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Richard Cordray testifies on Capitol Hill , June 2014. (Reuters photo: Jonathan Ernst)

NATIONAL REVIEW

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To save the Consumer Financial Protection Bureau, its director must resign.

By Ronald L. Rubin — March 15, 2017

Hardly a day has passed since the 2016 election without several “Save the Consumer Financial Protection Bureau” editorials. They are irrelevant. Only the agency’s director, Richard Cordray, can save the CFPB — by resigning.

The op-eds all defend what the CFPB was supposed to be rather than what it became. To sell the 2010 Dodd-Frank Act that created the bureau, then-professor Elizabeth Warren and other Democrats promised a professional law-enforcement agency whose mission was to prevent financial-services companies from defrauding consumers through deceptive advertising and indecipherable contracts. A unique organizational structure — an agency funded through the Federal Reserve rather than congressionally appropriated taxpayer dollars, led by a president-appointed single director removable only for cause during a five-year term — was supposed to make the bureau independent from political influences.

The promised CFPB never existed. Instead, America got an omnipotent liberal-advocacy organization devoid of Republican participation and immune from legislative oversight — a government regulator that paid tens of millions of dollars to the lead advertising agency for Barack Obama’s 2008 and 2012 presidential campaigns. The real CFPB — the one monopolized by Democrats and independent only from Republicans — cannot and should not be rescued.

Supporters often cite the huge fines the CFPB has secured as evidence that it is protecting consumers. But such fines were inevitable once the Dodd-Frank Act empowered the bureau to impose almost any monetary penalty on any financial-services company, and regardless of their size, penalties must be fair to be effective. Once defenseless businesses learned that treating consumers honestly and maintaining good compliance programs would not save them from politically motivated CFPB enforcement actions, the fines lost most of their power to incentivize good behavior.

A new poll explains why claims that Republicans oppose a popular fictional agency persist after six years. About four in five Americans approve of the bureau’s official anti-fraud mission, while the same proportion has never heard of the CFPB. It is even less known that the bureau's most powerful division is External Affairs, the media spin doctors who are rarely so influential outside of political entities. I observed this perverse hierarchy while working at the CFPB in 2011 and 2012, but I was still shocked recently when a senior bureau official told me that External Affairs often vetoes rulemaking initiatives because they lack sufficient publicity potential.

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The bureau might have been politically independent under a director such as Mary Jo White, the last Securities and Exchange Commission chairperson appointed by President Obama. But White was a rare exception: a strong, apolitical attorney so universally respected that six former SEC chairpersons from both parties published letters of protest after Senator Warren, frustrated by White's principled resistance to progressive demands, launched a series of disgraceful attacks against her. By contrast, Cordray is a party-line Democrat who has consistently succumbed to pressure from Warren and liberal special-interest groups.

I'll never forget a 2011 CFPB senior-management meeting in which the newly elevated director-nominee harshly criticized the first proposed mortgage-examination plan, reminding chastened division leaders that there would be no CFPB but for the risky mortgage lending that caused the 2008 financial collapse. Sadly, Cordray's priorities did not survive the ensuing Republican filibuster of his nomination and his retrospectively unconstitutional recess appointment by President Obama on January 4, 2012.

The bureau's first big task was writing "Ability-to-Repay/Qualified Mortgage" rules to prevent a recurrence of the mortgage crisis. Studies consistently find homeowner equity to be the single best deterrent to defaults, so CFPB economists included mandatory down payments in early drafts of the rules. Liberal advocacy groups — the same ones that blame defaults on "predatory lending" — objected that such standards would harm low-income people with no savings, and successfully lobbied Cordray to remove the down payment requirement. Instead of a simple, effective rule, the CFPB issued over 800 pages of complicated debt-to-income ratios and subjective affordability standards that encouraged defaulting borrowers to sue their bankers for predatory lending. To this day, credit-worthy homebuyers find it unnecessarily hard to obtain a mortgage.

One sign that the CFPB is not politically independent is the very idea that Cordray would have to be dragged kicking and screaming from office. In the SEC's 83-year history, its chairpersons, who serve similar five-year terms, have always voluntarily resigned to allow new presidents to choose their replacements. White did so a week after Donald Trump's election.

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The demise of the all-Democrat CFPB is inevitable — Republicans simply have too many ways to hasten it. If the resolution of the pending PHH case does not empower the president to remove Cordray at will, Trump can fire the director for cause. It is unlikely Cordray would sue to keep his job, but making him a martyr would give Democrats a good talking point. Republicans are increasingly leaning toward a less painful alternative: legislation that would dismantle the CFPB, which became a viable option after Democrats forced Republicans to abandon their filibuster and confirm Cordray on July 16, 2013, and then made it easier to change Senate filibuster rules.

Such legislation grows more likely every day that Cordray remains director. His tenure has now exceeded five years thanks to the 18 extra months afforded him by Obama’s illegal recess appointment. The agency’s defenders continue to label its critics Wall Street lackeys. Senator Warren taunts the Treasury secretary and the director of the National Economic Council, who will likely decide the CFPB’s fate, with the arguably anti-Semitic pejorative “Goldman Sachs bankers.” Community bankers beg President Trump for relief from Cordray and the Qualified Mortgage rules. Congressional Republicans have begun introducing bills to eliminate the bureau.

Cordray faces the same choice King Solomon offered two putative mothers: Relinquish the child or cling to its bisected corpse. Continue to defend the CFPB’s political independence with proclamations reminiscent of Claude Raines’ shock at finding gambling in Casablanca, or deflate the intense pressure to cripple the bureau by following White’s example and exiting gracefully. Avoid foreclosure by letting the house burn down, or preserve the CFPB’s potential to become the agency it was supposed to be.

It’s high time Richard Cordray declared his candidacy for Ohio governor.

Editor’s Note: *This piece has been amended since its initial publication.*

— Ronald L. Rubin was an enforcement attorney at the Consumer Financial Protection Bureau and chief advisor on regulatory policy at the House Financial Services Committee.