Syllabus

SUPREME COURT OF THE UNITED STATES

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SEILA LAW LLC *v.* CONSUMER FINANCIAL PROTECTION BUREAU

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19–7. Argued March 3, 2020—Decided June 29, 2020

In the wake of the 2008 financial crisis, Congress established the Consumer Financial Protection Bureau (CFPB), an independent regulatory agency tasked with ensuring that consumer debt products are safe and transparent. See Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), 124 Stat. 1376. Congress transferred the administration of 18 existing federal statutes to the CFPB, including the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Truth in Lending Act; and Congress enacted a new prohibition on unfair and deceptive practices in the consumer-finance sector. 12 U. S. C. §5536(a)(1)(B). In doing so, Congress gave the CFPB extensive rulemaking, enforcement, and adjudicatory powers, including the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, prosecute civil actions in federal court, and issue binding decisions in administrative proceedings. The CFPB may seek restitution, disgorgement, injunctive relief, and significant civil penalties for violations of the 19 federal statutes under its purview. So far, the agency has obtained over $11 billion in relief for more than 25 million consumers.

Unlike traditional independent agencies headed by multimember boards or commissions, the CFPB is led by a single Director, §5491(b)(1), who is appointed by the President with the advice and consent of the Senate, §5491(b)(2), for a five-year term, during which the President may remove the Director only for "inefficiency, neglect of duty, or malfeasance in office," §§5491(c)(1), (3). The CFPB receives its funding outside the annual appropriations process from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments.

In 2017, the CFPB issued a civil investigative demand to Seila Law LLC, a California-based law firm that provides debt-related legal services to clients. The civil investigative demand (essentially a subpoena) sought information and documents related to the firm's business practices. Seila Law asked the CFPB to set aside the demand on the ground that the agency's leadership by a single Director removable only for cause violated the separation of powers. When the CFPB declined, Seila Law refused to comply with the demand, and the CFPB filed a petition to enforce the demand in District Court. Seila Law renewed its claim that the CFPB's structure violated the separation of powers, but the District Court disagreed and ordered Seila Law to comply with the demand. The Ninth Circuit affirmed, concluding that Seila Law's challenge was foreclosed by *Humphrey's Executor* v. *United States*, 295 U. S. 602, and *Morrison* v. *Olson*, 487 U. S. 654.

Held: The judgment is vacated and remanded.

923 F. 3d 680, vacated and remanded.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Parts I, II, and III, concluding:

1. Appointed *amicus* raises three threshold arguments for why this Court may not or should not reach the merits of petitioner's constitutional challenge, but they are unavailing. Pp. 8–11.

2. The CFPB's leadership by a single individual removable only for inefficiency, neglect, or malfeasance violates the separation of powers. Pp. 11–30.

(a) Article II vests the entire "executive Power" in the President alone, but the Constitution presumes that lesser executive officers will assist the President in discharging his duties. The President's executive power generally includes the power to supervise—and, if necessary, remove—those who exercise the President's authority on his behalf. The President's removal power has long been confirmed by history and precedent. It was recognized by the First Congress in 1789, confirmed by this Court in *Myers* v. *United States*, 272 U. S. 52, and reiterated in *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477. In *Free Enterprise Fund*, the Court recognized that it had previously upheld certain congressional limits on the President's removal power. But the Court declined to extend those limits to "a new situation not yet encountered by the Court." 561 U. S., at 483. *Free Enterprise Fund* left in place only two exceptions to the President's unrestricted removal power. First, *Humphrey's Executor* permitted Congress to give for-cause removal protection to a multimember body of experts who were balanced along partisan lines, appointed to staggered terms, performed only "quasi-legislative" and "quasi-judicial functions," and were said not to exercise any executive power. Second, *Morrison* approved for-cause removal protection for an *inferior* officer—the independent counsel—who had limited duties and no policymaking or administrative authority. Pp. 11–16.

(b) Neither *Humphrey's Executor* nor *Morrison* resolves whether the CFPB Director's insulation from removal is constitutional. The New Deal-era FTC upheld in *Humphrey's Executor* bears little resemblance to the CFPB. Unlike the multiple Commissioners of the FTC, who were balanced along partisan lines and served staggered terms to ensure the accumulation of institutional knowledge, the CFPB Director serves a five-year term that guarantees abrupt shifts in leadership and the loss of agency expertise. In addition, the Director cannot be dismissed as a mere legislative or judicial aid. Rather, the Director possesses significant administrative and enforcement authority, including the power to seek daunting monetary penalties against private parties in federal court—a quintessentially executive power not considered in *Humphrey's Executor*.

The logic of *Morrison* also does not apply. The independent counsel approved in *Morrison* was an inferior officer who lacked policymaking or administrative authority and exercised narrow authority to initiate criminal investigations and prosecutions of Governmental actors identified by others. By contrast, the CFPB Director is a principal officer whose duties are far from limited. The Director promulgates binding rules fleshing out 19 consumer-protection statutes that cover everything from credit cards and car payments to mortgages and student loans. And the Director brings the coercive power of the state to bear on millions of private citizens and businesses, imposing potentially billion-dollar penalties through administrative adjudications and civil actions.

The question here is therefore whether to extend the *Humphrey's Executor* and *Morrison* exceptions to a "new situation." *Free Enterprise Fund,* 561 U. S., at 433. Pp. 16–18.

(c) The Court declines to extend these precedents to an independent agency led by a single Director and vested with significant executive power. Pp. 18–30.

(1) The CFPB's structure has no foothold in history or tradition. Congress has provided removal protection to principal officers who alone wield power in only four isolated instances: the Comptroller of the Currency (for a one-year period during the Civil War); the Office of Special Counsel; the Administrator of the Social Security Administration; and the Director of the Federal Housing Finance Agency. Aside from the one-year blip for the Comptroller of the Currency, these examples are modern and contested; and they do not involve regulatory or enforcement authority comparable to that exercised by the CFPB. Pp. 18–21.

(2) The CFPB's single-Director configuration is also incompatible with the structure of the Constitution, which—with the sole exception of the Presidency—scrupulously avoids concentrating power in the hands of any single individual. The Framers' constitutional strategy is straightforward: divide power everywhere except for the Presidency, and render the President directly accountable to the people through regular elections. In that scheme, individual executive officials may wield significant authority, but that authority remains subject to the ongoing supervision and control of the elected President. The CFPB's single-Director structure contravenes this carefully calibrated system by vesting significant governmental power in the hands of a single individual who is neither elected by the people nor meaningfully controlled (through the threat of removal) by someone who is. The Director may *unilaterally*, without meaningful supervision, issue final regulations, oversee adjudications, set enforcement priorities, initiate prosecutions, and determine what penalties to impose on private parties. And the Director may do so without even having to rely on Congress for appropriations. While the CFPB's independent, single-Director structure is sufficient to render the agency unconstitutional, the Director's five-year term and receipt of funds outside the appropriations process heighten the concern that the agency will "slip from the Executive's control, and thus from that of the people." *Free Enterprise Fund*, 561 U. S., at 499. Pp. 21–25.

(3) *Amicus* raises three principal arguments in the agency's defense. First, *amicus* challenges the textual basis for the President's removal power and highlights statements from individual Framers expressing divergent views on the subject. This Court's precedents, however, make clear that the President's removal power derives from the "executive Power" vested exclusively in the President by Article II. And this Court has already discounted the founding-era statements cited by *amicus* in light of their context. Second, *amicus* claims that *Humphrey's Executor* and *Morrison* establish a general rule that Congress may freely constrain the President's removal power, with only two limited exceptions not applicable here. But text, first principles, the First Congress's decision in 1789, *Myers*, and *Free Enterprise Fund* all establish that the President's removal power is the rule, not the exception. Finally, *amicus* submits that this Court can cure any constitutional defect in the CFPB's structure by interpreting the language "inefficiency, neglect of duty, or malfeasance in office," 12 U. S. C. §5491(c)(3), to reserve substantial discretion to the President. But *Humphrey's Executor* implicitly rejected this position, and the CFPB's defenders have not advanced any workable standard derived from the statutory text. Nor have they explained how a lenient removal standard can be squared with the Dodd-Frank Act as a whole, which makes

plain that the CFPB is an "independent bureau." §5491(a).

The dissent advances several additional arguments in the agency's defense, but they have already been expressly considered and rejected by the Court in *Free Enterprise Fund*. Pp. 25–30.

THE CHIEF JUSTICE, joined by JUSTICE ALITO and JUSTICE KAVANAUGH, concluded in Part IV that the Director's removal protection is severable from the other provisions of the Dodd-Frank Act that establish the CFPB and define its authority. Pp. 30–37.

ROBERTS, C. J., delivered the opinion of the Court with respect to Parts I, II, and III, in which THOMAS, ALITO, GORSUCH, and KAVANAUGH, JJ., joined, and an opinion with respect to Part IV, in which ALITO and KAVANAUGH, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which GORSUCH, J., joined. KAGAN, J., filed an opinion concurring in the judgment with respect to severability and dissenting in part, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 19–7

SEILA LAW LLC, PETITIONER *v.* CONSUMER FINANCIAL PROTECTION BUREAU

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 29, 2020]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court with respect to Parts I, II, and III.

In the wake of the 2008 financial crisis, Congress established the Consumer Financial Protection Bureau (CFPB), an independent regulatory agency tasked with ensuring that consumer debt products are safe and transparent. In organizing the CFPB, Congress deviated from the structure of nearly every other independent administrative agency in our history. Instead of placing the agency under the leadership of a board with multiple members, Congress provided that the CFPB would be led by a single Director, who serves for a longer term than the President and cannot be removed by the President except for inefficiency, neglect, or malfeasance. The CFPB Director has no boss, peers, or voters to report to. Yet the Director wields vast rulemaking, enforcement, and adjudicatory authority over a significant portion of the U. S. economy. The question before us is whether this arrangement violates the Constitution's separation of powers.

Under our Constitution, the "executive Power"—all of it—is "vested in a President," who must "take Care that the

Laws be faithfully executed." Art. II, §1, cl. 1; *id.*, §3. Because no single person could fulfill that responsibility alone, the Framers expected that the President would rely on subordinate officers for assistance. Ten years ago, in *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477 (2010), we reiterated that, "as a general matter," the Constitution gives the President "the authority to remove those who assist him in carrying out his duties," *id.*, at 513–514. "Without such power, the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else." *Id.*, at 514.

The President's power to remove—and thus supervise—those who wield executive power on his behalf follows from the text of Article II, was settled by the First Congress, and was confirmed in the landmark decision *Myers* v. *United States*, 272 U. S. 52 (1926). Our precedents have recognized only two exceptions to the President's unrestricted removal power. In *Humphrey's Executor* v. *United States*, 295 U. S. 602 (1935), we held that Congress could create expert agencies led by a *group* of principal officers removable by the President only for good cause. And in *United States* v. *Perkins*, 116 U. S. 483 (1886), and *Morrison* v. *Olson*, 487 U. S. 654 (1988), we held that Congress could provide tenure protections to certain *inferior* officers with narrowly defined duties.

We are now asked to extend these precedents to a new configuration: an independent agency that wields significant executive power and is run by a single individual who cannot be removed by the President unless certain statutory criteria are met. We decline to take that step. While we need not and do not revisit our prior decisions allowing certain limitations on the President's removal power, there are compelling reasons not to extend those precedents to the novel context of an independent agency led by a single Director. Such an agency lacks a foundation in historical practice and clashes with constitutional structure by concentrating power in a unilateral actor insulated from Presidential control.

We therefore hold that the structure of the CFPB violates the separation of powers. We go on to hold that the CFPB Director's removal protection is severable from the other statutory provisions bearing on the CFPB's authority. The agency may therefore continue to operate, but its Director, in light of our decision, must be removable by the President at will.

I

A

In the summer of 2007, then-Professor Elizabeth Warren called for the creation of a new, independent federal agency focused on regulating consumer financial products. Warren, Unsafe at Any Rate, Democracy (Summer 2007). Professor Warren believed the financial products marketed to ordinary American households—credit cards, student loans, mortgages, and the like—had grown increasingly unsafe due to a "regulatory jumble" that paid too much attention to banks and too little to consumers. *Ibid.* To remedy the lack of "coherent, consumer-oriented" financial regulation, she proposed "concentrat[ing] the review of financial products in a single location"—an independent agency modeled after the multimember Consumer Product Safety Commission. *Ibid.*

That proposal soon met its moment. Within months of Professor Warren's writing, the subprime mortgage market collapsed, precipitating a financial crisis that wiped out over $10 trillion in American household wealth and cost millions of Americans their jobs, their retirements, and their homes. In the aftermath, the Obama administration embraced Professor Warren's recommendation. Through the Treasury Department, the administration encouraged Congress to establish an agency with a mandate to ensure that "consumer protection regulations" in the financial sector "are written fairly and enforced vigorously." Dept. of Treasury, Financial Regulatory Reform: A New Foundation 55 (2009). Like Professor Warren, the administration envisioned a traditional independent agency, run by a multimember board with a "diverse set of viewpoints and experiences." *Id.*, at 58.

In 2010, Congress acted on these proposals and created the Consumer Financial Protection Bureau (CFPB) as an independent financial regulator within the Federal Reserve System. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), 124 Stat. 1376. Congress tasked the CFPB with "implement[ing]" and "enforc[ing]" a large body of financial consumer protection laws to "ensur[e] that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." 12 U. S. C. §5511(a). Congress transferred the administration of 18 existing federal statutes to the CFPB, including the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Truth in Lending Act. See §§5512(a), 5481(12), (14). In addition, Congress enacted a new prohibition on "any unfair, deceptive, or abusive act or practice" by certain participants in the consumer-finance sector. §5536(a)(1)(B). Congress authorized the CFPB to implement that broad standard (and the 18 pre-existing statutes placed under the agency's purview) through binding regulations. §§5531(a)–(b), 5581(a)(1)(A), (b).

Congress also vested the CFPB with potent enforcement powers. The agency has the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, and prosecute civil actions in federal court. §§5562, 5564(a), (f). To remedy violations of federal consumer financial law, the CFPB may seek restitution, disgorgement, and injunctive relief, as well as civil penalties of up to $1,000,000 (inflation adjusted) for each day that a violation occurs. §§5565(a), (c)(2); 12 CFR §1083.1(a), Table (2019). Since its inception, the CFPB has obtained over $11 billion in relief for over 25 million consumers, including a $1 billion penalty against a single bank in 2018. See CFPB, Financial Report of the Consumer Financial Protection Bureau, Fiscal Year 2015, p. 3; CFPB, Bureau of Consumer Financial Protection Announces Settlement With Wells Fargo for Auto-Loan Administration and Mortgage Practices (Apr. 20, 2018).

The CFPB's rulemaking and enforcement powers are coupled with extensive adjudicatory authority. The agency may conduct administrative proceedings to "ensure or enforce compliance with" the statutes and regulations it administers. 12 U. S. C. §5563(a). When the CFPB acts as an adjudicator, it has "jurisdiction to grant any appropriate legal or equitable relief." §5565(a)(1). The "hearing officer" who presides over the proceedings may issue subpoenas, order depositions, and resolve any motions filed by the parties. 12 CFR §1081.104(b). At the close of the proceedings, the hearing officer issues a "recommended decision," and the CFPB Director considers that recommendation and "issue[s] a final decision and order." §§1081.400(d), 1081.402(b); see also §1081.405.

Congress's design for the CFPB differed from the proposals of Professor Warren and the Obama administration in one critical respect. Rather than create a traditional independent agency headed by a multimember board or commission, Congress elected to place the CFPB under the leadership of a single Director. 12 U. S. C. §5491(b)(1). The CFPB Director is appointed by the President with the advice and consent of the Senate. §5491(b)(2). The Director serves for a term of five years, during which the President may remove the Director from office only for "inefficiency, neglect of duty, or malfeasance in office." §§5491(c)(1), (3).

Unlike most other agencies, the CFPB does not rely on the annual appropriations process for funding. Instead, the CFPB receives funding directly from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments. Each year, the CFPB requests an amount that the Director deems "reasonably necessary to carry out" the agency's duties, and the Federal Reserve grants that request so long as it does not exceed 12% of the total operating expenses of the Federal Reserve (inflation adjusted). §§5497(a)(1), (2)(A)(iii), 2(B). In recent years, the CFPB's annual budget has exceeded half a billion dollars. See CFPB, Fiscal Year 2019: Ann. Performance Plan and Rep., p. 7.

B

Seila Law LLC is a California-based law firm that provides debt-related legal services to clients. In 2017, the CFPB issued a civil investigative demand to Seila Law to determine whether the firm had "engag[ed] in unlawful acts or practices in the advertising, marketing, or sale of debt relief services." 2017 WL 6536586, *1 (CD Cal., Aug. 25, 2017). See also 12 U. S. C. §5562(c)(1) (authorizing the agency to issue such demands to persons who "may have any information[] relevant to a violation" of one of the laws enforced by the CFPB). The demand (essentially a subpoena) directed Seila Law to produce information and documents related to its business practices.

Seila Law asked the CFPB to set aside the demand, objecting that the agency's leadership by a single Director removable only for cause violated the separation of powers. The CFPB declined to address that claim and directed Seila Law to comply with the demand.

When Seila Law refused, the CFPB filed a petition to enforce the demand in the District Court. See §5562(e)(1) (creating cause of action for that purpose). In response, Seila Law renewed its defense that the demand was invalid and must be set aside because the CFPB's structure violated the

Constitution. The District Court disagreed and ordered Seila Law to comply with the demand (with one modification not relevant here).

The Court of Appeals affirmed. 923 F. 3d 680 (CA9 2019). The Court observed that the "arguments for and against" the constitutionality of the CFPB's structure had already been "thoroughly canvassed" in majority, concurring, and dissenting opinions by the en banc Court of Appeals for the District of Columbia Circuit in *PHH Corp.* v. *CFPB*, 881 F. 3d 75 (2018), which had rejected a challenge similar to the one presented here. 923 F. 3d, at 682. The Court saw "no need to re-plow the same ground." *Ibid.* Instead, it provided a brief explanation for why it agreed with the *PHH* Court's core holding. The Court took as its starting point *Humphrey's Executor*, which had approved for-cause removal protection for the Commissioners of the Federal Trade Commission (FTC). In applying that precedent, the Court recognized that the CFPB wields "substantially more executive power than the FTC did back in 1935" and that the CFPB's leadership by a single Director (as opposed to a multimember commission) presented a "structural difference" that some jurists had found "dispositive." 923 F. 3d, at 683–684. But the Court felt bound to disregard those differences in light of our decision in *Morrison*, which permitted a single individual (an independent counsel) to exercise a core executive power (prosecuting criminal offenses) despite being insulated from removal except for cause. Because the Court found *Humphrey's Executor* and *Morrison* "controlling," it affirmed the District Court's order requiring compliance with the demand. 923 F. 3d, at 684.

We granted certiorari to address the constitutionality of the CFPB's structure. 589 U. S. ___ (2019). We also requested argument on an additional question: whether, if the CFPB's structure violates the separation of powers, the CFPB Director's removal protection can be severed from the rest of the Dodd-Frank Act.