[ORAL ARGUMENT SCHEDULED FOR FEBRUARY 24, 2026]
No. 25-5091

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL TREASURY EMPLOYEES UNION, *et al.*,
Appellees,

v.

RUSSELL VOUGHT, in his official capacity as
Acting Director of the Consumer Financial Protection Bureau, *et al.*,
Appellants.

On Appeal from the United States District Court
for the District of Columbia

EN BANC BRIEF OF CURRENT AND FORMER MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE

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STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Pursuant to D.C. Circuit Rule 29(b), undersigned counsel for *amici curiae* represents that counsel for all parties have consented to the filing of this brief.[1]

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for *amici* certifies that a separate brief is necessary. *Amici* are current and former members of Congress familiar with the Consumer Financial Protection Bureau and the critical work that it does for the American people. Indeed, many *amici* participated in drafting and passing the Dodd-Frank Wall Street Reform and Consumer Protection Act that established the Bureau and so can offer a unique perspective on that law and its requirements.

As current and former Members of Congress, *amici* also have strong interests in the separation-of-powers issues at the core of this case. The Constitution, as *amici* well know, empowers Congress—not the executive—to determine the structure of the federal government. Since the Founding, Congress has created, restructured, and eliminated executive departments and agencies. And when the executive has sought to abolish or restructure an agency, it has asked Congress for the authority to do so,

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

recognizing that it cannot do so unilaterally. Because Congress created the Bureau and has the sole power to abolish it, *amici* have a unique interest in this case.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* state that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I. PARTIES AND *AMICI CURIAE*

Except for any *amici* who had not yet entered an appearance in this case as of the filing of Appellants' *en banc* brief, all parties, intervenors, and *amici* appearing in this Court are listed in Appellants' brief.

II. RULINGS UNDER REVIEW

Reference to the rulings under review appears in Appellants' *en banc* brief.

III. RELATED CASES

Reference to any related cases pending before this Court appears in Appellants' *en banc* brief.

Dated: February 9, 2026

/s/ Brianne J. Gorod
Brianne J. Gorod

Counsel for Amici Curiae

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GLOSSARY

CFPB	Consumer Financial Protection Bureau
FCC	Federal Communications Commission
GLO	General Land Office
HEW	Department of Health, Education, and Welfare
HHS	Department of Health and Human Services
ICC	Interstate Commerce Commission
NFIB	National Federation of Independent Business
NLRB	National Labor Relations Board
OSHA	Occupational Safety and Health Administration
PCAOB	Public Company Accounting Oversight Board

INTEREST OF *AMICI CURIAE*

Amici curiae are current and former members of Congress who are familiar with the Consumer Financial Protection Bureau (CFPB) and the critical work that it does for the American people. Indeed, many *amici* participated in the drafting and passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act that established the CFPB. Having studied the financial crisis of 2008, its causes, and its consequences for the American people, they understand the importance of having an agency with the centralized authority necessary to protect America's consumers. *Amici* thus have a strong interest in the continued existence of the CFPB and its ability to perform its statutorily mandated responsibilities.

As current and former Members of Congress, *amici* also have a strong interest in the separation-of-powers issues at the heart of this case. The Constitution empowers Congress—not the President—to determine the structure of the federal government. Since the Founding, Congress has created, restructured, and eliminated executive branch offices, departments, and agencies. Conversely, in the past, when the executive has sought to eliminate or restructure a department or agency, it has always asked Congress for the authority to do so. Because Congress created the CFPB—and Congress alone has the power to abolish it—*amici* have a strong interest in this case.

A full list of *amici* appears in the Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

When Congress creates an agency, that agency is required by law to exist. Only Congress—not the President—has "plenary control over the . . . existence of executive offices." *Free Ent. Fund v. PCAOB*, 561 U.S. 477, 500 (2010). Thus, every action to establish, restructure, or eliminate a federal agency must stem from an act of Congress.

Congress exercised this power when it created the CFPB. In 2010, Congress passed the Dodd-Frank Act in response to the 2008 recession, a crisis that "shattered" lives, "shuttered" businesses, "evaporated" savings, and caused millions of families to lose their homes. S. Rep. No. 111-176, at 39 (2010). After extensively studying the crisis, Congress determined that the fragmented manner in which authority was apportioned among federal agencies delayed the government's response to the mortgage abuses that precipitated the crisis.

To solve this problem, Congress established the CFPB, an agency whose sole mission is protecting Americans from harmful practices of the financial services industry. Congress consolidated federal consumer-protection responsibilities into a single agency, transferring "consumer financial protection functions" from seven existing agencies to the CFPB. 12 U.S.C. § 5581; 76 Fed. Reg. 43569, 43569 (July 21, 2011). Since its creation, the CFPB has successfully protected consumers from unfair and predatory practices in the financial services industry.

Yet Appellants now seek to effectively shutter the Bureau. Wherever the line may be between the sorts of routine changes in policies and priorities that occur from one administration to another and the evisceration of an agency's ability to fulfill its statutory mandates, Appellants have crossed it: "firing all probationary and term-limited employees without cause, cutting off funding, terminating contracts, closing all of the offices, and implementing a reduction in force . . . that would cover everyone else." JA634. Appellants' actions infringe on Congress's legislative authority and in so doing violate the Constitution's separation of powers, the "structural protections against abuse of power [that are] critical to preserving liberty." *Bowsher v. Synar*, 478 U.S. 714, 730 (1986). As longstanding historical practice confirms, the power to abolish or fundamentally restructure the CFPB through a drastic downsizing of the agency lies with Congress through the lawmaking process prescribed by Article I.

The Constitution vests "[a]ll legislative Powers" in Congress, U.S. Const. art. I, § 1, and, exercising those powers, Congress has created, restructured, and eliminated executive departments and agencies since the Founding. Among Congress's first statutes were those creating the Departments of Treasury, War, and Foreign Affairs. As the nation grew and faced new challenges, Congress established various departments, agencies, and offices to address them. And in response to changing conditions, Congress has at times reorganized, downsized, and eliminated

certain executive agencies. Critically, all of these actions to restructure the executive branch have been accomplished through legislation passed by Congress and signed into law by the President.

Congress's exclusive power to reorganize the executive branch is underscored by the fact that when Presidents have reorganized the executive branch, they have always done so pursuant to congressional delegations of that power—delegations made through legislation and subject to appropriate restraints. Throughout the twentieth century, Congress passed statutes called Reorganization Acts. *See, e.g.*, 5 U.S.C. §§ 901-12. These Acts, which always carried expiration dates, authorized the President to make substantial changes to the structure of the executive branch that could not be accomplished through ordinary discretionary actions like modifying internal operations, managing federal employees, and determining policy priorities. These reorganizations ranged from creating and abolishing certain agencies to consolidating agency statutory functions. *See id.* § 902(2). The history of these Reorganization Acts demonstrates that when Congress wants to give the President reorganization power, it knows how to do so. But absent such express authorization, that power remains solely with Congress.

The creation of the CFPB following the 2008 financial crisis is a quintessential example of Congress exercising its power over executive offices to provide for the welfare of the American people. Without the CFPB, there would be no federal

regulator charged with ensuring that banks comply with the rules protecting consumers from deceptive practices, as Federal Reserve Chair Jerome Powell noted last year. *See Fed's Powell: No Agency Other than CFPB Tasked with Consumer Protection Enforcement*, Reuters (Feb. 11, 2025), www.reuters.com/world/us/feds-powell-no-agency-other-than-cfpb-tasked-with-consumer-protection-2025-02-11. And state regulators cannot fill this gap on their own, particularly given the CFPB's "exclusive authority" to "supervis[e]" our nation's largest banks, savings associations, and credit unions. 12 U.S.C. § 5515(b)(1). Abolishing the CFPB—or reducing it in size to the point that it is incapable of fulfilling its statutorily mandated functions—would thus not only harm American consumers but also "trigger a major regulatory disruption and . . . leave appreciable damage to Congress's work in the consumer-finance arena." *Seila L. LLC v. CFPB*, 591 U.S. 197, 237 (2020).

Appellants cite no constitutional or statutory power that authorizes their efforts to eliminate the Bureau in contravention of the law Congress passed establishing it. This Court should affirm the preliminary injunction.

ARGUMENT

I. Congress Has the Sole Authority to Create, Restructure, and Abolish Federal Departments and Agencies.

The Constitution provides that "[a]ll legislative Powers," U.S. Const. art. I, § 1, including "plenary control over the . . . existence of executive offices," *Free Ent. Fund*, 561 U.S. at 500, "shall be vested in a Congress of the United States,"

U.S. Const. art. I, § 1. Pursuant to this prerogative, Congress has been creating, restructuring, and eliminating executive offices, departments, and agencies since the Founding. And because power over the basic structure of the federal government belongs to Congress, the executive branch can neither establish nor abolish an executive agency unilaterally.

A. The Constitution grants Congress the exclusive power to "carr[y] into Execution" not only the "foregoing Powers" under Article I, Section 8 but also "all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8, cl. 18. By referencing the Vesting Clauses of Article II and Article III, this affirmative textual grant of congressional power "undoubtedly" authorizes Congress to pass legislation creating executive departments, agencies, and offices. *Buckley v. Valeo*, 424 U.S. 1, 138 (1976); *see* U.S. Const. art. II, § 2, cl. 2 (granting Congress the authority to establish offices "by Law"); *Myers v. United States*, 272 U.S. 52, 129 (1926) ("To Congress under its legislative power is given the establishment of offices [and] the determination of their functions and jurisdiction."). Once the President signs such legislation, it becomes law. *See* U.S. Const. art. I, § 7, cl. 2. Agencies are thus

"creatures of statute," *NFIB v. OSHA*, 595 U.S. 109, 117 (2022) (per curiam), and Congress has plenary authority over the structure of the federal government.

With that plenary authority comes substantial legislative flexibility. Indeed, the Framers rejected a plan to delineate the specific departments of the executive branch and their duties in the Constitution, choosing instead to give Congress the power to create those departments through the legislative process. *See* 2 *Records of the Federal Convention of 1787*, at 335-36 (Max Farrand ed., 1911). The First Congress promptly exercised that power, recognizing that executive departments would be essential to a functional government. Some of the first statutes Congress passed established new executive departments, including the Department of Treasury, Act of Sept. 2, 1789, ch. 12, § 1, 1 Stat. 65, 65; the Department of War, Act of Aug. 7, 1789, ch. 7, § 1, 1 Stat. 49, 49-50; and the Department of Foreign Affairs, Act of July 27, 1789, ch. 4, § 1, 1 Stat. 28, 28-29.

To ensure that these departments functioned as envisioned, the First Congress gave some of them specifically delineated responsibilities, while instructing others simply to execute the duties the President assigned them. *Compare* Act of Sept. 2, 1789, § 2, 1 Stat. at 65-66 (requiring the Secretary of the Treasury to "digest and prepare plans for the improvement and management of the revenue . . . ; to prepare and report estimates of the public revenue, and the public expenditures . . . and generally to perform all such services relative to . . . finances"), *with* Act of July 27,

1789, § 1, 1 Stat. at 29 (providing that the "Secretary for the Department of Foreign Affairs . . . shall perform and execute such duties as shall from time to time be enjoined on or intrusted to him by the President of the United States"), *and* Act of Aug. 7, 1789, § 1, 1 Stat. at 50 (authorizing the Secretary of War to "perform and execute such duties as shall from time to time be enjoined on, or entrusted to him by the President"). And whatever the scope of their statutorily designated responsibilities, Congress ensured that these departments could hire the staff they needed to accomplish their work. *See* Act of Sept. 11, 1789, ch. 13, § 2, 1 Stat. 67, 68. Over the next several decades, Congress created additional executive departments to meet the fledgling nation's evolving needs. *See, e.g.*, Act of Mar. 3, 1849, ch. 108, § 1, 9 Stat. 395, 395 (Department of the Interior); Act of June 22, 1870, ch. 150, § 1, 16 Stat. 162, 162 (Department of Justice).

Congress's power over the structure of the federal government extends beyond the establishment of executive departments to the creation of federal agencies to address the nation's most pressing problems. In 1887, Congress created the first regulatory agency: the Interstate Commerce Commission (ICC). *See* Act to Regulate Commerce, ch. 104, § 11, 24 Stat. 379, 383 (1887). Railroads were "central[] . . . to the national economy in the post-Civil War period," Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 Stan. L. Rev. 1189, 1197 (1986), but with this booming industry came considerable challenges, including

"[r]uinous rate wars," "price fixing and pooling agreements," and "onerous" working conditions, Paul Stephen Dempsey, *The Rise and Fall of the Interstate Commerce Commission: The Tortuous Path from Regulation to Deregulation of America's Infrastructure*, 95 Marq. L. Rev. 1151, 1155-56, 1159 (2012). Because states were unable to address these problems themselves, a national solution was needed. *See* Rabin, *supra*, at 1206. Congress thus created the ICC to "regulate the rates and practices of the railroads," Dempsey, *supra*, at 1152, which included the power to receive and investigate complaints about rail carriers and to issue orders if it found rates to be unjust or unreasonable, *see* Henry B. Hogue, Cong. Rsch. Serv., R47897, *Abolishing a Federal Agency: The Interstate Commerce Commission* 4 (2024) [hereinafter Hogue, *ICC*].

In the years since, Congress has continued to create federal departments and agencies, including the Department of Education, 20 U.S.C. § 3411; the Department of Homeland Security, 6 U.S.C. § 111(a); the Food and Drug Administration, 21 U.S.C. § 393(a); the Social Security Administration, 42 U.S.C. § 901(a); and the National Aeronautics and Space Administration, 51 U.S.C. § 20111(a). The creation of each of these departments and agencies reflected Congress's judgment about the proper means to respond to a unique moment in history, provide a public service, or effectuate a policy. Each agency's powers are prescribed by "the authority that Congress has provided" through statute. *NFIB*, 595 U.S. at 665. That is, "an agency

literally has no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). But once Congress mandates certain functions for an agency, those duties are nondiscretionary.

B. Congress also has the power to restructure and to abolish federal agencies, including renaming them, subsuming one federal agency or office within another, changing an agency's functions, and eliminating an agency altogether. Congress has exercised this power since its earliest days. *See, e.g.*, Act of Sept. 15, 1789, ch. 14, § 1, 1 Stat. 68, 68 (renaming the "Department of Foreign Affairs" the "Department of State").

In the early nineteenth century, Congress began creating new offices that were housed within executive departments and reassigning and reorganizing their functions and supervision. *See, e.g.*, Act of Apr. 25, 1812, ch. 68, § 1, 2 Stat. 716, 716 (establishing the General Land Office (GLO) within the Treasury Department); Act of July 4, 1836, ch. 352, §§ 1-5, 5 Stat. 107, 107-11 ("reorganiz[ing]" the GLO); Act of July 4, 1836, ch. 357, § 1, 5 Stat. 117, 117-18 (establishing the Patent Office within the Department of State). Later, when Congress created the Department of the Interior, it transferred the GLO and the Patent Office from their original departments to the new Department and reassigned certain powers previously

exercised by the Secretaries of Treasury, War, and State to the new Secretary of the Interior. *See* Act of Mar. 2, 1849, ch. 108, §§ 2-7, 9 Stat. 395, 395-96.

Even when past Presidents have called for agencies to be abolished, they have always recognized that Congress retains the ultimate power to eliminate agencies and transfer their functions. Consider again the ICC. Beginning in the 1970s, as the importance of railways waned, railroads became less profitable and "regulation . . . took the blame." Dempsey, *supra*, at 1172. In a series of statutes, Congress began limiting the ICC's powers. *See id.* at 1173. Notably, President Reagan pushed to abolish the ICC and proposed legislation to do so, but Congress did not pass the legislation. Hogue, *ICC*, *supra*, at 18. The ICC therefore continued to operate until 1995, when Congress passed, and President Clinton signed into law, the ICC Termination Act, Pub. L. No. 104-88, 109 Stat. 903 (1995), which transferred the ICC's remaining functions to a newly created Surface Transportation Board and the Department of Transportation, Hogue, *ICC*, *supra*, at 22.

The creation of today's Postal Service marks another example of presidential recognition that the proper means to seek reorganization of the executive branch is by recommending legislation to Congress. In 1970, postal-service reform was urgently needed because the nation's "vast sprawling postal complex [was] heavily overburdened and in deep trouble" and struggled to "[keep] pace with the advances of the national economy." H.R. Rep. No. 91-1104, at 3652-53 (1970). After

extensive negotiations about how to change the postal system, "President Nixon transmitted [his] proposed legislation to" Congress, *id.* at 3652, and the reorganization was implemented "[w]hen, in 1970, Congress enacted the Postal Reorganization Act [Pub. L. 91-375, 84 Stat. 719]," *Nat'l Ass'n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 813 (1983). "The Act abolished the Post Office Department, which since 1789 had administered the Nation's mails," and, "[i]n its place, . . . established the United States Postal Service as an independent agency." *Id.* (citations omitted).

Congress has reorganized agencies through more recent legislation as well, often to increase efficiency. In 1998, Congress passed the Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105-277, div. G, 112 Stat. 2681-761, to "consolidate and reinvigorate" the nation's foreign affairs functions "by abolishing the United States Arms Control and Disarmament Agency, the United States Information Agency, and the United States International Development Cooperation Agency, and transferring the functions of these agencies to the Department of State." *Id.* § 1102(2), 112 Stat. at 2681-766. When Congress created the Department of Homeland Security in 2002 in response to the September 11th attacks, it abolished the Immigration and Naturalization Service and transferred its functions to the new Department. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 471, 116 Stat. 2135, 2205 (codified at 6 U.S.C. § 291). Other examples abound. *See, e.g.*,

Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103-354, tit. II, §§ 202, 211, 108 Stat. 3178, 3209; Energy Reorganization Act of 1974, Pub. L. No. 93-438, §§ 101, 104(a), 88 Stat. 1233.

C. This "[l]ong settled and established practice" of Congress using the lawmaking process to reorganize or eliminate agencies—and receiving consistent deference from the President in doing so—underscores that the authority to create, restructure, and abolish federal agencies lies with Congress as the nation's lawmaking body. *NLRB v. Noel Canning*, 573 U.S. 513, 524 (2014) (noting that "long settled and established practice" is entitled to "'great weight in a proper interpretation of constitutional provisions' regulating the relationship between Congress and the President" (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929))). That legislative process must "be exercised in accord with [the] single, finely wrought and exhaustively considered, procedure" of bicameralism and presentment that the Framers selected. *INS v. Chadha*, 462 U.S. 919, 951 (1983). Pursuant to that process, the President can recommend that Congress create an executive agency, *see* U.S. Const. art. II, § 3, and he can veto a congressional effort to create one, *see id.* art. I, § 7, cl. 2, but he has no power to create or destroy an agency on his own, for the Constitution simply "does not confer upon him any power to enact laws or to suspend or repeal such as the Congress enacts." *United States v. Midwest Oil Co.*, 236 U.S. 459, 505 (1915); *see Youngstown Sheet & Tube Co. v.*

Sawyer, 343 U.S. 579, 655 (1952) (Jackson, J., concurring) ("The Executive, except for recommendation and veto, has no legislative power."). That is why when past Presidents have reorganized or eliminated agencies through executive action, they have always done so pursuant to statutory delegations of authority, as the next Section explains.

II. As Historical Practice Demonstrates, When Congress Wants to Give the President Reorganization Authority, It Does So Through Legislation.

From 1932 to 1984, Congress gave the President reorganization authority by passing and renewing laws known as the Reorganization Acts. This history demonstrates that when Congress decides to delegate its reorganization power to the President, it knows how to do so while simultaneously guarding against executive branch overreach.

Broadly speaking, the Reorganization Acts authorized presidents to reorganize executive agencies by submitting a Reorganization Plan to Congress. *See* Henry B. Hogue, Cong. Rsch. Serv., R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress* 1 (2012) [hereinafter Hogue, *Reorganization*]. If Congress consented to the plan, through either its inaction or express approval, then the plan became law. *Id.* at 1-2; *cf.* Henry B. Hogue, Cong. Rsch. Serv., R48763, *Presidential Reorganization Authority: Potential Approaches for Congressional Consideration* 4 (2025) (noting that the

Acts' statutory design evolved such that "congressional disapproval of plans [submitted by the President] was made easier over time").

Some of today's major federal departments and agencies were created by Reorganization Plans. The Department of Health, Education, and Welfare (HEW)—predecessor to the Department of Health and Human Services (HHS) and Department of Education—was established by President Eisenhower through a Reorganization Plan. *See* Reorganization Plan No. 1 of 1953, *in* 67 Stat. 631; 20 U.S.C. § 3441 (transferring the educational functions of the Secretary of Health, Education, and Welfare to the new Secretary of Education); *id.* § 3508 (changing HEW's name to HHS). The Environmental Protection Agency and the Federal Emergency Management Agency were similarly created by Reorganization Plans. *See* Reorganization Plan No. 3 of 1970, *in* 84 Stat. 2086 (Environmental Protection Agency); Reorganization Plan No. 3 of 1978, *in* 92 Stat. 3788 (Federal Emergency Management Agency).

Congress passed the first iteration of expressly delegated reorganization authority in 1932 at the urging of President Hoover. In a statement to Congress on "[t]he need for reorganization," President Hoover emphasized that the "gradual growth" of the executive branch had led to "overlapping and waste," such that "the number of agencies can be reduced." 75 Cong. Rec. 4181 (1932). He recommended that the "[a]uthority under proper safeguards . . . to effect these transfers and

consolidations" should "be lodged in the President" via executive orders subject to Congress's review. *Id.* at 4182; *see* Statement about Congressional Action on Reorganization of the Executive Branch (Feb. 24, 1932), *in Public Papers of the Presidents of the United States: Herbert Hoover* 74, 74 (U.S. Gov't Printing Off., Wash. 1977) ("It is a most unpleasant task to abolish boards and bureaus and to consolidate others . . . . [Reorganization] should be lodged with the Executive with the right of Congress to review the actions taken.").

Congress subsequently passed legislation to permit the President to transfer the functions of one agency to another and to consolidate the functions of agencies or departments, but it did not allow the President to abolish agencies or departments. *See* An Act of June 30, 1932, Pub. L. No. 72-212, §§ 403, 406, 47 Stat. 382, 413-15. Hoover lamented this limit on his authority. *See* Statement About Signing the "Economy Act" (June 30, 1932), *in Public Papers of the Presidents of the United States: Herbert Hoover*, *supra*, at 283 ("[T]he bill is so framed as to render abolition or consolidation of the most consequential commissions and bureaus impossible of consummation.").

Hoover thus continued to push for the expansion of reorganization authority. *See* Hogue, *Reorganization*, *supra*, at 7-8. In 1933, with the Act set to expire in two years, Congress acquiesced in part, amending it to allow the President to abolish an executive agency (defined as "any commission, independent establishment, board,

bureau, division, service or office in the executive branch of the Government"), but still prohibiting presidential abolition of an executive department. *See* Act of Mar. 3, 1933, Pub. L. No. 72-428, tit. IV, §§ 402, 403, 409, 47 Stat. 1489, 1517-19. Indeed, Congress explained that it was delegating such power to the President on a temporary basis due only to the "serious emergency [that] exists by reason of the general economic depression" and a corresponding "imperative to reduce drastically governmental expenditures." *Id.* § 401, 47 Stat. at 1517. President Franklin Roosevelt later used this delegated power to consolidate certain agency functions into newly created agencies and to abolish other agencies. *See* Hogue, *Reorganization*, *supra*, at 9 (citing A.J. Wann, *The President as Chief Administrator: A Study of Franklin D. Roosevelt* 25 (1968)).

In 1937, after the 1933 Act expired, President Roosevelt requested more robust reorganization authority from Congress. *Id.* at 10. One of the proposed bills would have allowed the President to reorganize the executive branch without any involvement from Congress and without an expiration date. *See id.* This proposal sparked sharp rebuke from members of Congress concerned about giving away their constitutional power over the structure of the executive branch in such a sweeping fashion. *See, e.g.*, 83 Cong. Rec. 4190 (1938) (Sen. Brown) ("[L]eave final authority for changes in the Congress, where it belongs."); *id.* at 4195 (Sen. Borah) ("If the President could abolish or consolidate these agencies without authority of Congress

you may rest assured he would not be here asking for authority. He cannot act [unless] we give him power which belongs to Congress."); *id.* at 4196 (Sen. Johnson) ("The powers which are proposed to be given by the bill . . . are yet the greatest legislative powers which exist in the Congress of the United States.").

Congress then passed the Reorganization Act of 1939, Pub. L. No. 76-19, 53 Stat. 561, a narrower version of the bills considered the year before—indeed narrower still than the reorganization authority Congress had granted in 1933. The purpose of the Act was, in part, to "increase efficiency of the operations of the Government" and "to abolish such agencies as may not be necessary." *Id.* § 1(a)(2), (4), 53 Stat. at 561. The Act permitted the President to reorganize federal agencies and departments through the submission of a Reorganization Plan (rather than an executive order) to Congress, which would become law absent a concurrent resolution rejecting the Plan. *Id.* §§ 4-5, 57 Stat. at 562-63. This time, however, Congress prohibited the President from creating or abolishing executive departments or abolishing independent agencies in whole or in part. *See id.* § 3, 57 Stat. at 561-62. This Act expired in 1941. *Id.* § 12, 57 Stat. at 564.

Over the following decades, Congress passed additional Reorganization Acts, each with a sunset date, and at times modified the scope of the delegation of its reorganization power. *See* Hogue, *Reorganization*, *supra*, at 22; *see, e.g.*, Reorganization Act of 1945, Pub. L. No. 79-263, 59 Stat. 613 (prohibiting the

President from limiting the independence of an independent federal agency); Reorganization Act of 1949, Pub. L. No. 81-109, 63 Stat. 203 (permitting the President to create departments); Reorganization Act of 1977, Pub. L. No. 95-17, 91 Stat. 29 (prohibiting the President from creating or abolishing departments or abolishing an independent agency).

Congressionally authorized presidential reorganization power came to an end in the 1980s. President Reagan requested such authority in 1981, but Congress did not renew the Act until 1984. *See* Reorganization Act Amendments of 1984, Pub. L. No. 98-614, 98 Stat. 3192 (codified at 5 U.S.C. §§ 901-12).[2] The 1984 Act expired on December 31, 1984, *see* 5 U.S.C. § 905(b), and Congress has not delegated any reorganization authority to the executive branch since then, despite requests from both President George W. Bush and President Obama to do so, *see* Hogue, *Reorganization*, *supra*, at 31-32, 34. President Trump also sought to reorganize the executive branch during his first term, although his administration conceded that any "significant changes will require legislative action." Executive Office of the President, *Delivering Government Solutions in the 21st Century* 4 (2018); *see* Exec. Order No. 13,781, 82 Fed. Reg. 13959 (Mar. 13, 2017) (requiring

[2] In light of the Supreme Court's then-recent decision holding the legislative veto unconstitutional, *see Chadha*, 462 U.S. at 959, the 1984 Act required a joint resolution by Congress to approve the plans, *see* 5 U.S.C. § 906(a). Congress also passed a law to ratify reorganization plans that had become law through the previous procedure. Act of Oct. 19, 1984, Pub. L. 98-532, 98 Stat. 2705.

the Office of Management and Budget to create a report with reorganization recommendations).

III. Congress Created the CFPB to Combat the Abuses that Caused the Devastating 2008 Financial Crisis and the President Lacks the Power to Unilaterally Abolish It.

In response to the worst financial crisis since the Great Depression, Congress established the CFPB to "ensur[e] that consumer debt products are safe and transparent." *Seila L.*, 591 U.S. at 202-03. Specifically, Congress "charged the Bureau with enforcing consumer financial protection laws to ensure '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.'" *CFPB v. Cmty. Fin. Servs. Ass'n*, 601 U.S. 416, 421 (2024) (quoting 12 U.S.C. § 5511(a)). While Appellants have the authority to shift the Bureau's priorities, they do not have the authority to prevent it from fulfilling its statutory obligations as required by the Dodd-Frank Act. Appellants' actions are irreconcilable with Congress's mandate that the CFPB must exist and perform certain critical functions to protect American consumers.

A. In 2008, the nation was plunged into a calamitous financial crisis that destroyed livelihoods and pushed the country to the brink of economic ruin. In response, Congress held more than fifty hearings to evaluate the causes of that financial crisis and to "assess the types of reforms needed." S. Rep. No. 111-176, at

44. Based on that investigation, Congress concluded that the crisis was largely caused by "a long-standing failure of our regulatory structure to keep pace with the changing financial system," particularly "the proliferation of poorly underwritten mortgages with abusive terms." *Id.* at 40, 11.

The source of this "spectacular failure . . . to protect average American homeowners," *id.* at 15, was the fact that consumer financial protection was "governed by various agencies with different jurisdictions and regulatory approaches," generating a "disparate regulatory system" that did not "aggressive[ly] enforce[] against abusive and predatory loan products," H.R. Rep. No. 111-367, pt. 1, at 91 (2009). This fragmented structure "resulted in finger pointing among regulators and inaction when problems with consumer products and services arose." S. Rep. No. 111-176, at 168; *see Perspectives on the Consumer Financial Protection Agency: Hearing Before the H. Fin. Servs. Comm.*, 111th Cong. 2 (2009) (statement of Chairman Frank) ("I think it is fair to say that no calluses will be found on the hands of those in the Federal bank regulatory agencies who had consumer responsibilities."). Thus, as *amici* came to understand, a critical problem was how the executive branch's authority to prevent consumer financial abuses was organized and exercised. *See* Susan Block-Lieb, *Accountability and the Bureau of Consumer Financial Protection*, 7 Brook. J. Corp. Fin. & Com. L. 25, 33 (2012).

To remedy these failures and establish a regulatory framework that could "respond to the challenges of a 21st century marketplace," Congress passed the Dodd-Frank Act. S. Rep. No. 111-176, at 42. Central to the Act was the creation of the CFPB, an agency with the sole responsibility to protect consumers from harmful practices of the financial services industry. By establishing the CFPB and centralizing consumer-protection regulation in the Bureau, Congress aimed to prevent "a recurrence of the same problems" that fostered the financial crisis. *Id.*

With the CFPB, Congress sought to "end[] the fragmentation of the current system" and to leave "inter-agency finger pointing in the past." *Id.* at 11, 168. Consistent with its long history of reorganizing agency functions, Congress transferred the "consumer financial protection functions" of seven existing federal agencies to the CFPB, *see* 12 U.S.C. § 5581; 76 Fed. Reg. 43569, 43569 (2011), and specified how employees responsible for those functions at other agencies would be transferred to the CFPB, *see* 12 U.S.C. § 5584.

Congress also wanted this new consolidated agency to be readily equipped and available to respond to American consumers' concerns. Indeed, a major cause of the financial crisis was the failure of existing regulators to use their authority "in a timely way" to address emerging consumer abuses. S. Rep. No. 111-176, at 17; *see, e.g.*, *id.* at 16-23. This lack of responsiveness "underscor[ed]" to legislators "the

importance of creating a dedicated consumer entity" able to "respond quickly and effectively to these new threats to consumers." *Id.* at 18.

To effectuate that responsiveness, Congress required the Bureau to operate certain offices dedicated to assisting consumers. For example, the CFPB must have a "unit whose functions shall include . . . facilitat[ing] the centralized collection of, monitoring of, and response to consumer complaints." 12 U.S.C. § 5493(b)(3)(A). The CFPB must also "designate a Private Education Loan Ombudsman . . . to provide timely assistance to borrowers of private education loans." *Id.* § 5535(a). And Congress required the CFPB to maintain several offices and units charged with researching and providing guidance on consumer-protection issues, *see id.* § 5493(b)(2), (d)(3)(A) (Community Affairs Office); "educat[ing] and empower[ing] consumers," *id.* § 5493(d)(1) (Office of Financial Education); and assisting specific communities, *see, e.g.*, *id.* § 5493(e) (Office of Service Member Affairs); *id.* § 5493(g)(1) (Office of Financial Protection for Older Americans).

Finally, Congress empowered the CFPB with "rulemaking, enforcement, and supervisory authority." JA640. The CFPB can, among other functions, issue regulations "identifying as unlawful unfair, deceptive, or abusive acts or practices" connected to "consumer financial product[s] or service[s]," 12 U.S.C. § 5531(b); investigate and take enforcement actions against covered entities for violating

consumer-protection laws, *see id.* §§ 5562-63; and supervise financial institutions, *see id.* §§ 5514-15.

In the more than fifteen years since its establishment, the CFPB has been wildly successful. As the district court explained, "[t]o date, the CFPB has returned more than $21 billion improperly taken from at least 205 million consumers, in addition to at least $5 billion in civil penalties made available to compensate consumers in cases where the business that took their money is insolvent." JA637.

The CFPB has also been remarkably productive and efficient. In fiscal year 2024, for example, the CFPB successfully resolved 100% of its public enforcement actions, responded to 99% of all consumer complaints within fifteen days, and published thirty-two research reports on various topics. *See* CFPB, *Financial Report of the Consumer Financial Protection Bureau: Fiscal Year 2024*, at 12, 14, 16 (Nov. 14, 2024).

The CFPB has also enforced vital consumer-protection laws against major banks to the distinct benefit of American consumers. For example, Bank of America paid $30 million in civil penalties for, in part, "appl[ying] for and open[ing] credit cards for consumers without their consent." Bank of America, N.A., CFPB No. 2023-CFPB-0007 (July 11, 2023). And T.D. Bank paid $97 million in restitution plus $25 million in civil penalties for "failing to obtain consumers' affirmative consent to enroll in [their] overdraft-protection service and subsequently charging

those consumers overdraft fees." T.D. Bank, N.A., BCFP No. 2020-BCFP-0007 (Aug. 20, 2020).

The CFPB's supervision of nonbanks has also led to significant enforcement actions. For example, Equifax agreed to pay $700 million in monetary relief and penalties due to unfair and deceptive practices arising from a data breach "that impacted approximately 147 million consumers." CFPB, *Equifax, Inc.* (July 22, 2019), https://perma.cc/FSP3-5839. In addition, after "years of failures and lawbreaking" by Navient, the Bureau banned the company from federal-loan servicing and secured $20 million in penalties plus $100 million in redress to borrowers who were affected. CFPB, *CFPB Bans Navient from Federal Student Loan Servicing and Orders the Company to Pay $120 Million for Wide-Ranging Student Lending Failures* (Sept. 12, 2024), https://perma.cc/G2ES-PPEL.

In short, Congress created the CFPB to protect consumers from unfair practices and prevent the kind of fraudulent activities in the financial services industry that led to the 2008 crisis. And that is exactly what the Bureau has done.

B. Appellants' lawless attempt to reduce the Bureau to a hollow shell—incapable as a practical matter of fulfilling its statutory mandates—is flatly inconsistent with Congress's express requirement that the Bureau exist. *See* 12 U.S.C. § 5491(a). Like all statutes, the Dodd-Frank Act was enacted through the constitutionally prescribed procedure of bicameralism and presentment. And

Congress has not repealed the statutory provisions establishing the CFPB and expressly directing it to fulfill specific statutory mandates.

Appellants' efforts are therefore "incompatible with the expressed or implied will of Congress," such that their executive "power is at its lowest ebb." *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring). Without an act of Congress either abolishing the CFPB or authorizing the President to do so, Appellants lack any constitutional power to shutter the Bureau. To hold otherwise would be to "assert[] a principle, which if carried out in its results to all cases falling within it, would be clothing the President with a power to control the legislation of [C]ongress." *Kendall v. United States ex rel. Stokes*, 37 U.S. 524, 525 (1838); *see Youngstown*, 343 U.S. at 587 (majority opinion) ("In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.").

The Administration's actions, if allowed to stand, would not just be unconstitutional. They would also be disastrous. As the Supreme Court has explained, eliminating the CFPB wholesale would "trigger a major regulatory disruption and would leave appreciable damage to Congress's work in the consumer-finance arena." *Seila L.*, 591 U.S. at 237. The CFPB currently exercises many functions that no other federal agency has the authority to exercise and, even where other agencies could, in theory, assume some of these responsibilities, they "do not

have the staff or appropriations to absorb the CFPB's 1,500-employee, 500-million-dollar operations," as the Supreme Court has noted. *Id.* Thus, critical functions that Congress established the CFPB to carry out will simply not be exercised if Appellants are allowed to accomplish their stated goal of shuttering the Bureau.

Without the CFPB, for example, consumers would have nowhere to turn for timely assistance from the federal government for help confronting unfair practices in the financial services industry. *See* 12 U.S.C. § 5493(b)(3)(A) (mandating the creation of a consumer complaint unit to give such assistance). Without the CFPB, consumers would not have access to the vital information published by the Bureau on consumer financial products and services. *See, e.g.*, 15 U.S.C. § 1646(a), (b) (requiring such reports). And without the CFPB, banks' and nonbanks' legal violations would go uninvestigated and federal consumer-protection laws would go underenforced, if they were enforced at all. *See* 12 U.S.C. §§ 5561-67 (providing for investigations and enforcement). Congress established the CFPB to avoid precisely those results.

* * *

Congress created the CFPB 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). Because the power to abolish executive branch agencies belongs to

Congress, Appellants cannot unilaterally shutter the CFPB nor render it incapable of fulfilling its statutory obligations. Allowing them to do so would not only irreparably harm America's consumers and the national economy but also wreak havoc on our constitutional separation of powers.

CONCLUSION

For the foregoing reasons, this Court should affirm the preliminary injunction.

Respectfully submitted,

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Dated: February 9, 2026

APPENDIX

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Sen. Charles E. Schumer

Sen. Richard J. Durbin

Sen. Amy Klobuchar

Sen. Cory Booker

Sen. Mark Warner

Sen. Bernard Sanders

Sen. Tammy Baldwin

Sen. Catherine Cortez Masto

Sen. Brian Schatz

Sen. Christopher Murphy

Sen. Angela Alsobrooks

Sen. Michael F. Bennet

Sen. Richard Blumenthal

Sen. Lisa Blunt Rochester

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 6,355 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 9th day of February, 2026.

/s/ Brianne J. Gorod
Brianne J. Gorod

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2026, I electronically filed the foregoing document using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: February 9, 2026

/s/ Brianne J. Gorod
Brianne J. Gorod