



Written by [Bob Adelman](#) on November 20, 2017

Trump Considers Mulvaney to Run Consumer Financial Protection Bureau

Office of Management and Budget (OMB) Director Mick Mulvaney (shown) [is likely to be appointed](#) to take Richard Cordray's place when he leaves the Consumer Financial Protection Bureau (CFPB) at the end of next week. Mulvaney has been leading discussions with other top administration officials for months about what to do with the rogue agency. He is on record as calling the CFPB a "sad, sick joke."



Abolishing the unaccountable and unconstitutional agency apparently isn't part of those discussions. Instead, insiders familiar with those discussions are suggesting that Mulvaney will serve temporarily and name another individual or a team to run the agency. That way Mulvaney, who has already been confirmed by the Senate, doesn't need further confirmation to take on his new temporary role.

The agency could then pull back from existing investigations, and slow down or eliminate enforcement of some of its most egregious and costly rules, eventually making the agency irrelevant. Since it was created by Congress as part of Dodd-Frank, and is funded by the Federal Reserve, Congress cannot just starve it to death. But Mulvaney's appointee, or appointees, could pull its teeth.

When *The New American* wrote last week that Cordray was leaving, we noted that the agency is unconstitutional. That opinion was shored up by a decision by the U.S. Court of Appeals for the District of Columbia last year: *PHH Corporation v. Consumer Financial Protection Bureau*. In its decision declaring that the CFPB is unconstitutional, the court gave a lesson in constitutional government as created by the Founders: "This is a case about executive power and individual liberty. The U.S. Government's executive power to enforce federal law against private citizens — for example, to bring criminal prosecutions and civil enforcement actions — is essential to societal order and progress, but simultaneously a grave threat to individual liberty."

This is similar to President George Washington's warning: "Government is not reason, it is not eloquence, it is force; like fire, a troublesome servant and a fearful master. Never for a moment should it be left to irresponsible action."

The court continued:

The Framers understood that threat to individual liberty. When designing the executive power, the Framers first separated the executive power from the legislative and judicial powers.... To ensure accountability for the exercise of executive power, and help safeguard liberty, the Framers then lodged full responsibility for the executive power in the President of the United States, who is elected by and accountable to the people.

The text of Article II provides quite simply: "The executive Power shall be vested in a President of the United States of America." And Article II assigns the President alone the authority and responsibility to "take Care that the Laws be faithfully executed." As Justice Scalia explained: "The



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purpose of the separation and equilibration of powers in general, and of the unitary Executive in particular, was not merely to assure effective government but to preserve individual freedom.”

After reviewing the defense attorneys’ arguments that somehow the CFPB was legal and justified, the court concluded:

In light of the consistent historical practice under which independent agencies have been headed by multiple commissioners or board members, and in light of the threat to individual liberty posed by a single-Director independent agency, we conclude that ... the CFPB is unconstitutionally structured.

There are certainly other problems with the agency, too. It was specifically constructed to be outside of any executive branch control, restraint, or influence. As Ian Murray noted in his summary of “The Case Against the Consumer Financial Protection Bureau” released by the Competitive Enterprise Institute (CEI) in September,

Its funding comes not from congressional appropriations but from the Federal Reserve....

It is headed by a single director ... who may not be fired by the President except for “cause”... and

The courts are required to give extra deference to the CFPB’s decisions.

“These provisions,” wrote Murray, “violate constitutional norms of checks and balances on executive power and have led the CFPB to abuse its power, including by trying to regulate in areas where its statutory authority is expressly limited.”

One of the most egregious abuses is its enforcement of “Operation Chokepoint,” a program designed to damage gun dealers and other industries deemed by the Obama administration not to be in the best interest of the public. As Murray concluded, “The CFPB is too problematic to fix by relying on better discretion from its director and other personnel. Its problems are so fundamental that it should probably be abolished.”

There’s no “probably” about it. The agency needs to be terminated immediately. Given the reality that Congress cannot directly defund it, Mulvaney (or whomever the president names to fill in for the departing Cordray next week) can work to make it irrelevant by pulling its teeth and firing its 1,600-plus employees.

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