



Written by [Joe Wolverton, II, J.D.](#) on October 11, 2023

Supreme Court Needs to End Consumer Financial Protection Bureau

On October 10, the Supreme Court heard oral arguments in a case of interest and significance to politicians and people alike: the case of *Consumer Financial Protection Bureau (CFPB) v. Community Financial Services Association of America*. At the heart of the matter lies a narrow, yet critical question, one that strikes at the very foundation of our constitutional order: Is the CFPB's peculiar and historically unprecedented practice of simply sending demand letters to the Federal Reserve a violation of the appropriations clause?



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In this pivotal debate, progressive judges seem to pivot away from the black letter of our Constitution, leaning instead toward statistics to justify this brazen affront to the separation of powers, one of the principal pillars upon which the federal system was constructed and without which it would crumble.

"This is a rounding error in the federal budget," remarked Justice Elena Kagan with seeming nonchalance, disregarding the massive \$641.5 million that flowed into the agency's coffers just last year.

Despite Kagan's identification of a math error as the central issue, these proceedings represent a profound clash of principles, where constitutional fidelity is set against numerical pragmatism in a battle that will surely reverberate through the annals of legal history and have some effect on the overall economy in the short term.

The actionable issue in this case doesn't revolve around mere financial numbers; it's the process itself that's under scrutiny. In a compelling case set out in an amicus (friend-of-the-court) brief, Jeb Hensarling, former chairman of the House Financial Services Committee and an Advisory Council member to Americans for Prosperity; and Brian Johnson, former Deputy Director of the Consumer Financial Protection Bureau and chief financial institutions counsel for the House Committee on Financial Services — supported by former colleagues from both the agency and Congress — urged the Court to restore the constitutionally granted authority of Congress over the purse strings. This pivotal decision will determine if the American people, through their elected representatives, will have a genuine say in the workings of the CFPB.

In essence, the outcome of this case hinges on a more profound question, one that resonates with the core principles of our Constitution. It's about whether the doctrine of "all legislative powers" granted to



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Congress in Article I of the U.S. Constitution are yet vested in Congress, or if a meaningful measure of that power has been ceded to and wielded by unelected bureaucrats, such as those at the CFPB.

This legal battle, with its far-reaching implications, holds the potential to redefine the balance of power among the three branches of federal authority, as well as between the states and the federal government.

During its previous session, the Supreme Court handed down a pivotal decision in *West Virginia v. EPA*, reinforcing the principle that government agencies must not arrogate broad administrative powers without explicit authorization from Congress. This marks a significant win for the fundamental principles outlined in Article I of the Constitution.

The highest court in the land now faces another momentous choice, one that carries profound implications for both the American people and their duly elected representatives. The imperative here is to uphold the tenets of sound jurisprudence over mere reliance on statistics. The Supreme Court has an obligation to deliver a verdict that aligns with the core values of our legal system, preserving the vital balance of powers as laid out by our Constitution.

A [report published by the Cato Institute](#) in 2018 reveals the full measure of the CFPB's accumulation and exercise of unconstitutional power.

"The director of the CFPB reports to no one but himself, and, under the terms of Dodd-Frank, can be removed by the president only for cause," writes Ilya Shapiro, a senior fellow in constitutional studies at Cato. "This structure violates core principles of separation of powers and allows the agency to exist unfettered by any accountability to the people."

What is relevant to Americans today is the realization that such consolidation of government authority, in the hands of one (or many) agents of the federal government, particularly one so free from oversight, is tyrannical and will eventually lead to the denial of the full panoply of rights that should be shielded from bureaucratic despotism.

Apart from the accumulation of powers being accomplished by the CFPB and the other scores of alphabet agencies, there is another aspect of this growth of government that is anathema to our republican form of government.

One of the royal abuses of power in the "long train" listed by Thomas Jefferson in the Declaration of Independence seems to accurately describe these agencies' autocratic agenda.

"He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance," Jefferson wrote.

The Roman historian Tacitus — a man of immeasurable influence on the Founding Fathers — lived at the time of Augustus and witnessed the unwinding of the Roman Republic first-hand. Tacitus pointed to the increasing power of the bureaucrats as a reason republican liberty was becoming a myth in his time.

He reported that the Roman Empire under Caesar Augustus employed 1,800 bureaucrats throughout the whole of the expansive empire.

While 1,800 bureaucrats may sound like a lot, that's far fewer than those regulation-writing civil servants employed by the state of Nevada alone!

The people of the United States retain ultimate and unalienable sovereignty in this country, and they



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must call on Congress to cut off funding to this federal agency that is choking the life out of the American middle class by spending millions on contracts with cronies and acting as if they were above the law.

Additionally, state legislators may play a part in dismantling this despotic bureaucracy by refusing to participate in or afford any resources to any CFPB policy or program. This exercise of state sovereignty wouldn't abolish the agency, but it would protect citizens from being subject to the enforcement of its unconstitutional edicts.



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