Testimony
Before the U.S. House of Representatives Committee on Financial Services
Subcommittee on Financial Institutions and Monetary Policy
Hearing on "Consumer Financial Protection Bureau: Ripe for Reform"

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Chairman Barr, Ranking Member Foster, and honorable members of this Subcommittee, thank you for this opportunity to present testimony on behalf of Pacific Legal Foundation at this hearing on why the Consumer Financial Protection Bureau is in desperate need of reform due to its unconstitutional structure and in turn, the power it claims to wield in ways that harm the American financial services industry.

Pacific Legal Foundation (PLF) is a legal organization that defends Americans' liberties when threatened by government overreach and abuse. We sue the government when it violates Americans' constitutional rights, providing pro bono representation to people from all walks of life. As a nonprofit organization we also do extensive work at the federal and state levels on legal policy and strategic research to further our goal of vindicating important constitutional rights and principles.

I am a litigator for PLF and represent clients who have nearly lost their businesses due to unconstitutional lockdowns; those who would be denied their right to make an honest living due to unjust regulations and, as relevant to today's hearing, I have represented businesses that have come under fire from overzealous federal agencies that have exceeded their authority.

My prepared statement will address four issues relevant to the Subcommittee's hearing today. First, in contrast to CFPB's recent arguments in its briefing before the U.S. Supreme Court, CFPB has always described itself as a non-appropriated independent agency. This dual-level exemption from the appropriations process plainly violates the Appropriations Clause of the U.S. Constitution—despite CFPB's recent insistence that the agency's perpetual funding mechanism in the Dodd-Frank Act satisfies Congress' constitutional duty to control the power of the purse.

Free from the oversight and accountability that accompanies the Congressional appropriations process, CFPB can evade the APA rulemaking process by using consent orders as precedential guidance to regulated institutions. CFPB's use of consent orders in this manner present constitutional concerns for due process, undermine the rule of law, and will limit consumer access to financial service.

The constitutional hazards of CFPB's policy making by consent orders is exemplified by Pacific Legal Foundation's clients, Townstone Financial, a small mortgage broker, and its owner, Barry Sturner. Faced with an enforcement action based on a novel interpretation of a nearly 50-year-old regulation and allegations of redlining, Townstone faced immense pressure to enter into a consent order. But Townstone had the courage to challenge CFPB's untested legal theory in court and recently, a federal court agreed with Townstone that CFPB's interpretation of its own regulation exceed the authority granted to it by Congress.

Finally, to protect consumer access to financial services and the rule of law, Congress must bring CFPB within the Congressional appropriations process. With this essential element of checks-and-balances restored, Congress should conduct oversight over the broad legislative powers delegated to CFPB in the many statutes it is charged with enforcing to ensure its regulations and enforcement actions do not exceed its authority.

Created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010,[1] the CFPB's funding mechanism is a constitutional aberration that violates the separation of powers. CFPB is tasked with implementing and enforcing at least 19 different statutes. Congress also vested potent enforcement powers in the CFPB. The agency has extensive adjudicatory authority in addition to its rulemaking and enforcement powers. Moreover, Congress placed CFPB under the leadership of a single Director, unlike traditional independent agencies. Unlike any other agency with this structure, CFPB does not rely on the annual appropriations process for its funding and enjoys dual-level removal from the appropriations process. The CFPB's design is a constitutional anomaly. As the Supreme Court observed in 2020, "'[p]erhaps the most telling indication of [a] severe constitutional problem' with an executive entity 'is [a] lack of historical precedent' to support it."[2]

On February 27, 2023, the U.S. Supreme Court agreed to hear *CFPB v. Community Financial Services Association of America, Ltd, et al.*,[3] in which the Court will decide whether CFPB's perpetual funding mechanism outside of the annual appropriations process violates the Appropriations Clause. *CFPB v. Community Financial Services* has the potential to be one of the most important separation of powers decisions in recent history.

Congress should not wait for the Court to force its hand with regards to CFPB's funding. The separation of powers is essential to the design of the U.S. Constitution and the rule of law—it ensures transparency and accountability, thereby protecting

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[1] *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[2] *Seila Law, LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2201 (2020), quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 483 (2010).

[3] *CFPB v. Com. Fin. Servs. Assn.*, No. 22-448, 2023 WL 2227658 (Feb. 27, 2023).

our representative form of government. The CFPB is ripe for reform to prevent further damage to the U.S. Constitution's separation of powers.

I. CFPB's Funding Mechanism Violates the Separation of Powers

Article I, Section 9, Clause 7 of the Constitution solely vests Congress with the power of the purse: "no money shall be drawn from the treasury, but in consequence of appropriations made by law." As James Madison explained in *The Federalist Papers*, "This power over the purse, may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people[.]"[4] The power of the purse guards against "all the overgrown prerogatives of the other branches of the government."[5]

Yet the Dodd-Frank Act designed CFPB to be a financial regulator with full independence from Congress and the political process. With the constitutionality of CFPB's perpetual self-funding mechanism squarely presented to the Court, CFPB has reversed course on its long-stated view that it is a "non-appropriated agency" in its petition for certiorari[6] and cert-stage reply brief.[7] As prominent administrative law scholar, Adam White, has detailed at length, this reversal is contradicted by a decade of statements from CFPB and Congress itself.[8]

Congress delegated a core legislative power to CFPB in the Dodd-Frank Act. With a simple one page letter to the Federal Reserve, the CFPB can fund itself with up to 12 percent of the Federal Reserve's annual operating expenses, in perpetuity.[9] CFPB recently estimated its funding authority was $717.5 million in fiscal year 2021, and $734.0 million in fiscal year 2022.[10] For comparison purposes, the Office of

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[4] The Federalist Papers : No. 58, *Objection That The Number of Members Will Not Be Augmented as the Progress of Population Demands Considered*, Madison, available at https://avalon.law.yale.edu/18th_century/fed58.asp.
[5] *Id.*
[6] Pet'r Pet. Cert., 16 ("The CFPB's funding mechanism is entirely consistent with the text of the Appropriations Clause, with longstanding practice, and with this Court's precedent. Congress provided that the CFPB shall be funded 'from the combined earnings of the Federal Reserve System.' 12 U.S.C. 5497(a)(1).")
[7] Pet'r Reply Supp. Cert., at 2 ("Text, history, and precedent refute respondents' assertion that Congress violated the Appropriations Clause by authorizing the CFPB to spend a specified amount from a specified source for a specified purpose.").
[8] Adam J. White, *The CFPB's Lack of Candor to the Court, Continued, Yale Journal on Regulation*, Feb. 3; Adam J. White, *The CFPB's Blank Check—or, Delegating Congress's Power of the Purse*, Yale Journal on Regulation, Nov. 27; Adam J. White, *The CFPB Engages in Legal Deception*, Wall Street Journal, Dec. 2022.
[9] 12 U.S.C.A. § 5497(a)(2)(C).
[10] Consumer Financial Protection Bureau, *Annual performance plan and report, and budget overview*, at 12 (Feb. 2022).

Management and Budget was appropriated $106.6 million and $116 million in fiscal years 2021 and 2022, respectively, for its salaries and expenses.[11]

Dodd-Frank further shields CFPB's self-funding mechanism from oversight, declaring that its funds "shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate," nor subject to "the consent or approval of the Director of the Office of Management and Budget."[12] CFPB's independence from congressional and presidential appropriations processes was by design, as the Senate Banking Committee explained CFPB would not be "subject to repeated Congressional pressure."[13] "The Committee finds that the assurance of adequate funding, independent of the Congressional appropriations process, is absolutely essential to the independent operations of any financial regulator."[14]

From its inception, CFPB understood the vast power of the purse Congress delegated to the new agency. In one of its first strategic plans, CFPB emphasized that by "providing the CFPB with funding outside of the congressional appropriations process," Congress had "ensure[d] full independence" for the agency.[15] Despite its position in recent filings before the Supreme Court, CFPB has always described its perpetual self-funding as not coming from "appropriations."[16] In 2021, CFPB Director Rohit Chopra described CFPB as "an independent, non-appropriated bureau," and emphasized that its funds transferred from the Federal Reserve "are not government funds or appropriated funds."[17] CFPB's most recent financial report, released the day after CFPB filed its cert petition, continues to espouse this view: "The Dodd-Frank Act explicitly provides that Bureau funds obtained by or transferred to the CFPB are not government funds or appropriated funds."[18]

CFPB's attempt to recharacterize its long-held status when placed under constitutional scrutiny may be unsurprising, but its lack of candor to the Supreme Court should ring alarm bells for Congress. It is long past time for Congress to reform CFPB and submit the agency to the constitutional appropriations process.

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[11] H.R. 133, 117th Cong. at 212 (2021); H.R. 2471, 117th Cong. at 204 (2022).
[12] 12 U.S.C.A. § 5497(a)(2)(C); § 5497(a)(4)(E).
[13] S. Rep. No. 111-176, at 163 (2010).
[14] *Id.*
[15] Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Strategic Plan FY 2013 - FY 2017*, at 36-37 (Apr. 2013).
[16] See e.g., Consumer Fin. Prot. Bureau, *Financial report of the Consumer Financial Protection Bureau*, at 65 (Nov. 2015) ("The Congress, […] followed a long-established precedent in providing the CFPB with sources of funding outside of the Congressional appropriations process to ensure full independence […].").
[17] Consumer Fin. Prot. Bureau, *Financial report of the Consumer Financial Protection Bureau*, at 45, 51 (Nov. 2021).
[18] Consumer Fin. Prot. Bureau, *Financial report of the Consumer Financial Protection Bureau*, at 45, 51 (Nov. 2022).

II. CFPB Evades the APA Rulemaking Process Resulting in Policies That Are Harmful to the Rule of Law and Consumer Access to Financial Services

CFPB evades the APA rulemaking process in a variety of ways to advance its policy goals beyond the power granted to it by Congress. This evasion is detrimental to the rule of law and in turn, harmful to consumer access to financial services.

One way that CFPB avoids the procedures and protections of the APA rulemaking process is through the agency's enforcement actions. CFPB has successfully expanded its reach through lawsuits filed along with consent orders or administrative consent orders, which merely reflect its settlement terms with an individual financial institution. These actions are done without the benefit of public comment that accompanies APA rulemaking. CFPB points to these complaints and consent orders as legal precedent, in lieu of APA rulemaking. This use of complaints and consent orders present due process concerns when the complaints and consent orders announce new legal theories.

These settlement agreements are concerning for a number of reasons. First, the incentives surrounding the settlement negotiations for consent orders enable the CFPB to expand its authority. Financial institutions are reluctant to mount a legal fight against the CFPB that would cost hundreds of thousands, if not millions of dollars to litigate in court and that carries a serious risk of reputational harm or lost business opportunities. Moreover, as repeat players in the financial regulatory system, many financial institutions are hesitant to challenge a financial regulator that has authority to issue one civil investigative demand after another under a number of statutes. For many large financial institutions, from an economic and reputational perspective, it is simply a wise business decision to accept the CFPB's charges against it and negotiate a settlement that will not cause further harm.

The second problematic aspect of CFPB's negotiated settlement agreements is that while these consent orders are usually filed in and approved by a District Court, the courts do not evaluate the merits of the complaint or the settlement agreement reached by the parties.[19] While these settlement agreements or consent orders are binding on the parties, the orders do not develop administrative law in the courts and should not be binding on other financial institutions that were not parties to the suit. But CFPB publicizes and explicitly uses these consent orders as warnings to other financial institutions of the CFPB's legal interpretations and enforcement priorities. In fact, former CFPB Director Richard Cordray has publicly stated, "[i]t would be 'compliance malpractice' for executives not to take careful bearings from the contents

[19] Except in rare, extraordinary circumstances where a court might find a party was coerced into the agreement under a high standard for duress or fraud.

of these orders about how to comply with the law and treat consumers fairly."[20] CFPB even cites to these complaints and consent orders in court as evidence of its interpretation of the law.

Finally, such consent orders make compliance with regulations more costly for financial institutions. Large financial institutions often have in-house compliance attorneys who can monitor the CFPB's website for newly released complaints and consent orders. But this comes at an increased compliance cost— costs that are eventually passed on to the consumer, limiting consumer access to financial services.

These compliance costs are a much larger burden on the smaller financial institutions regulated by the CFPB, such as small mortgage lending companies, automobile dealerships, community banks, and other consumer lenders. While CFPB may disfavor financial products provided by some of these smaller businesses, these institutions frequently play an important role in consumer access to financial services.

III. The Constitutional Hazards of CFPB's Use of Consent Orders to Announce New Legal Theories Is Exemplified by Pacific Legal Foundation's Clients, Townstone Financial and Barry Sturner

Barry Sturner is a lifelong resident of Chicagoland, where he owns and operates Townstone Financial, a small mortgage company. From 2014 to the present, Townstone has employed between three to seven loan officers at any one time, including Mr. Sturner.

With a limited operating budget comes a limited marketing budget. Competing against large financial institutions, including national banks and online mortgage providers, Townstone experimented with its limited funds for marketing. Unlike many mortgage providers, Townstone does not rely on mortgage referrals from relationships with real estate brokerages or pre-existing customers of other financial services. Instead, Townstone primarily markets its services through radio ads and a weekly radio show, the Townstone Financial Show. The shows were broadcast throughout the Chicago area, extending into neighboring states when the AM radio signal was clear. As Mr. Sturner would admit, it's difficult to fill a full hour of unscripted radio with mortgage talk alone. Conversations often turned to news and current events, including local and national politics. Although not all of Townstone's hosts shared the same political philosophy, the radio program aired on a conservative talk radio station and many of its listeners held conservative political views.

In 2017, CFPB issued a civil investigative demand (CID) to Townstone and a number of other non-bank mortgage companies. Townstone voluntarily complied with

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[20] Prepared Remarks of CFPB Director Richard Cordray at the Consumer Bankers Association (Mar. 9, 2016), available at: https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-bankers-association/.

the CID in hopes that the regulator would be satisfied with its files and close its investigation. And it appeared that way for a while.

But in 2019, CFPB informed Townstone that it had approval to settle with or sue the company for redlining in violation of Regulation B, a regulation promulgated with authority granted under the anti-circumvention provision[21] of the Equal Credit Opportunity Act (ECOA). ECOA prohibits discrimination against credit applicants on the basis of protected characteristics, including race.[22] But Townstone never discriminated against any applicants for credit, nor did CFPB allege that it had.

Instead, CFPB alleged what has been called a "marketing discrimination" theory solely based on Regulation B.[23] Regulation B bars creditors from making statements to prospective applicants that would discourage, on a prohibited basis, a reasonable person from applying for credit.[24] Under CFPB's interpretation of Regulation B, it did not matter that no applicants alleged Townstone discriminated against them.

To support its claim that Townstone intended to discourage prospective African-American applicants, CFPB plucked five innocuous statements about crime and life in Chicago out of hundreds of hours of radio broadcasts. These statements on public issues were protected under the First Amendment. Further, none of the statements were racially hostile or derogatory, even if CFPB claimed, for example, that a discussion of crime in Chicago was racially disparaging. CFPB brought suit against Townstone without providing a Notice and Opportunity to Respond and Advise (NORA), although Townstone submitted a NORA-like letter that included consumer testing demonstrating that African-Americans were not discouraged by statements made on the Townstone Financial Show.[25]

Apart from the five out-of-context statements from the Townstone Financial Show, CFPB's remaining allegations resembled Fair Housing Act (FHA)[26] discrimination claims based on a disparate impact theory. While Townstone made loans to African Americans and in majority-minority census tracts, Townstone was not as successful attracting mortgage applications as some banks and larger mortgage companies. CFPB alleged that this lack of success, as well as the fact that

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[21] 15 U.S.C. § 1691b(a).
[22] 15 U.S.C. § 1691 *et seq.*
[23] See, e.g., Richard Horn, Motion to Dismiss in CFPB's Redlining Lawsuit Against Townstone Financial (Oct. 30, 2020); Richard Horn, CFPB, DOJ, and OCC Redlining Settlement – New DOJ Redlining Initiative Includes Non-Bank Mortgage Companies (October 22, 2021).
[24] 12 C.F.R. § 1002.1 *et seq*.
[25] Report on Testing of Townstone Podcasts and Radio Broadcast with African American Residents of Chicago's South Side (July 29, 2019), available at: https://www.garrishorn.com/s/Townstone-Consumer-Testing-Kleimann-Report-Final.pdf.
[26] 42 U.S.C. §§ 3601–3619.

Townstone had not employed any African-American loan officers during the relevant time period (even though it employed African-Americans in other roles and other minorities as loan officers), were evidence of Townstone's intent to discriminate.

These allegations were a shock to Townstone—not only because it had never received any complaints from applicants or listeners. Most surprising was that these allegations were a novel interpretation of Regulation B that first appeared in the lawsuit against Townstone. Although the Department of Justice and CFPB previously brought similar suits against banks, which are subject to the Community Reinvestment Act,[27] those suits were controversial.[28] Most banks confronted with these allegations made the decision to enter into a settlement agreement. Another key factor that distinguished the case against Townstone from past consent orders is that prior cases all included allegations of FHA violations, which CFPB lacks authority to enforce. But CFPB's inability to enforce FHA claims didn't stop the CFPB from citing to these complaints during litigation against Townstone as support for its interpretation of Regulation B.[29]

Mr. Sturner was faced with any small business owner's nightmare: settle the case—implicitly admitting liability when he firmly believed no discrimination occurred—and pay stiff penalties, or mount a legal fight against a government agency with a virtually unlimited budget. A decision to litigate would risk the company, Mr. Sturner's finances, and Townstone's reputation in the process.

Fortunately, Mr. Sturner and Townstone decided to fight back. When Townstone was on the precipice of settling the case, PLF joined the Townstone litigation team providing pro bono legal services to help alleviate some of the financial strain on the small mortgage broker. Then on February 3, 2023, nearly six years after the CFPB first contacted Townstone, a federal judge in the Northern District of Illinois dismissed, the CFPB's case against Townstone, with prejudice.[30] Applying the *Chevron* framework, the district court held that ECOA prohibits discrimination against *applicants*, but Regulation B's language prohibiting *discouragement* of *prospective* applicants exceeds the agency's authority granted by Congress.[31]

CFPB's interpretation of Regulation B advanced in the Townstone litigation turned ECOA on its head. Congress passed ECOA to prevent discrimination against a protected class. But CFPB alleged Townstone violated the law by speaking about

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[27] 12 U.S.C. § 2901.
[28] John J. Spina, *United States v. Albank, FSB: Is Justice Being Served in the Enforcement of Fair Lending Laws*, 2 N.C. Banking Inst. 207, 220 (1998) ("Albank and Chevy Chase seem to stretch this fair lending definition beyond the letter and spirit of the law."), available at: http://scholarship.law.unc.edu/ncbi/vol2/iss1/13.
[29] Pl. Opp'n Mot. Dismiss, at 13 n.65, ECF No. 35.
[30] *Bureau of Consumer Fin. Prot. v. Townstone Fin., Inc.*, No. 20-CV-4176, 2023 WL 1766484 (N.D. Ill. Feb. 3, 2023).
[31] *Id.*, at *4-5.

public issues protected by the First Amendment and failing to meet an unknown racial quota in its lending portfolio, hiring, and marketing efforts. In CFPB's view, it is not enough not to discriminate—CFPB advanced a theory of Regulation B that would require creditors such as Townstone to lend money and make other business decisions based on race.

CFPB may still appeal the district court's decision to the U.S. Court of Appeals for the Seventh Circuit. But Townstone's fight is illustrative of the harm that CFPB's overreach and avoidance of APA rulemaking can inflict on a small financial services provider and in turn, consumers. Townstone's reputation with consumers and the financial industry was sullied by CFPB's allegations of redlining. Townstone's speech on important issues such as crime, and in support of the police, was chilled, despite First Amendment protections. And Townstone's financial health was strained from the legal costs of defending itself in a six-year battle.[32]

Not many small financial providers would have the courage to run the gauntlet and challenge the legality of a novel agency interpretation of a nearly 50-year-old regulation. But the Constitution's guarantee of the separation of powers is stronger because of Townstone's courage.

Questions remain, even if CFPB does not appeal the Townstone decision to the Seventh Circuit. Will CFPB target another creditor's speech on public issues like it did in the Townstone case? Will CFPB continue to pursue the marketing-discrimination theory of redlining against non-banks like Townstone, with or without the cooperation of the Department of Justice? Will the CFPB apply its marketing-discrimination theory to other financial service providers? Data collected under CFPB's new Small Business Lending Data Collection rule will require submission of statistical information from other small financial institutions regarding small business lending.[33] This information would permit CFPB to support its marketing discrimination claims with disparate impact allegations that a financial institution did not have as much business success with a particular segment of the population as its competitors.

If Congress doesn't act to bring CFPB back within Congressional oversight, one thing is certain: the cost of compliance for financial institutions will continue to increase as CFPB expands its authority outside of the APA rulemaking process, and small financial institutions will feel the most financial strain from the increase in compliance costs, and consumer access to financial services will suffer.

IV. The U.S. Constitution is the Solution

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[32] Townstone was represented by private counsel throughout the CID and litigation process; PLF joined the litigation team providing pro bono legal services in March 2022.

[33] Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B), 86 Fed. Reg. 56,356 (Oct. 8, 2021).

a. Congress should act now to bring CFPB within the constitutional appropriations process

Although the U.S. Supreme Court has announced it will hear arguments regarding CFPB's perpetual self-funding mechanism, Congress should act now to reform CFPB and bring it within the constitutional appropriations process and ensure proper Congressional oversight. Congress should fulfill its constitutional duty to control the power of the purse and bring CFPB into the constitutional appropriations process.

b. Congress should conduct oversight hearings to review the breadth of authority delegated to CFPB

The Constitution vests "all legislative powers" in Congress.[34] Congress should jealously guard its duty as the people's representatives to craft the laws and limits its delegation of that power to executive agencies. As the Supreme Court's recent separation of powers cases[35] and the application of the major questions doctrine[36] demonstrate, executive agencies have shown a willingness to stretch their authority beyond the powers granted by Congress. This has been an alarming trend for decades, and although the Supreme Court has increased its scrutiny of agency action of late, Congress also has a duty to police the boundaries of the separation of powers. The *CFPB v. Townstone Financial, et al*. decision is illustrative of how CFPB is not afraid to engage in alarming overreach.

Regulation B was promulgated in 1975 and faced few legal challenges. The Northern District of Illinois was the first to consider whether the authority delegated to the Federal Reserve--later CFPB--in ECOA reaches the "discouragement" of "prospective applicants." Expansion of agency authority through enforcement actions is another way that CFPB evades the APA rulemaking process and poses risks to the rule of law. As the *Townstone* case shows, the attempted expansion of agency authority through litigation can cause a nearly 50-year-old regulation to be called into question. This harms regulated financial institutions through increased compliance costs and these costs will ultimately affect consumer access to financial services.

Congress should conduct oversight hearings to examine the delegations of legislative power to CFPB. Where appropriate, Congress should amend statutes granting legislative power to CFPB to place explicit limitations on CFPB's exercise of

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[34] Article I, Section 1 U.S. Const. art. I, § 1.
[35] *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020); *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021); *Lucia v. S.E.C.*, 138 S. Ct. 2044 (2018).
[36] *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587 (2022); *NFIB v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661 (2022); *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021).

authority. For example, in the *Townstone* case, CPFB argued that the authority granted to it in the anti-circumvention provision of ECOA permits it to enforce Regulation B to prevent the "discouragement" of "prospective applicants."[37] Congress should start its review of authority delegated to CFPB with similar anti-circumvention provisions in other statutes, such as the Truth in Lending Act (TILA),[38] as well as general rulemaking authority under the Consumer Financial Protection Act[39] and its Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) authority granted in the Dodd-Frank Act.[40]

V. Conclusion

The constitutional defects in the structure of the CFPB, combined with CFPB's appetite for expanded authority compound one another to create separation of powers violations that pose a threat to individual liberty and consumer access to financial services. Now is the time for Congress to reform the CFPB.

Thank you for the opportunity to testify on this important constitutional issue. I look forward to answering your questions.

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[37] Pl. Opp'n Mot. Dismiss, at 6-7, ECF No. 35.
[38] 15 U.S.C. 1601 *et seq.*
[39] 12 U.S.C. §§ 5491 *et seq.*
[40] 12 U.S.C. § 5536.