

October 10, 2019

The Honorable Nancy Pelosi, Speaker
U.S. Capitol H-232
Washington, D.C. 20515

The Honorable Kevin McCarthy, Minority Leader
U.S. Capitol H-204
Washington, D.C. 20515

The Honorable Steny Hoyer, Majority Leader
U.S. Capitol H-107
Washington, D.C. 20515

The Honorable Steve Scalise, Minority Whip
U.S. Capitol H-148
Washington, D.C. 20515

The Honorable James Clyburn, Majority Whip
U.S. Capitol H-329
Washington, D.C. 20515

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader Hoyer, Majority Whip Clyburn, and Minority Whip Scalise:

I write to you in your capacity as members of the Bipartisan Legal Advisory group regarding your October 4, 2019, motion before the Supreme Court in the case of *Seila Law v. Consumer Financial Protection Bureau* (CFPB).¹ CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets.

We share your concern for safeguarding the CFPB from executive and political interference, and suggest again that the appropriate and sensible remedy for the question at issue in the *Seila* case is for Congress to take action by passing legislation that would ensure the CFPB's independence and constitutionality by replacing the single director structure with a five-person, bipartisan commission, as originally intended by the House when it first passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.² In total, bipartisan legislation establishing a commission has passed the House Financial Services Committee six times and passed the House of Representatives four times with both Democrats and Republicans voting in favor.

As your brief explains, "where an agency is headed by a single individual, the lines of Executive accountability—and Presidential control—are even more direct than in a multi-member agency."³ The CFPB today under a single director has rulemaking, supervisory, and enforcement authority over a \$3 trillion financial services industry. In addition to supervisory authority over each depository institution with more than \$10 billion in assets, the CFPB has supervisory authority over all businesses responsible for the origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; private education loans; and short term liquidity products. In short, the director of the CFPB has more discretionary authority than all other financial depository regulators combined, and in your words: "unlike in multi-member

¹ Brief of Amicus Curiae United States House of Representatives in Support of the Judgement Below, *Seila Law v. Consumer Financial Protection Bureau*, 923 F.3d 680 (9th Cir. 2019), *petition for cert. filed* (U.S. June 28, 2019) (No. 17-56324).

² Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 4103 (2010).

³ Brief for U.S. House, *supra* note 1, at 9.

agencies, removal of a ‘single officer’ will transform the entire CFPB and the execution of the consumer protection laws it enforces” (emphasis added).⁴

The CFPB director is currently a single officer responsible for leading the CFPB and is the chief decisionmaker on rulemakings, enforcement and supervisory actions that affect millions of Americans’ everyday financial lives. Your brief underscores how a change in that position affects the entire CFPB and laws that affect all Americans. The potential of a court ruling that could install a removeable at-will director would bring increased confusion to financial services providers who have been asking that Congress inject stability and transparency into the Bureau. An at-will director, removable every four years, or sooner, would leave financial instructions with few assurances that the rules they are complying with today would remain in place. The financial services marketplace thrives in a stable regulatory environment. When regulatory stability is eroded by changing political dynamics, the consumer suffers from financial institutions’ inability to rely upon a consistent regulatory environment.

Replacing the sole director model with a bipartisan, Senate confirmed, five-person commission would depoliticize the CFPB while increasing stability, accountability and transparency for all consumers and industry stakeholders. A lack of certainty and long-term consistency in leadership at the Bureau adversely affects consumers, our economy, and the financial services industry. As we saw after the departure of Director Cordray, the CFPB’s current governance structure is subject to dramatic political shifts and strains with each change in presidential administration. Unpredictable political shifts make it difficult for the financial services industry to plan for the future, which ultimately stifles innovation, limits access to credit, and hurts consumers. As demonstrated by other government regulators, a bipartisan commission would bring more certainty and stability so banks can properly plan for the future and better serve consumers.

It is crucial that appropriate protections, checks and balances are in place given the scope and importance of the CFPB. It is also important to insulate the Bureau from political shifts with each new director that could reduce its ability to impartially ensure a fair and competitive marketplace. We share your urgent concern about the possibility of the Seila case resulting in a director removable at-will undermining the mission and operations of the CFPB, and thus encourage you to proactively reject that possibility by enacting legislation replacing the sole director model with a bipartisan commission.

Sincerely,



Richard Hunt
President and CEO
Consumer Bankers Association

Cc: The Honorable Maxine Waters, Chairwoman
House Committee on Financial Services

The Honorable Patrick McHenry, Ranking Member
House Committee on Financial Services

⁴ *Id.* at 9-10.