No. 19-7

In the Supreme Court of the United States

SEILA LAW LLC, PETITIONER

v.

CONSUMER FINANCIAL PROTECTION BUREAU

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

BRIEF FOR THE STATES OF TEXAS, ARKANSAS, GEORGIA, INDIANA, KANSAS, LOUISIANA, NEBRASKA, OKLAHOMA, SOUTH CAROLINA, TENNESSEE, UTAH, AND WEST VIGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

Whether the vesting of substantial executive authority in the Consumer Financial Protection Bureau, an independent agency led by a single director, violates the separation of powers.

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INTEREST OF AMICI CURIAE

Amici curiae are the States of Texas, Arkansas, Georgia, Indiana, Kansas, Louisiana, Nebraska, Oklahoma, South Carolina, Tennessee, Utah, and West Virginia.[1] As this Court has long recognized, States have "special solicitude" to challenge unlawful federal Executive Branch actions. *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007). Such solicitude is necessary because States, whose law may be preempted by federal agencies run amok, stand in a unique position to guard "the public interest in protecting separation of powers by curtailing unlawful executive action." *Texas v. United States*, 809 F.3d 134, 187 (5th Cir. 2015), *aff'd by equally divided Court*, 136 S. Ct. 2271 (2016) (per curiam).

In this case, the Consumer Financial Protection Bureau (CFPB) has wielded its unchecked power to compel Seila Law LLC, a private law firm, to provide information as part of an investigation into whether Seila Law has violated the Telemarketing Sales Rule, 16 C.F.R. pt. 310, while providing debt-relief services to its clients. States enforce robust consumer protections, including limitations on unfair trade practices and law firms' marketing activities. If Congress wishes to permit federal agencies to assist or preempt States in protecting consumers and policing deceptive trade practices, it must do

[1] No counsel for any party authored this brief, in whole or in part. No person or entity other than amici contributed monetarily to its preparation or submission.

so in a manner consistent with Article II of the Constitution. For the reasons set out below, the CFPB's structure violates the Constitution.

INTRODUCTION

I. The "ultimate purpose" of our Constitution's separation of powers "is to protect the liberty and security of the governed." *Metro. Washington Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991). That is why the Framers "viewed the principle of separation of powers as the absolutely central guarantee of a just Government." *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting). This case calls upon the Court to vindicate that principle by striking down the unlawful action of an administrative agency built around a single unaccountable and unchecked administrator.

That agency—the CFPB—was created in 2010 under the Dodd-Frank Act. The Act "transfers to the Bureau much of the authority to regulate consumer financial products and services that had been vested in other federal agencies." Brief for the Respondent in Opposition at 2, *State Nat'l Bank of Big Spring v. Mnuchin*, 139 S. Ct. 916 (2018) (No. 18-307) [hereinafter "*State Nat'l* BIO"]. Unlike the federal agencies the CFPB replaced, however, the CFPB is headed neither by a group of commissioners nor by an individual who is removable at will by the President. Instead, the CFPB is headed by a single director, who is appointed by the President, with the advice and consent of the Senate, to a five-year term.

12 U.S.C. § 5491(b), (c). He may be removed by the President only for "inefficiency, neglect of duty, or malfeasance in office." *Id.* § 5491(c)(3).

The CFPB's structure is virtually unprecedented. To date, "[n]o independent agency exercising substantial executive authority" that has come before this Court "has ever been headed by *a single person*." *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 7, 165 (D.C. Cir. 2018) (en banc) (Kavanagh, J., dissenting) (emphasis in original). As one member of this Court has noted, "the Director of the CFPB possesses more unilateral authority—that is authority to take action on one's own, subject to no check—than any single commissioner or board member in any other independent agency in the U.S. Government." *Id.* at 165-66. Indeed, "other than the President, the Director enjoys more unilateral authority than any other official in any of the three branches of the U.S. Government." *Id.* at 166.

Not even the United States still maintains that such a structure is constitutional. *State Nat'l* BIO at 13.[2] And with good reason: The Constitution forbids entrusting concentrated, unchecked authority to a sole, unaccountable director of an administrative agency charged with wielding executive power. This Court has permitted multi-member commissions on the basis that such a structure poses less of a threat to individual liberty than

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[2] *See also* En Banc Supplemental Brief of Defendant-Appellees Federal Housing Finance Agency and Joseph M. Otting at 3, *Collins v. Mnuchin*, No. 17-20364 (5th Cir. Jan. 14, 2019) (declining to defend Federal Housing Finance Authority (FHFA)).

a single-headed commission. *See, e.g.*, *Humphrey's Ex'r v. United States*, 295 U.S. 602, 629 (1935); *see also* 51 Cong. Rec. 10,376 (1914) (Federal Trade Commission "would have precedents and traditions and a continuous policy and would be free from the effect of . . . changing incumbency."). An agency built around a sole director, by contrast, is unchecked by the constraints of group decisionmaking among members appointed by different presidents. *PHH Corp.*, 881 F.3d at 166, 178 (Kavanaugh, J., dissenting) (citing SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS, STUDY ON FEDERAL REGULATIONS, S. DOC. NO. 95-91, vol. 5, at 35 (1977)). A single director thus "poses a far greater risk of arbitrary decisionmaking and abuse of power, and a far greater threat to individual liberty, then a multimember independent agency does." *Id.* at 166.

In this case, the CFPB brought that unchecked power to bear on Seila Law to compel a private law firm to participate in the investigation of potentially improper marketing of debt-relief services. Pet. App. at 10a. It has done so free from any executive oversight. The CFPB had no power to undertake that investigation.

II. The Court should use this case to resolve the nagging question of whether Congress may assign responsibility for setting federal economic policy to a single individual who is not accountable to the President. Although the CFPB has continued to defend its own constitutionality in lower courts, all parties agree that the "question is important, and it warrants this Court's review in an appropriate case." *State Nat'l* BIO at 9.

This is that appropriate case. The question is presented cleanly: If the CFPB's structure is constitutional,

Seila Law must provide the requested information. If the CFPB's structure is not constitutional, the civil investigative demand is invalid, and Seila Law is under no such obligation. During all stages of this litigation, the legality of the CFPB has been vigorously argued by the parties and squarely ruled upon by the courts. Though there is no disagreement among the circuit courts at present,[3] delay will not assist this Court in its consideration of the CFPB's constitutionality. The legal issues have been exhaustively examined; unanimity has been achieved only because of a common misunderstanding of this Court's prior precedent. Delay will serve only to prolong confusion over who sets policy in the multi-billion-dollar market in consumer financial products.

ARGUMENT

The CFPB has the power to "seek to implement and, where applicable, enforce Federal consumer financial law" as a means of ensuring that "all consumers have access to markets for consumer financial products and services" and that the markets for such products and services are "fair, transparent, and competitive." 12 U.S.C. § 5511(a). The CFPB may also prescribe rules imple-

[3] In *Collins v. Mnuchin*, a panel of the Fifth Circuit held that the FHFA, whose structure is substantively identical to the CFPB, did not pass constitutional muster. 896 F.3d 640, 666 (5th Cir. 2018) (per curiam); *see also id.* at 677-78 (Stewart, C.J., dissenting) (noting that "similar structure" between two agencies made *Collins* and *PHH* indistinguishable). That opinion has been withdrawn pending en banc review. *Collins v. Mnuchin*, 908 F.3d 151 (5th Cir. 2018).

menting consumer-protection laws; conduct investigations of market actors; and enforce consumer-protection laws in administrative proceedings in federal court. *See, e.g.*, *id.* §§ 5511(c), 5562, 5563, 5564.

The Ninth Circuit followed the majority of a highly fractured D.C. Circuit in upholding the CFPB's structure based on a flawed understanding of this Court's jurisprudence. The Court should grant certiorari and hold that the Constitution does not permit Congress to consolidate such sweeping executive powers in an administrative agency headed by a sole director whom the President may remove only for cause.

I. The CFPB's Structure Violates the Constitution's Separation of Powers.

The Constitution vests "[t]he executive power" in the President and compels him to "take care that the laws be faithfully executed." U.S. Const. art. II, § 1, cl. 1; *id.* art. II, § 3. Precedent provides that removal restrictions such as those applicable to the CFPB are permissible only for multi-member commissions—not for those headed by a single director.

A. The President Must Retain the Power to Remove at Will Individuals Who Wield Executive Power.

Article II bestows "[t]he executive power" in a single, unitary executive. It makes "emphatically clear from start to finish" that "the president would be personally responsible for his branch." AKHIL REED AMAR, AMERICA'S CONSTITUTION: A BIOGRAPHY 197 (2005). The Framers demanded "unity in the Federal Executive" to guarantee "both vigor and accountability." *Printz v.*

United States, 521 U.S. 898, 922 (1997). This unitary executive further promotes "[d]ecision, activity, secre[c]y, and d[i]spatch" in ways that a "greater number" cannot. 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1414, at 283 (1833).

Of course, as a practical matter, the President cannot carry out the full scope of "the executive power" on his own. This is why, "as part of his executive power," the President "select[s] those who [are] to act for him under his direction in the execution of the laws." *Myers v. United States*, 272 U.S. 52, 117 (1926). Selecting assistants and deputies lies at the heart of "the executive power," which necessarily includes "the power of appointing, overseeing, and controlling those who execute the laws." *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010) (quoting 1 ANNALS OF CONG. 463 (1789) (Joseph Gales ed., 1834) (remarks of James Madison)).

The President's essential power to select administrative officials necessarily includes the power to "remov[e] those for whom he cannot continue to be responsible." *Myers*, 272 U.S. at 117; *see also PHH Corp.*, 881 F.3d at 168 (Kavanaugh, J., dissenting) ("To supervise and direct executive officers, the President must be able to remove those officers at will."); Neomi Rao, *Removal: Necessary and Sufficient for Presidential Control*, 65 ALA. L. REV. 1205, 1215 (2014) ("The text and structure of Article II provide the President with the power to control subordinates within the executive branch.").

Since the Founding, it has been understood that the removal power is necessary "to keep [executive] officers

accountable." *Free Enter. Fund*, 561 U.S. at 483. This view "soon became the 'settled and well understood construction of the Constitution.'" *Id.* at 492 (quoting *Ex parte Hennen*, 38 U.S. (13 Pet.) 230, 259 (1839)).

After all, if the President could not remove agents, then a "subordinate could ignore the President's supervision and direction without fear, and the President could do nothing about it." *PHH Corp.*, 881 F.3d at 168 (Kavanaugh, J., dissenting) (citing *Bowsher v. Synar*, 478 U.S. 714, 726 (1986) ("Once an officer is appointed, it is only the authority that can remove him . . . that he must fear and, in the performance of his functions, obey.")) (quotation marks omitted). That, in turn, would intolerably impinge on the President's duty to execute the law. *Id.* And it would upend the chain of command upon which the Executive Branch relies to function properly. *See Free Enter. Fund*, 561 U.S. at 513-14. Put simply, "[t]he President cannot 'take Care that the Laws be faithfully executed' if he cannot oversee the faithfulness of the officers who execute them." *Id.* at 484.

The Court recognized this common-sense understanding in *Myers v. United States*, when it struck down as unconstitutional a statutory provision that restricted the President's power to remove certain executive officers. 272 U.S. at 176. The Court held: "[W]hen the grant of the executive power is enforced by the express mandate to take care that the laws be faithfully executed, it emphasizes the necessity for including within the executive power as conferred the exclusive power of removal." *Id.* at 122. If the President lacked the exclusive power of

removal, he could not "'take care that the laws be faithfully executed.'" *Id.* at 164.

This Court has repeatedly reaffirmed the *Myers* rule to the present day. It did so most recently in *Free Enterprise Fund*, reiterating that the President's executive power "includes, as a general matter, the authority to remove those who assist him in carrying out his duties" to faithfully execute the laws. 561 U.S. at 513-14. "Without such power, the President could not be held fully accountable" for how executive power is exercised, and "[s]uch diffusion of authority 'would greatly diminish the intended and necessary responsibility of the chief magistrate himself.'" *Id.* at 514 (quoting THE FEDERALIST No. 70, at 478 (Alexander Hamilton) (J. Cooke ed. 1961)).

B. Congress May Restrict the President's Removal Power As to Independent, Multi-Headed Commissions.

There is only one narrow exception to the general rule in *Myers*. In 1935, this Court held that Congress could create "independent" agencies headed by commissions or boards whose members were not removable at will and would operate free of the President's supervision and direction. *Humphrey's Ex'r*, 295 U.S. at 625, 631-32.

Humphrey's Executor concerned President Franklin Roosevelt's dispute with a commissioner of the Federal Trade Commission. President Roosevelt attempted to fire the commissioner, but the commissioner contested his removal, claiming that he was protected against firing by the FTC's for-cause removal provision. *Id.* at 621-

22. Before this Court, the Roosevelt Administration relied in "chief" on *Myers* and its articulation of the Article II executive power. *Id.* at 626.

This Court rejected that argument and held that Article II did not forbid Congress to create an independent agency "wholly disconnected from the executive department." *Id.* at 630. The Court deferred to the FTC's "nonpartisan" nature and its charge to "act with entire impartiality" while "exercis[ing] the trained judgment of a body of experts appointed by law and informed by experience." *Id.* at 624 (quotation marks omitted). Where those two features are present, this Court held, Congress may validly limit the President's power to remove the commissioners. *Id.* at 628-30.

Predictably, following *Humphrey's Executor*, independent agencies came to populate all corners of the federal government. These agencies "play[] a significant role in the U.S. Government" and "possess extraordinary authority over vast swaths of American economic and social life—from securities to antitrust to telecommunications to labor to energy." *PHH Corp.*, 881 F.3d at 170 (Kavanaugh, J., dissenting). Several of these agencies impact the daily lives of countless Americans in significant ways, including the Federal Reserve Board, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the National Labor Relations Board, the Consumer Product Safety Commission, and many others. *Id.* at 173.

Importantly, those independent agencies share the two features recognized in *Humphrey's Executor*:

(1) leadership comprised of multiple members who (2) are appointed at staggered terms. As this Court observed in *Humphrey's Executor*, the FTC had five members with staggered terms, and no more than three of them could be of the same political party. 295 U.S. at 619-20. The Court thus held that the Commission was a "body of experts" deliberately "so arranged that the membership would not be subject to complete change at any one time." *See id.* at 624. Those features have come to be regarded as the *Humphrey's Executor* exception to the general rule announced in *Myers*. *See, e.g.*, *Wiener v. United States*, 357 U.S. 349, 355-56 (1958) (upholding the removal provisions of the three-member War Claims Commission); *see also Free Enter. Fund*, 561 U.S. at 483 ("In *Humphrey's Executor* . . ., we held that Congress can, under certain circumstances, create independent agencies run by principal officers appointed by the President, whom the President may not remove at will but only for good cause.").

There are two reasons why the Constitution may tolerate limits on the President's power to remove the heads of independent agencies headed by multiple members serving staggered terms. *First*, "[i]n the absence of Presidential control, the multi-member structure of independent agencies serves as a critical substitute check on the excesses of any individual independent agency head." *PHH Corp.*, 881 F.3d at 183 (Kavanaugh, J., dissenting). That is, "[t]he multi-member structure thereby helps to prevent arbitrary decisionmaking and abuse of power, and to protect individual liberty." *Id.* That basic structure makes it harder for the independent agency to

impinge on individual freedom. *See id.* It further discourages arbitrary, unsound agency actions driven by the whims of one individual. *Id.* Each commissioner or board member, in other words, acts as a check on the others through the process of "deliberative decision making." Kirti Datla & Richard Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 CORNELL L. REV. 769, 794 (2013).

Second, multi-member independent agencies have a historical tradition since *Humphrey's Executor. PHH Corp.*, 881 F.3d at 182-83 (Kavanaugh, J., dissenting); *see also id.* at 178 (citing, *e.g.*, *Free Enter. Fund*, 561 U.S. at 547 (Breyer, J., dissenting)). In "separation of powers cases not resolved by the constitutional text alone, historical practice matters." *Id.* at 182-83. For example, in *National Labor Relations Board v. Noel Canning*, this Court relied on "[l]ong settled and established practice" to reach "a proper interpretation of constitutional provisions regulating the relationship between Congress and the President." 573 U.S. 513, 524 (2014) (quotation marks omitted).

In sum, only independent agencies with several directors serving staggered terms can possibly fall within the *Humphrey's Executor* exception to the *Myers* rule.

C. The CFPB's Structure Unconstitutionally Vests Unchecked Power in a Single Director Removable Only for Cause.

As the United States has now conceded, this Court's precedent makes clear "that the statutory restriction on the President's authority to remove the Director [of the

CFPB] violates the constitutional separation of powers." *States Nat'l* BIO at 13.

Unlike the multi-member boards approved in *Humphrey's Executor* and its progeny, the CFPB is headed by a single director. 12 U.S.C. § 5491(b). He serves a term of five years and may be fired only for "inefficiency, neglect of duty, or malfeasance in office." *Id.* § 5491(c). And he wields "unmistakably executive responsibilities," including "criminal investigation and prosecution." *PHH Corp.*, 881 F.3d at 80 (majority op.).

The director wields that executive power over *nineteen* different federal consumer-protection statutes. 12 U.S.C. § 5512 (b)(1). He may examine and investigate individuals and entities to assess their compliance with those statutes. *Id.* §§ 5514(b), 5515(b), 5516(c). He may (as he did in this case) issue "civil investigative demand[s]." *Id.* § 5562(c). He may institute enforcement actions and conduct "adjudication proceedings." *Id.* § 5563(a). And he may sue in state or federal court to enforce consumer-protection laws. *Id.* § 5564.

Those facts reveal the fundamental flaw in the Ninth Circuit's conclusion that this case is "control[led by the] standard enunciated in *Morrison v. Olson*." Pet. App. at 12a. As the Court explained in *Free Enterprise Fund*, it "considered the status of inferior officers in *Morrison*," including whether Congress may limit an agency head's ability to terminate an inferior officer at will. 561 U.S. at 494. The Court concluded that Congress may do so in light of the inferior officer's "limited jurisdiction and tenure and lack[] [of] policymaking or significant administrative authority." *Morrison*, 487 U.S. at 691. But the

Court said nothing about whether Congress may also limit the President's ability to remove a principal officer who has "all but exclusive power to make and enforce rules" under 19 federal statutes, *PHH Corp.*, 881 F. 3d at 153 (Henderson, J., dissenting), on topics "covering everything from home finance to student loans to credit cards to banking practices." *Id.* at 165 (Kavanaugh, J., dissenting); *cf. Free Enter. Fund*, 561 U.S. at 494-95 (limiting *Morrison* to its facts).

Instead, the extent of the CFPB's ability to set and enforce federal economic policy demonstrates why this case is controlled by this Court's original *Myers* rule. *Myers* provides that the President's subordinates must be removable at will. *Humphrey's Executor* creates a narrow exception for multi-director independent agencies with directors serving staggered terms. Because the CFPB has a sole director, appointed for a term of five years and removable only for cause, its structure violates Article II by preventing the President from carrying out the executive power.

II. This Case Is an Ideal Vehicle to Decide the CFPB's Lawfulness.

This Court should grant review in this case to definitively resolve the persistent question of whether Congress may limit the President's ability to remove the sole director of an agency empowered to set and enforce significant areas of federal policy. Review is warranted for at least three reasons.

First, the legality of the CFPB presents a question of vital importance that the parties agree can be resolved only by this Court. As this Court has long recognized,

"[s]eparation of powers was designed to implement a fundamental insight: Concentration of powers in the hand of a single branch is a threat to liberty." *Clinton v. City of New York*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring); *see also, e.g.*, *Morrison*, 487 U.S. at 697 (Scalia, J., dissenting) ("No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty." (quoting THE FEDERALIST No. 47, at 301 (James Madison) (C. Rossiter ed. 1961))) (alterations omitted); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson, J., concurring) ("[T]he Constitution diffuses power the better to secure liberty.").

The threat to liberty posed by the CFPB is uniquely acute. In a supposed effort to protect consumers, the Dodd-Frank Act deliberately stripped power that had been spread across "seven different federal regulators" as well as their state-law counterparts. *See* S. REP. 111-176, at 10 (2010) (asserting a purpose to reduce "fragmentation" and supposed "regulatory arbitrage between federal regulators and the [S]tates"); *id.* at 16-17 (discussing history of State regulation of areas relating to consumer financial products). Rather than shift that power to an existing Department overseen by a cabinet Secretary, however, the Act concentrated that power in the hands of a bureaucrat who need not seek the approval either of the electorate or an elected official.

The United States conceded last year that this concentration of power poses a threat to our constitutional system and presents "an important [question] that warrants this Court's review in an appropriate case." *State Nat'l* BIO at 10. Indeed, "although the Bureau itself has

continued to defend the constitutionality of its structure in lower courts," even the CFPB "agrees" that the question "will ultimately need to be settled by this Court." *Id.*

Second, this is an "appropriate case" for the Court to consider whether Congress may insulate huge swaths of economic regulation from presidential accountability. The prudential concerns and jurisdictional defects that previously counseled against this Court's review are absent. *See State Nat'l* BIO at 10-12 (raising concerns regarding the Court's jurisdiction given status of particular petitioner and arguing that the Court should wait to consider the question until nine Justices could participate). The question presented to this Court was also fully briefed by the parties and squarely ruled upon by the court below. Pet App. 2a-6a.

Moreover, the question is presented cleanly: Because the CFPB's structure is unconstitutional, any action it takes is necessarily invalid. In *Free Enterprise Fund*, after concluding that the Public Company Accounting Oversight Board's structure was constitutionally impermissible, this Court declared that the challengers were entitled to relief "sufficient to ensure that the reporting requirements and auditing standards to which they are subject will be enforced only by a constitutional agency accountable to the Executive." 561 U.S. at 513 (citing *Bowsher*, 478 U.S. at 727 n.5).

The outcome in this case should be the same. If the CFPB is constitutional, Seila Law must provide information in response to the CFPB's civil investigative demand. If the CFPB is not constitutional, Seila Law is under no such obligation. *Fed. Election Comm'n v. NRA Political Victory Fund*, 6 F.3d 821, 827-28 (D.C. Cir.

1993); *accord Lucia v. Sec. & Exch. Comm'n*, 138 S. Ct. 2044, 2055 (2018) ("This Court has held that 'one who makes a timely challenge to the constitutional validity of the appoint of an officer who adjudicates his case 'is entitled to relief." (quoting *Ryder v. United States*, 515 U.S. 177, 182 (1995)).

Third, any further delay in definitively resolving the CFPB's legality will prolong a period of regulatory confusion without appreciable benefit to this Court. Due to its sprawling mandate, the CFPB interacts directly with innumerable participants in American economic life from law firms such as Petitioner to large financial institutions to individual consumers. For example, in addition to its rulemaking activity, the CFPB has received more than 1.5 million complaints and obtained more than $12 billion in relief from enforcement actions during its lifespan. CFPB, http://www.consumerfinance.gov/ (last updated June 4, 2018). That number grows every day. *See, e.g.*, *Enforcement Actions*, CFPB, https://www.consumerfinance.gov/policy-compliance/enforcement/actions/ (last visited July 23, 2019) (listing subset of enforcement actions made public). These economic actors need to understand the rules of the road if the multi-billion-dollar market in consumer financial products is to function.

Until this Court definitively decides whether the CFPB has authority to set those rules, effective regulation of consumer financial products will be hampered both at the federal and state levels. As discussed above (at 13), the CFPB is the only federal entity with a current statutory mandate to propound regulations and enforce policy under nineteen separate federal statutes relating to consumer financial products. Moreover, to the extent

that the CFPB has acted within the scope of a valid congressional mandate, its rules have preempted inconsistent state law. *Cf., e.g.*, *New York v. Fed. Energy Regulatory Comm'n*, 535 U.S. 1, 17-18 (2002). Until this Court determines whether the CFPB has *any* permissible statutory mandate, both regulators and the regulated will remain uncertain regarding their scope of permissible action. Litigation will inevitably result.

At the same time, this is not a case where the Court will appreciably benefit from further development of the law in lower courts. As the Ninth Circuit correctly noted, the arguments involved in this constitutional debate have been "thoroughly canvassed" in hundreds of pages of published opinions. Pet. App. 2a; *see generally PHH*, 881 F.3d at 75-200; *Consumer Fin. Protection Bureau v. RD Legal Funding, LLC*, 332 F. Supp. 3d 729 (S.D.N.Y. 2018) (appeal pending); *Collins*, 896 F.3d at 640-93 (discussing FHFA) (en banc review pending). Even those courts that have sided with the CFPB have acknowledged significant concerns about its structure, but they have stated that they are bound by their (incorrect) understanding of this Court's prior precedent. *See* Pet. App. 6a ("In short, we view *Humphrey's Executor* and *Morrison* as controlling here. . . . The Supreme Court is of course free to revisit those precedents, but we are not."); *PHH Corp.*, 881 F.3d at 113 (Tatel, J., concurring) ("PHH is free to ask the Supreme Court to revisit *Humphrey's Executor* and *Morrison*, but that argument has no truck in a circuit court of appeals."). It is extremely unlikely that any further circuit court ruling will aid this Court's consideration of the issue.

This Court should grant review of this important constitutional issue now and hold that Congress may not insulate a principal officer with authority to set wide-ranging federal economic policies from presidential oversight.

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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