FCC*, 569 U.S. 290, 315 (2013) (Roberts, C.J., dissenting). Courts must ensure that Congress keeps a firm grasp on the purse strings. Nor will fulfilling that responsibility here cause any catastrophe. Congress can appropriate funds properly if it chooses. And in the meantime, States and federal

regulators can stand guard in the Bureau's stead just as they did for decades before.

In the end, we return to where we began: to an easy answer that the agency and Congress have already provided. Congress has not appropriated the CFPB the hundreds of millions of dollars it spends each year. But the Constitution says the Bureau needs an appropriation if it wants to spend. So the Court should affirm the decision below.

SUMMARY OF ARGUMENT

I. The Appropriations Clause offers Congress one of its best tools to supervise and control federal agencies. The appropriations power is essential to the separation of powers, and the separation of powers in turn protects the States' interests. Beyond that, Congress offers a forum in which States can participate more directly in the oversight and operation of administrative processes. In contrast, when an agency like the CFPB operates outside the ordinary appropriations process, it often leaves States out in the cold.

II. Licensing the Bureau to operate free from the appropriations process's ordinary constraints has had real consequences for our financial system. The CFPB has ignored Congress and the States—and proponents overstate the perceived benefits from its complete financial autonomy. At the same time, the CFPB's actions show that evading effective oversight does damage. Honoring the Appropriations Clause's limits will bring needed accountability and transparency to this critical area.

III. The Bureau and its amici cannot justify skirting around the problems in the CFPB's funding scheme with

their imagined harms. Although they worry the financial system is destined for failure if the Court affirms, none explains why the Bureau's unusual self-governance is essential to the agency's operation. And if the CFPB is as critical to the financial system as its supporters suggest, then Congress can restore its funding quickly. In the meantime, States and other federal financial regulators have experience protecting consumers in financial markets. They can stand in the breach.

ARGUMENT

I. The Appropriations Clause Matters, Especially To The States.

Often, those supporting a sovereign CFPB downplay the Appropriations Clause's importance. One group of States, for instance, dismisses the harm from this type of constitutional violation as "indeterminate" or "meager." NY.Amici.Br.9-10. A group of legislators, meanwhile, takes a no-harm-no-foul approach, arguing that Congress does a good enough job overseeing the CFPB through other means. See Legislators.Br.21-28.

But the Appropriations Clause is no small thing. "Seemingly innocuous and self-evident, it is instead "one of the most profound political statements in the Constitution." Paul F. Figley & Jay Tidmarsh, *The Appropriations Power and Sovereign Immunity*, 107 MICH. L. REV. 1207, 1267 (2009). So violations strike a blow to the centerpiece of our constitutional scheme—and impose serious harm on the States.

A. The Appropriations Clause comprises a "straightforward and explicit command" that "no money can be paid out of the Treasury unless it has been appropriated by an act of Congress." *OPM* v. *Richmond*,

496 U.S. 414, 424 (1990). Its restraint is "absolute." *U.S. Dep't of Navy* v. *FLRA*, 665 F.3d 1339, 1348 (D.C. Cir. 2012) (Kavanaugh, J.). It covers "any sum of money collected for the government." *Ring* v. *Maxwell*, 58 U.S. 147, 148 (1854).

The Appropriations Clause is an important way the Constitution ensures that Congress reaches the "difficult judgments." *Richmond*, 496 U.S. at 428. Early thinkers like Justice Joseph Story concluded that the "common good" motivates Congress, rather than the "individual favor" that other "Government agents" might use to decide a spending issue. *Id.* And as "our most representative of institutions," Paul Larkin, Jr. & Zack Smith, *"Brother, Can You Spare A Million Dollars?": Resurrecting the Justice Department's "Slush Fund,"* 19 GEO. J.L. & PUB. POL'Y 447, 457 (2021), Congress is "uniquely qualified to make spending decisions," Robert C. Byrd, *The Control of the Purse and the Line Item Veto Act*, 35 HARV. J. ON LEGIS. 297, 315-16 (1998). Congressionally led spending should thus produce "the most desirable, balanced, and responsive" results. Abner J. Mikva, *Congress: The Purse, the Purpose, and the Power*, 21 GA. L. REV. 1, 3 (1986). And the Founders recognized all this from the beginning. James Madison, for example, explained that "[t]his power over the purse may [be] the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people." THE FEDERALIST, NO. 58.

Getting to specifics, the Appropriations Clause "hands the Legislative Branch a powerful tool to curb behavior by the Executive." *Am. Fed'n of Gov't Emps., AFL-CIO, Loc. 1647* v. *FLRA*, 388 F.3d 405, 409 (3d Cir. 2004). If Congress is not in control of the purse, then "the executive would possess an unbounded power." *Richmond*, 496 U.S.

at 427 (quoting 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1348 (3d ed. 1858)). But by exercising its appropriations power, Congress maintains "a controlling influence" over that power. 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 530, at 14 (1833); see also, *e.g.*, *Laird* v. *Tatum*, 408 U.S. 1, 15 (1972) (describing Congress's power of the purse as particularly suited to monitor the "wisdom and soundness of Executive action"). The Clause ensures that each branch plays an important and mutually limiting role.

And in practice, Congress has exercised its appropriations power to police the executive in all manner of ways. For instance, it used appropriations bills to cut funding for the Vietnam War and effectively squeeze the military into ending the fight. Mikva, *supra*, at 4. In another foreign-policy-related act, Congress used an appropriations rider to smother a secret clean-air agreement that the executive had signed with Venezuela. Aubry D. Smith, *Executive-Branch Rulemaking and Dispute Settlement in the World Trade Organization: A Proposal to Increase Public Participation*, 94 MICH. L. REV. 1267, 1268 (1996). These examples show that even where executive power is at its apex beyond the country's waterline, the Appropriations Clause gives Congress some real bite.

The Appropriations Clause is also more than a tool that Congress can take up at will; it imposes obligations directly on Congress, too. Recall that the Clause appears in Article I—governing Congress—and Section 9—describing limits on Congress's powers. See Steven G. Calabresi, *A Critical Introduction to the Originalism Debate*, 31 HARV. J.L. & PUB. POL'Y 875, 896 (2008) (reading the Appropriations Clause as a limit on the

spending power found in the preceding section's Necessary and Proper Clause); see also Chad Squitieri, *The Appropriate Appropriations Inquiry*, 74 FLA. L. REV. FORUM 1, 7 (2023) (suggesting that the CFPB's funding statute "is not a 'necessary and proper' exercise of Congress's power to regulate interstate commerce"). "This placement … suggests that the Appropriations Clause is properly viewed as a limitation on Congress to not spend in broad, undifferentiated terms or delegate spending authority to the President." Daniel Martin, *The Duty to Appropriate: Why Congress Has A Constitutional Obligation to Fund Criminal Law Enforcement*, 106 CAL. L. REV. 511, 518 (2018). And unlike some of the other limits found in Article I, Section 9, the Appropriations Clause does not contain an escape hatch. Cf. U.S. CONST. art. I, § 9, cl. 8 (providing that the Emoluments Clause does not apply when Congress has given its "consent"). Congress therefore offends the Clause if it fails to provide sufficient limits on the Executive's spending authority, "particularly in areas"—as here—"where the executive branch has significant discretion in defining the objects of expenditure." Kate Stith, *Congress' Power of the Purse*, 97 YALE L.J. 1343, 1386 (1988).

The Clause thus "force[s] Congress to take ownership of the government's spending choices, in order to promote accountability and fiscal restraint." C. Boyden Gray, *Extra Icing on an Unconstitutional Cake Already Frosted? A Constitutional Recipe for the CFPB*, 24 GEO. MASON L. REV. 1213, 1226 (2017). Understood this way, the Clause ensures that members of Congress make spending decisions in full view of their constituents, which lets the voters appropriately reward or punish the decisionmakers. See Michael Patrick Wilt, *Evaluating "Consumer Relief" Payments in Recent Bank Settlement*

Agreements, 17 J. BUS. & SEC. L. 253, 291 (2017) (explaining how the separation of powers "provides voters with a greater ability to hold political leaders accountable and to elicit information from them").

So if Congress tries to "divest[]" itself of "its core Article I appropriations power," it crosses a "forbidden line." Markham S. Chenoweth & Michael P. DeGrandis, *Out of the Separation-of-Powers Frying Pan and into the Nondelegation Fire: How the Court's Decision in* Seila Law *Makes CFPB's Unlawful Structure Even Worse*, 8/27/2020 U. CHI. L. REV. ONLINE 55, 55 (2020). Congress may not "delegate ... powers," like the appropriations power, that "are strictly and exclusively legislative." *Wayman* v. *Southard*, 10 Wheat. 1, 42-43 (1825). So whenever the executive escapes the ordinary appropriations processes, even with congressional acquiescence or assistance, it "vitiate[s] the foundational constitutional decision to empower Congress to determine what actions shall be undertaken in the name of the United States." Stith, *supra*, at 1356; cf. *Free Enter. Fund* v. *Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 497 (2010) ("[T]he separation of powers does not depend on … whether the encroached-upon branch approves the encroachment." (cleaned up)).

In short, by operating on both Congress and the executive, "[t]he Appropriations Clause plays a critical role in the Constitution's separation of powers among the three branches of government and the checks and balances between them." *United States* v. *McIntosh*, 833 F.3d 1163, 1175 (9th Cir. 2016); see also *Navy*, 665 F.3d at 1347 ("The Appropriations Clause is thus a bulwark of the Constitution's separation of powers among the three branches of the National Government.").

B. The Appropriations Clause has continued to play its vital role even with the rise of the modern administrative state. "The budget … is a key tool for controlling agencies." Eloise Pasachoff, *The President's Budget As A Source of Agency Policy Control*, 125 YALE L.J. 2182, 2186 (2016); see also ROBERT E. CUSHMAN, THE INDEPENDENT REGULATORY COMMISSIONS 674-75 (1972) (explaining that congressional oversight of an independent agency's finances is "[t]he most constant and effective control"). It's not hard to understand why: "agencies dependent upon annual appropriations obey both houses of Congress because each must consent to enact such appropriations." Matthew B. Lawrence, *Congress's Domain: Appropriations, Time, and* Chevron, 70 DUKE L.J. 1057, 1059 (2021); see also *CFPB* v. *All Am. Check Cashing, Inc.*, 33 F.4th 218, 241 (5th Cir. 2022) (Jones, J., concurring) ("[F]unding is the very lifeblood that empowers [an agency] to act.").

The Appropriations Clause gives Congress more options than just turning off the financial faucet. Besides "altering total funding," Congress can also "target[] specific programs through earmarks and riders" or "us[e] signals and threats" to affect agency choices both before and after the fact. Note, *Independence, Congressional Weakness, and the Importance of Appointment: The Impact of Combining Budgetary Autonomy with Removal Protection*, 125 HARV. L. REV. 1822, 1825 (2012); accord Debra L. Lowman, *A Call for Judicial Restraint: Federal Taxpayer Grievances Challenging Executive Action*, 30 SEATTLE U. L. REV. 651, 698-99 (2007) (describing specific actions that Congress can take against an agency under the Appropriations Clause). Sometimes, Congress needn't do anything at all; the unstated understanding that "the agency would have to please Congress with its use of the appropriated money" to get

more can drive it in the right direction. David B. Spence & Frank Cross, *A Public Choice Case for the Administrative State*, 89 GEO. L.J. 97, 118 (2000).

Here again, real-world examples are plenty. Congress once used funding cuts to curtail the Consumer Product Safety Commission's powers. *Independence*, *supra*, at 1825-26. Another time, Congress cut the Securities and Exchange Commission's budget by hundreds of millions of dollars—after expanding its responsibilities in the Dodd-Frank Wall Street Reform and Consumer Protection Act—because it was frustrated by the agency's "troubled past" and failure to go after wrongdoers aggressively enough. James B. Stewart, *As A Watchdog Starves, Wall Street Is Tossed a Bone*, N.Y. TIMES (July 15, 2011), https://bit.ly/3r6FgNa. Of course, not everything that draws Congress's appropriations attention is of such grand scale. Congress also barred the Department of Transportation from spending money to implement peanut-free zones on airplanes in a 1999 appropriations rider. Marie Plicka, *Mr. Peanut Goes to Court: Accommodating an Individual's Peanut Allergy in Schools and Day Care Centers Under the Americans with Disabilities Act*, 14 J.L. & HEALTH 87, 88 (2000). And ten years before, Congress used another rider to prevent the Department of the Interior from keeping a record of communications with congressmembers or their staff. Jeremy Rabkin, *Micromanaging the Administrative Agencies*, 100 PUB. INT. 116, 127 (1990).

So whether it comes to hundreds of millions of dollars for securities enforcement or just peanuts for keeping the skies goober-free, the point is the same: "[I]n a disagreement between Congress and the President over the priorities or the value of a particular program, Congress will win if it uses its power over the allocation of

funds." Jack M. Beermann, *Congressional Administration*, 43 SAN DIEGO L. REV. 61, 84-85 (2006).

Some might mistakenly think that Congress could just as easily win these fights by targeting the agencies' authorizing statutes themselves. But that view ignores the realities of modern legislation. "The complex, interlocking, and overlapping structures of legislative organization … make it difficult to change existing policy." Michael Doran, *Legislative Entrenchment and Federal Fiscal Policy*, 81 LAW & CONTEMP. PROBS. 27, 45 (2018). More so in a highly polarized and divided Congress or when the President is of a different party than the congressional majority.

Unlike the difficulties of amending authorizing statutes, appropriations legislation carries a "must-pass status, dramatically raising the stakes of a presidential veto." Gillian E. Metzger, *Agencies, Polarization, and the States*, 115 COLUM. L. REV. 1739, 1749 (2015); see also, *e.g.*, Lawrence, *supra*, at 1072-73 (explaining soft legislative entrenchment of agency statutes and how appropriations bills can overcome that hurdle). If the President or a legislative minority blocks appropriations, then the government shuts down—a painful pill to swallow for the sake of standing up for an agency's policy choice. And procedural mechanisms like reconciliation can help Congress effect change through appropriations without having to fight through obstacles that persist even in this context, like the filibuster. What's more, the appropriations-committee process itself has value. Because appropriations involves both oversight committees and appropriations committees, agencies may have "less flexibility to ally themselves with executive branch officials or interest groups." J.R. DeShazo & Jody

Freeman, *The Congressional Competition to Control Delegated Power*, 81 TEX. L. REV. 1443, 1509-10 (2003).

C. As an aspect of the separation of powers, the Appropriations Clause also advances federalism. "The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States." *Bond* v. *United States*, 564 U.S. 211, 221 (2011). Balancing powers among the branches helps "ensure that States function as political entities in their own right." *Id.*; see also Bradford R. Clark, *Separation of Powers As A Safeguard of Federalism*, 79 TEX. L. REV. 1321, 1324 (2001) ("Permitting the federal government to avoid these constraints would allow it to exercise more power than the Constitution contemplates, at the expense of state authority."). The Framers chose the "structure of the Federal Government" as the "principal means" "to ensure the role of the States." *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528, 550 (1985). And at the same time, federalism and separation of powers are the two "principal mechanism[s]" by which to control "improvident spending." *Clinton* v. *City of New York*, 524 U.S. 417, 452 (1998) (Kennedy, J., concurring). So while "federalism and separation of powers" may be "less romantic" aspects of our Constitution, "the Framers considered [these] structural protections of freedom the most important ones." *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 707 (2012) (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting).

Romance aside, assigning the spending power directly to Congress—including authority over agencies' budgets—makes the federal government far more accountable to the States.

Congress can be better "relied upon to respect the States." Calvin R. Massey, *The Tao of Federalism*, 20

HARV. J.L. & PUB. POL'Y 887, 891 (1997). At least in part because they come to Washington from specific communities, "[m]embers of Congress are more responsive to the concerns of local regional con[stituencies] than centralized regulatory agencies." Jonathan H. Adler, *The Ducks Stop Here? The Environmental Challenge to Federalism*, 9 SUP. CT. ECON. REV. 205, 221 (2001); see also MARTIN H. REDISH, THE CONSTITUTION AS POLITICAL STRUCTURE 138 (1995) (concluding that the legislative branch is based on "localized accountability"). But Congress doesn't respect States just because its members travel from everywhere. Rather, "political checks and Congress' political accountability"—like State-centered involvement in congressional elections, State-focused lobbying efforts, state political party pressure, and more—are the political safeguards of federalism. D. Bruce La Pierre, *Political Accountability in the National Political Process—the Alternative to Judicial Review of Federalism Issues*, 80 NW. U. L. REV. 577, 633 (1985).

And over time, Congress has also come to show its "peculiar institutional competence … in adjusting federal power relationships," including relationships between the States and the federal government. Laurence H. Tribe, *Intergovernmental Immunities in Litigation, Taxation, and Regulation: Separation of Powers Issues in Controversies About Federalism*, 89 HARV. L. REV. 682, 696 (1976). As Wisconsin Governor Tommy Thompson once told Congress: "I like dealing with you and I can usually convince you to go part way with the position of the States, but once it leaves your hands and goes over to a department, to some bureaucrat there that is going to promulgate the rules, … we are left out." *Federalism: Hearings Before the S. Comm. on Governmental Affs.*, 106th Cong. 15 (1999). Congress's spending power

prevents situations in which the States have "no recourse whatsoever." *Id.*

Indeed, the federal government becomes far less accountable to States as agencies seize independent spending power. "[U]nlike Congress, administrative agencies are clearly not designed to represent the interests of States." *Geier* v. *Am. Honda Motor Co.*, 529 U.S. 861, 908 (2000) (Stevens, J., dissenting). Rather, the "'political safeguards' that give [S]tates a voice in Congress's lawmaking" do not extend to a "voice in the executive branch's activities." Charles Davant IV, *Sorcerer or Sorcerer's Apprentice?: Federal Agencies and the Creation of Individual Rights*, 2003 WIS. L. REV. 613, 640 (2003). And "independent agencies" in particular are "virtually insulated from political forces." David A. Herrman, *To Delegate or Not to Delegate—That Is the Preemption: The Lack of Political Accountability in Administrative Preemption Defies Federalism Constraints on Government Power*, 28 PAC. L.J. 1157, 1181-82 (1997).

Tracing accountability back to States through Congress benefits everyone. For example, agencies may be "too quick" to "displace state law" precisely "because, unlike Congress, agencies are not accountable directly to the States." Amanda Frost, *Judicial Review of FDA Preemption Determinations*, 54 FOOD & DRUG L.J. 367, 368 (1999). The Appropriations Clause supplies a fiscal prophylactic—if agencies overreach, States can speak up, and Congress can hit their pocketbook. Or States might be more aggressive, convincing Congress to attach appropriations riders that "single out a specific regulatory activity and prohibit the expenditure of funds for carrying [it] out." Beermann, *supra*, at 85. Either approach might lead an agency to abandon course, but also might prompt

Congress to incorporate cooperative federalism programs or other State-centric measures to win over reluctant state interests and achieve its regulatory objectives. Congressional *in*action in the appropriations process can likewise check an agency—an especially important constraint during times of political polarization and deadlock. States can make the pitch for any of these measures.

These are not abstractions. The appropriations process gives States concrete opportunities to influence agency operations that wouldn't otherwise exist. See, *e.g.*, Laura E. Dolbow, *Agency Adherence to Legislative History*, 70 ADMIN. L. REV. 569, 579-80 (2018) (explaining how the appropriations process provides an "effective oversight technique" for agencies). "[F]rom a state's perspective," the legislative process provides several concrete on-ramps for state involvement—"more opportunities and more access points to provide input to Congress than [there would be] to the President." Michele E. Gilman, *Presidents, Preemption, and the States*, 26 CONST. COMMENT. 339, 365 (2010). Passing a budget is complex: every year the President proposes a detailed budget; relevant committees in the House and Senate hold hearings, make sub-allocations, adopt amendments, and report budget bills out to the chambers; the bills are considered on the House and Senate floors (where members can offer further amendments); the bills are conferenced; and both chambers eventually agree to the complete budgetary package, which the President signs. See JAMES V. SATURNO, ET AL., CONG. RSCH. SERV., R42388, THE CONGRESSIONAL APPROPRIATIONS PROCESS: AN INTRODUCTION 2-9 (2016). Each of these steps is a genuine invitation for the States to get involved. And Congress's "institutional design" allows legislators from *all* States to participate. Mathew D. McCubbins &

Daniel B. Rodriguez, *Canonical Construction and Statutory Revisionism: The Strange Case of the Appropriations Canon*, 14 J. CONTEMP. LEGAL ISSUES 669, 697 (2005). In short, the deliberative way in which the budget wends through Congress gives States plenty of people to speak to, helping to ensure that their interests are heard. The States have used this process to shape agency behavior many times. See WV.Cert.Amicus.Br.12-13 (listing examples when State-centric interests have compelled agency action through appropriations-related maneuvers).

The appropriations process also provides key information that helps States influence agency actions in less direct ways. For instance, when an agency launches a new enforcement initiative or substantial rulemaking effort, it needs to detail its anticipated work publicly to secure the funding to support it. See McCubbins & Rodriguez, *supra*, at 702 (describing how the appropriations process is "probably more" transparent than "any other legislation"). Disclosure on the front end of the appropriations process can empower affected parties—including the States—to take quick, responsive actions beyond lobbying their representatives (up to suing to stop illegal action, if need be). Early information-sharing through Congress also allows States to bring their expertise to bear in all manner of fora on issues of traditional state expertise, from law enforcement and land use, to insurance and immunizations. But an agency free from the appropriations process can keep critical information out of public view for as long as possible. As a result, new enforcement initiatives may become hard to spot until the pattern emerges. And even rulemakings may lack the transparency that the appropriations process offers, as "many substantive policy decisions happen before the agency publishes the notice of proposed

rulemaking." Jennifer Nou & Edward H. Stiglitz, *Strategic Rulemaking Disclosure*, 89 S. CAL. L. REV. 733, 743 (2016).

* * * *

All these considerations should make one thing plain: there's nothing "meager" or "indeterminate" about the harms that flow from skipping the appropriations process. Just as the Constitution intended, that process serves as a vital avenue of influence by giving States insight into agency action and a meaningful way to respond to it.

II. Lacking An Appropriation, The CFPB Has Avoided Real Accountability.

In arguing to overturn the decision below, many of the Bureau's supporters have compiled lists of what the Bureau has done over the last decade. See, *e.g.*, NY.Amici.Br.10-22; Cmty.Dev.Amici.16-26; Treasury. Emps.Br.8-13. But none of them explains why the Bureau needed funding autonomy to accomplish any of these actions. And a deeper look at the agency's record reveals that the Bureau has shown itself unconcerned with even less direct oversight from Congress. Or with giving the States genuine opportunities to participate in an area where they have unique and longstanding expertise.

A. The CFPB's funding structure offers none of the ordinary appropriations process's benefits. See Todd Zywicki, *The Consumer Financial Protection Bureau: Savior or Menace?*, 81 GEO. WASH. L. REV. 856, 888 (2013). One former Democratic chair of the Council of Economic Advisors calls the structure a "clever ruse to use the Fed's deep pockets." Martin Baily, *Dodd Bill Offers Progress At Last*, POLITICO (Mar. 29, 2010 5:17 a.m.), https://bit.ly/3XwgBxY. The trick effectively

silences anyone who would otherwise offer input on the Bureau's work.

States and others are left out. They cannot participate through committee work because the CFPB's hundreds of millions of dollars in funding is "not … subject to review by the Committees on Appropriations of the House of Representatives and the Senate." 12 U.S.C. § 5497(a)(2)(C). If the Bureau stays under the statute's automatic funding cap (it always has), and if Congress does not overcome legislative entrenchment to revise the Bureau's enabling statute wholesale (it hasn't yet), then the CFPB's funding will never reach the floor of Congress again. True, the Bureau files a few minimal reports to the Office of Management and Budget, but it need not "consult with or obtain [OMB's] consent or approval" before it does anything. *Id.* § 5497(a)(4)(E).

Instead, the CFPB Director need only determine that funds are "reasonably necessary to carry out the authorities of the Bureau," and the Federal Reserve must transfer those funds. *Id.* § 5497(a)(1). A half-page letter—with no reasoning, analysis, or justification—is all that the Bureau needs to set that process in motion. See, *e.g.*, Letter from Rohit Chopra, Dir., CFPB, to Jerome Powell, Chair, Bd. of Governors of the Fed. Rsrv. Sys. (Apr. 6, 2023), https://bit.ly/3NrRZBQ. Once the Director sends that letter, millions of dollars become "immediately available" to the Bureau and remain ready under its control until the agency spends them. See 12 U.S.C. § 5497(c)(1). Aside from that ordinary operating fund, the CFPB also maintains a separate, unsupervised slush fund where it funnels hundreds of millions of dollars in civil penalties. See *id.* § 5497(d)(2). And even though the Federal Reserve cuts the Bureau's checks, Congress

expressly barred it from exercising any oversight along the way. See *id.* § 5492(c).

Thus, the CFPB is its own appropriator. The approach is an anomaly. See, *e.g.*, Charles Kruly, *Self-Funding and Agency Independence*, 81 GEO. WASH. L. REV. 1733, 1735 (2013) ("Congress has utilized self-funding in only a limited number of 'narrowly-focused' independent agencies."). It was also intentional: The Bureau's champions thought this structure would prevent it from being "compromised by political maneuvering." 156 Cong. Rec. S4140 (2010) (statement of Sen. Dodd). Others, of course, might call this "maneuvering" "oversight" and "input." Either way, this choice was not one that Congress was free to make: Because of the CFPB's structure, accountability and transparency have fallen by the wayside. "[S]elf-funding … effectively makes the agency accountable to nobody." Thomas Arning, *The Consumer Financial Protection Bureau: A Novel Agency Design with Familiar Issues*, 24 FORDHAM J. CORP. & FIN. L. 153, 169 (2018).

So those outside the cloistered community of the Bureau are kept effectively powerless. "[T]here is minimal leverage that Congress," and by extension the States, "can bring to bear to influence the agency." Roberta Romano, *Does Agency Structure Affect Agency Decisionmaking? Implications of the CFPB's Design for Administrative Governance*, 36 YALE J. ON REG. 273, 299 (2019) (explaining that the CFPB is the most insulated agency among those with similar regulatory objectives). The States and the public must depend on voluntary disclosures and a couple semi-annual reports to learn what the agency is up to. They can hope that audits or reports from the General Accountability Office might lead the Bureau to change its ways. But depending on a self-

interested CFPB to do the right thing is a "curious assumption," especially when the Bureau has "lack[ed] transparency in much of its decision-making." (More on that below.) Adam C. Smith & Todd Zywicki, *Behavior, Paternalism, and Policy: Evaluating Consumer Financial Protection*, 9 N.Y.U. J.L. & LIBERTY 201, 236-37 (2015). It's hardly a surprise, then, that the Court has already observed how the Bureau's "financial freedom" "makes it even more likely that the agency will slip … from [the control] of the people." *Seila Law LLC* v. *CFPB*, 140 S. Ct. 2183, 2204 (2020) (cleaned up). It already has.

The most States have left is the Hail Mary of convincing Congress to pass a Congressional Review Act resolution or, failing that, filing suit. But litigation should be a backstop—not the only practical option to constrain an agency running amuck—because the Constitution "does not establish 'government by lawsuit.'" *United States* v. *Texas*, No. 22-58, slip op. at 19 (U.S. June 23, 2023), 2023 WL 4139000, at *17 (Gorsuch, J., concurring in the judgment) (cleaned up). "[G]overnment institutions should rely on … structural tools, not lawsuits, to protect the public interest." Tara Leigh Grove, *Government Standing and the Fallacy of Institutional Injury*, 167 U. PA. L. REV. 611, 635 (2019).

This setup is even more worrisome given the immense power that the CFPB holds. The Bureau "wields vast rulemaking, enforcement, and adjudicatory authority over a significant portion of the U.S. economy." *Seila Law*, 140 S. Ct. at 2191. It oversees nineteen different consumer-financial statutes, many of which themselves employ broadly defined terms granting expansive power. Gray, *supra*, at 1216-17. Working from these statutes, the agency can issue regulations and interpretations that

trump those of other financial regulators. *Id.* Before Congress created the Bureau, seven different federal regulators—not to mention their state counterparts—exercised these powers. See S. REP. NO. 111-176, at 10 (2010). And the Bureau can also bring enforcement actions that the Director himself can then hear. Gray, *supra*, at 1216-17. The "sweeping" and "unprecedented" nature of the Bureau places it firmly "in the 'wheelhouse' of the House and Senate Committees on Appropriations." *Biden* v. *Nebraska*, No. 22-506, slip op. at 23 (U.S. June 30, 2023), 2023 WL 4277210, at *14.

The CFPB's specific lack of accountability to the States is all the worse because the Bureau is operating in a realm that the State historically owned. Consumer protection is the States' "traditional[]" field. *Pennsylvania* v. *Navient Corp.*, 967 F.3d 273, 294 (3d Cir. 2020). The same goes for banking and finance, where our dual-banking system contemplates that States are active regulatory partners. *Atherton* v. *FDIC*, 519 U.S. 213, 221-23 (1997); see also, *e.g.*, Julia Patterson Forrester, *Still Mortgaging the American Dream: Predatory Lending, Preemption, and Federally Supported Lenders*, 74 U. CIN. L. REV. 1303, 1359-68 (2006) (describing the States' "longstanding" control over real-estate financing and consumer protection). States are not any old constituents for the CFPB; Congress fully intended the CFPB to work directly with the States in their area of expertise. See generally Lauren Sanders, THE ROLE OF THE STATES UNDER THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2010 (2010); see also *infra* Part III (describing traditional state involvement in this area). But without backup from Congress, the Bureau can ignore them.

Even just considering preemption shows the threat an unaccountable CFPB poses to the States. As a federal agency with a wide-reaching regulatory domain, the Bureau can displace large swaths of state regulatory action through preemption or otherwise. "[B]road delegations of lawmaking … authority" like Congress gave the CFPB "should go hand-in-hand with increased congressional vigilance with respect to the means of backstopping agencies—foremost, budgetary means." Christopher C. DeMuth & Michael S. Greve, *Agency Finance in the Age of Executive Government*, 24 GEO. MASON L. REV. 555, 587 (2017). That backstop is missing here.

So the Court faces an agency endowed with substantial power, led by a single Director who can exercise great additional power, indefinitely self-funded through the Fed that is itself self-funded, in permanent control of any funds it obtains, expressly exempt from the usual forms of oversight that come with federal appropriations, and operating in a field of traditional state control. That combination of features renders the agency different from all others—no other law-enforcement agency is funded outside the normal process in this way. See Pet.App.37a. Plain and simple, "the CFPB is truly exemplary: it is a self-funded agency … with broad policymaking powers" great enough "to fundamentally restructure the private economy." Eric Pearson, *A Brief Essay on the Constitutionality of the Consumer Financial Protection Bureau*, 47 CREIGHTON L. REV. 99, 110 (2013).

B. And it is not clear what benefits this structure provides. (That's not even to mention the harms; we'll get to those in a moment.)

Perhaps most often, proponents of agency funding independence fret about regulatory capture by the

regulated industry. These worries are overstated, as the "career-making benefits" that flow to successful regulatory and enforcement attorneys often prompt them to act. Jed S. Rakoff, *The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?*, N.Y. REV. BOOKS (Jan. 9, 2014), https://bit.ly/435ETQi; see also Wentong Zheng, *The Revolving Door*, 90 NOTRE DAME L. REV. 1265 (2015). But if these concerns were real, self-funding might only worsen them. That's because agencies' "greater degree of political insulation may make them more attuned to the interests of the industries they regulate and less responsive to the states and other interests." Thomas W. Merrill, *Preemption and Institutional Choice*, 102 NW. U. L. REV. 727, 757 (2008). In contrast, when Congress stays involved, it can "help guard against agency capture by opening the claustrophobic and technical process of agency decisionmaking to a broader array of information and constituencies." Zywicki, *supra*, at 889; see also *PHH Corp.* v. *CFPB*, 881 F.3d 75, 163 (D.C. Cir. 2018) (Henderson, J., dissenting) (explaining how a "mutant CFPB" is "responsive to the President" and thus subject to powerful "lobbying" efforts, "but nowise accountable to the Congress").

If capture were really the concern, it's also hard to understand why the CFPB has only a single director. "[H]aving only one person at the apex can ... mean that the agency is more easily captured." Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15, 38 (2010). The Court should not overlook a constitutional funding defect to save Congress from the consequences of its separate decision how to structure the agency. And indeed, the fear of capture may have already become a reality, as some conclude that certain interest groups are effectively

calling the shots. See Daniel Press, *The Myth of Independence at the Consumer Financial Protection Bureau*, COMPETITIVE ENTER. INSTIT. (Feb. 5, 2018), https://bit.ly/3JyEEXh.

Apart from capture, some States seem to think that funding independence fosters more cooperation between the States and the Bureau, but they never close the circle on why that's true. NY.Amici.11-22. Even in their favored examples, those States celebrate how they had a few "calls and meetings" with agency personnel and submitted comments that the CFPB assured them it "considered." *Id.* at 15-16. Those minimal avenues of input hardly replace the strong medicine that appropriations leverage would provide for a policy gone wrong. Likewise, that the CFPB has hopped on board with certain multistate enforcement efforts means little; nobody explains why agency financial independence was essential for that involvement—or even why the CFPB needed to be involved at all. *Id.* at 17-22. And in truth, these arguments only prove that appropriations oversight is important. If state input on CFPB operations is good, and if appropriations oversight provides more opportunities for that input, see *supra* Section I.B, then all States should be pushing for more appropriations oversight.

Sometimes advocates for self-funding also insist that it provides stability and policy coherence, but that rationale doesn't work here, either. Remember how the Bureau is led by a single Director who the President may remove and replace at any time. So unlike a multi-member commission, the Bureau's "priorities may fluctuate with the party of the appointing President," and Congress has no means to pull it back. Kruly, *supra*, at 1742. At the same time, the only ostensible check on the Bureau's budget—other than the soaring cap—is the Director's

finding that the money is "reasonably necessary to carry out the authorities of the Bureau." 12 U.S.C. § 5497(a)(1). That provision provides the Bureau a financial incentive to expand faster and farther, no matter whether those efforts aid market improvement or stability. James V. DeLong, *New Wine for A New Bottle: Judicial Review in the Regulatory State*, 72 VA. L. REV. 399, 421 (1986) ("[A]n agency is subject to strong internal incentives to attempt to expand its budget."). Aggressive, inconsistent, and unaccountable are not words we usually associate with the quiet prudence of a financial regulator.

And fundamentally, by using an "unprecedented combination of structural characteristics" to build out the agency, William Simpson, *Above Reproach: How the Consumer Financial Protection Bureau Escapes Constitutional Checks & Balances*, 36 REV. BANKING & FIN. L. 343, 345 (2016), Congress has left the Bureau in a constant state of upheaval and legal uncertainty. This case is the second major structural challenge to the Bureau to reach the Court in just three years. That constant flux hardly bespeaks the sort of stability that policymakers should seek when it comes to financial regulation. See Jolina C. Cuaresma, *Commissioning the Consumer Financial Protection Bureau*, 31 LOY. CONSUMER L. REV. 426, 430 (2019) (describing how the Bureau's uniquely problematic mix of structural features has led to "regulatory uncertainty" that "discourages investment"); see also Jonathan Masur, *Judicial Deference and the Credibility of Agency Commitments*, 60 VAND. L. REV. 1021, 1041 (2007) (describing how "change[s] in the background regulatory rules" can upset investment strategies).

C. Along with few benefits, the costs of the Bureau's fiscal autonomy are high. A few examples show how.

First, in exercising one of its broadest authorities, the Bureau has shown a continuing preference for hiding its actions from the public view. The statute in question empowers the Bureau to go after persons for engaging in "unfair, deceptive, or abusive act[s] or practice[s]" in the consumer-finance space. 12 U.S.C. § 5531(a). The agency has repeatedly declined to acknowledge how it understands this "UDAAP" provision to work.

Start with "abusive." In one hearing, the Director labelled the statutory language a "puzzle" and declared that it was "[p]robably not useful to try to define a term like that in the abstract." *How Will The CFPB Function Under Richard Cordray, Hearing before the H. Oversight Comm., Subcomm. on TARP, Fin. Servs., and Bailouts of Pub. and Priv. Programs*, 112th Cong. 69 (2012). It was unclear at the time what that odd response meant, but it became clear soon enough: the Bureau wanted to leave wiggle room so it could use the provision as it pleased. Dozens of enforcement actions followed as the Bureau pursued a campaign of "regulation by enforcement." Michael R. Faz, *Scouring Muddied Waters: Towards Clarifying the CFPB's "Abusive" Practices*, 32 LOY. CONSUMER L. REV. 45, 46 (2019).

Later, the Bureau turned its attention to the "unfair" portion of the statute. That effort proved no better, as the agency quietly abandoned any ordinary understanding of the term in a change to its enforcement manual without notice or comment. The effort spurred a lawsuit. See *Chamber of Com. of the U.S.* v. *CFPB*, No. 6:22-cv-00381-JCB (E.D. Tex. filed Sept. 28, 2022).

In short, as even the Treasury Department has recognized, the Bureau is fond of adopting new policies retroactively through an "unusual degree" of "enforcement actions and guidance documents, which the

CFPB has consistently issued without opportunity for public comment." U.S. DEP'T OF THE TREASURY, A FINANCIAL SYSTEM THAT CREATES ECONOMIC OPPORTUNITIES: BANKS AND CREDIT UNIONS 82 (2017), https://bit.ly/3PyuuJP; see, *e.g.*, Press Release, CFPB, CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers (Apr. 25, 2022), https://bit.ly/3Fzl5fQ (announcing, after a decade of silence and no new comment opportunity, that the agency planned to begin examining "nonbank financial companies"); Letter from Rep. Patrick McHenry, H.R. Comm. on Fin. Servs., Republican Leader, et al. to Rohit Chopra, Dir., CFPB, at 2 (Sept. 20, 2022), https://bit.ly/3PaEYwK (listing various CFPB "initiatives" that "circumvented" Congress and undermined "transparency and accountability"); Letter from Sen. Pat Toomey, et al. to Rohit Chopra, Dir., CFPB, at 1-3 (Sept. 12, 2022) (same), https://bit.ly/46x7WPM.

Second, the Bureau has preferred to stack the deck in its own favor. Just recently, for example, the Bureau changed its adjudicatory procedures to allow the Director to bypass an administrative-law judge and rule directly on substantive legal issues. See Rules of Practice for Adjudication Proceedings, 88 Fed. Reg. 18,382, 18,386 (Mar. 29, 2023). And that rule would compel those facing enforcement actions to exhaust every question before the agency, including questions like the one presented here about the constitutionality of the Bureau's very structure. *Id.* at 18,388; but see *Axon Enter., Inc.* v. *FTC*, 143 S. Ct. 890, 897 (2023) (finding constitutional challenges to the FTC's and SEC's structures need not be challenged through administrative proceedings). So when entities face ambiguous UDAAP enforcement actions, the Director intends to be the one to decide whether his own

claims are viable. Once more, the Bureau has positioned itself to skirt any oversight.

Third, free from worries about Congress, the Bureau has also struck repeatedly at the States' sovereign interests. For instance, a few months ago the Bureau proposed to establish a "repeat offender" registry for certain non-bank financial institutions. See Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders, 88 Fed. Reg. 6,088 (Jan. 30, 2023). But in forcing these entities to disclose settlements and the like, the Bureau shows little regard for state regulators and authorities who might've preferred to keep them confidential; a state regulator might reasonably fear that disclosure of a particular issue at a particular bank might cause investor departures or depositor withdrawals that in turn threaten the bank's safety and soundness. Yet the CFPB has left no room for state judgments like these. Meanwhile, the CFPB has also aggressively issued at least one civil investigative demand to a sovereign—a tribal entity that Dodd-Frank defines as a "State." See *CFPB* v. *Great Plains Lending, LLC*, 846 F.3d 1049 (9th Cir. 2017). With no approval from Congress and no opportunity for States to object, the CFPB has construed its investigatory powers to reach directly into state operations. In effect, state regulators have become regulated parties themselves.

Fourth, substantive policies aside, consider how the agency has comported itself before Congress. Officials from the agency were trading blows with Congress even before the agency formally launched. *See* Edward Wyatt, *Decorum Breaks Down at House Hearing*, N.Y. TIMES (May 24, 2011), https://bit.ly/3CMRIo0. Later, in one bit of testimony, the CFPB's first director responded, "Why does that matter to you?" when a congressperson asked

who had authorized hundreds of millions in renovation costs for the Bureau's headquarters. See H.R. Comm. on Fin. Servs., *Committee Pushes for Accountability and Transparency at the CFPB*, YOUTUBE, at 3:33:19 (Mar. 6, 2015), http://bit.ly/3Y6p9eJ. And another time, a different CFPB director told the House Financial Services Committee that he could "twiddle [his] thumbs while you all ask questions" because the CFPB is "not accountable to anybody but itself." Jim Puzzanghera, *CFPB Chief Mick Mulvaney Says He Could Just 'Twiddle My Thumbs' Before Congress To Highlight Agency's Flaws*, L.A. TIMES (Apr. 11, 2018, 11:55 a.m.), http://bit.ly/3PaQJ6o.

Things haven't gone better outside the hearing room. The Bureau's actions have forced senators and representatives to send the Bureau repeated letters complaining about its inadequate responses to congressional requests, budget-related and otherwise. See, *e.g.*, Letter from Rep. Randy Neugebauer, Chairman, H.R. Comm. on Fin. Servs., Subcomm. on Oversight and Investigations, et al. to Richard Cordray, Dir., CFPB, at 1 (May 2, 2012), https://bit.ly/3uHWEX9; Letter from Sen. Rob Portman, et al. to Richard Cordray, Dir., CFPB, at 1 (Oct. 30, 2013), https://bit.ly/3uFK0rT; Letter from Sen. Mike Enzi, Chairman, S. Budget Comm. & Richard Shelby, Chairman, S. Comm. On Banking, Hous. & Urban Affairs, to Richard Cordray, Dir., CFPB, at 1 (Mar. 9, 2015), https://bit.ly/3Fx3gwP. Even Senator Elizabeth Warren lamented that her pet project had come to "ignore[] congressional mandates" and function as a "politicized rogue agency" when it fell under the control of a political opponent. Elizabeth Warren, *Republicans Remain Silent As Mulvaney's CFPB Ducks Oversight*, WALL ST. J. (Mar. 28, 2018, 5:48 p.m.), https://bit.ly/3Bh6lQg.

Fifth, the CFPB has behaved badly in the courtroom, too. Just recently, it "tried to bring a wide-ranging civil lawsuit against 18 defendants without ever being deposed." *CFPB* v. *Brown*, No. 21-14468, 2023 WL 3939432, at *1 (11th Cir. June 12, 2023). When that (unsurprisingly) didn't go well, the Bureau "doubled down by engaging in dramatic abuse of the discovery process." *Id.* Because the agency had "tried to game the system so that nothing was accomplished," the Bureau's antics forced the district court to dismiss the suit. *Id.* at *4-5. And that case was hardly an aberration; over and over, the Bureau has shown that it thinks it is above the rules that apply to others. See, *e.g.*, *CFPB* v. *Access Funding, LLC*, No. CV ELH-16-3759, 2021 WL 2915118, at *22 (D. Md. July 12, 2021) (striking a witness's deposition testimony after the CFPB tried to use it on summary judgment, where "the Bureau created … time constraints" that prevented the defendants from cross-examining the witness); *CFPB* v. *Borders & Borders, PLC*, No. 3:13-CV-1047-CRS, 2016 WL 9460472, at *7 (W.D. Ky. June 29, 2016) (sanctioning the CFPB for trying to change legal theories "at essentially the 11th hour," creating "manifest" "unfairness" to the defendants); *CFPB* v. *Accrediting Council for Indep. Colleges & Sch.*, 183 F. Supp. 3d 79, 84 (D.D.C. 2016) (describing how the Bureau had "plow[ed] head long into fields not clearly ceded to them by Congress" by pursuing enforcement action and then offered a "post-hoc justification" for its authority that was "a bridge too far!").

The Amici States don't offer these examples to sully the agency's reputation. Rather, they show how the Bureau acts unaccountable before Congress and throughout all its regulatory and enforcement efforts. And really, it's no surprise that institutional imperiousness is the result when Congress hands an

agency a blank check. The Appropriations Clause's limits matter.

III. The Court Should Ignore Doomsaying About The Consequences Of Providing Relief.

The Court can fix all this right now, but many are forecasting catastrophic results to try to scare the Court into staying its hand. See, *e.g.*, Treasury.Emps.Br.2 ("[T]he Bureau's important work will grind to a halt."). The Court shouldn't listen.

Plenty of solutions to the Bureau's funding problem exist at the federal level. Most obviously, faced with a court decision effectively compelling it to act, Congress could pass a proper appropriations bill. This case is about one specific regulation, and the measured pace of litigation should give Congress time to act before the Court's decision affects much else. And a rebuke from this Court would no doubt grease the sticky wheels of the legislative process and move them a bit faster. Indeed, Congress already has many potential funding bills from which to choose. See, *e.g.*, Taking Account of Bureaucrats' Spending Act of 2023, H.R. 1382, 118th Cong. § 3 (2023) (bill to bring the Bureau into the ordinary appropriations process). And if any stopgap were needed, the many federal regulators that existed long before the CFPB came to be in 2011 could step up again.

The States are ready to move, too. That'd be nothing new. Today, "[s]tate regulators charter and supervise approximately 3,981 banks with more than $7.15 trillion in combined assets, representing 79% of all U.S. banks." *Keeping Up With the Codes—Using AI For Effective RegTech, Hearing before H. Fin. Servs. Comm. A.I. Task Force of the H. Comm. on Fin. Servs.*, 117th Cong. 2 (2022) (testimony of Melanie Hall, Comm'r, Mont. Div. of

Banking & Fin. Institutions), *available at* https://bit.ly/44zOsbz. As Congress recognized when passing Dodd-Frank, "[o]versight of [nonbank] companies" has also "largely been left to the States." S. REP. NO. 111-176, at 167 (2010). And across the board, "[c]onsumer protection" has been "quintessentially a field which the States have traditionally occupied." *Watters* v. *Wachovia Bank, N.A.*, 550 U.S. 1, 35-36 (2007) (Stevens, J., dissenting) (cleaned up). Congress continued that tradition by giving state Attorneys General the power to enforce Dodd-Frank and by taking care to preserve other aspects of state authority. 12 U.S.C. § 5552(a), (d). Likewise, States have long taken the lead in ensuring "sound financial institutions and honest financial practices" in "banking and [all] related financial activities." *Lewis* v. *BT Inv. Managers, Inc.*, 447 U.S. 27, 38 (1980).

So if a little accountability from Congress somehow pared back the CFPB's remit, then the States could fill any gap. In fact, "[w]here federal [financial] regulators [have] refused to act [before], the states stepped into the breach." S. REP. NO. 111-176, at 16; see also *id.* at 174 ("States are much closer to abuses and are able to move more quickly when necessary to address them."). They can do the same while Congress fixes the Bureau's constitutional flaw.

The financial system will not fold if the Court holds Congress to the Appropriations Clause's line. The Court should do exactly that.

CONCLUSION

The Court should affirm the decision below.

Respectfully submitted.

PATRICK MORRISEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
lindsay.s.see@wvago.gov
(304) 558-2021

LINDSAY S. SEE
Solicitor General
Counsel of Record

MICHAEL R. WILLIAMS
Principal Deputy Solicitor General

Counsel for Amicus Curiae *State of West Virginia*

ADDITIONAL COUNSEL

STEVE MARSHALL
Attorney General
State of Alabama

TREG TAYLOR
Attorney General
State of Alaska

TIM GRIFFIN
Attorney General
State of Arkansas

ASHLEY MOODY
Attorney General
State of Florida

CHRIS CARR
Attorney General
State of Georgia

RAÚL LABRADOR
Attorney General
State of Idaho

TODD ROKITA
Attorney General
State of Indiana

BRENNA BIRD
Attorney General
State of Iowa

KRIS KOBACH
Attorney General
State of Kansas

DANIEL CAMERON
Attorney General
Commonwealth of
Kentucky

JEFF LANDRY
Attorney General
State of Louisiana

LYNN FITCH
Attorney General
State of Mississippi

ANDREW BAILEY
Attorney General
State of Missouri

AUSTIN KNUDSEN
Attorney General
State of Montana

MICHAEL T. HILGERS
Attorney General
State of Nebraska

JOHN M. FORMELLA
Attorney General
State of New Hampshire

DREW WRIGLEY
Attorney General
State of North Dakota

DAVE YOST
Attorney General
State of Ohio

GENTNER DRUMMOND
Attorney General
State of Oklahoma

ALAN WILSON
Attorney General
State of South Carolina

MARTY JACKLEY
Attorney General
State of South Dakota

JONATHAN SKRMETTI
Attorney General and
Reporter
State of Tennessee

JOHN SCOTT
Provisional Attorney
General
State of Texas

SEAN D. REYES
Attorney General
State of Utah

JASON MIYARES
Attorney General
Commonwealth of Virginia

BRIDGET HILL
Attorney General
State of Wyoming