Elizabeth Warren's Secrets and Lies

Senator Warren defends the CFPB on Capitol Hill in March 2015. (Reuters photo: Joshua Roberts)

NATIONAL REVIEW

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Warren will stop at nothing to shield the Consumer Financial Protection Bureau from scrutiny. After all, it's her signature accomplishment, and she has a political future to think about.

By Ronald L. Rubin — February 10, 2017

Last Friday, President Trump signed an executive order listing "Core Principles" for reforming financial regulation, including the Democrats' 2010 Dodd-Frank Act and the Consumer Financial Protection Bureau it created. Massachusetts senator Elizabeth Warren could hardly object to some of the principles — for example, "prevent taxpayer-funded bailouts" or "empower Americans to make independent financial decisions and informed choices in the marketplace" — because she herself had previously expressed similar sentiments. So instead, she quickly accused Republicans of "rushing to unleash the big banks" and "gut the consumer agency that has forced banks to give $12 billion back to customers they cheated."

It's time to retire these slurs, which Democrats have used for five years to attack any Republican who criticizes the CFPB or suggests ways to fix it. The vast majority of Republicans are not billionaires, or even millionaires, but they are all consumers, and they don't enjoy being defrauded any more than Democrats do. Understanding economics and opposing policies that harm rather than protect consumers do not make one a bank worshipper.

Democrats' latest talking point, that the CFPB has forced banks to give $12 billion back to their customers, is incorrect for the same reasons as the myth that the bureau forced Wells Fargo to return $185 million to its victims. The bank actually paid less than $5 million to the millions of customers who had unauthorized accounts opened in their names; the remaining fines disappeared into various government black holes.

It's no surprise that Democrats and the liberal media shamelessly perpetuate such obvious lies about the CFPB, since its leadership by an ostensibly irremovable director, funding outside the congressional appropriations process, and ideological hiring turned the bureau into a political rather than professional organization. Just this week, Paul Krugman wrote in his *New York Times* column that the Wells Fargo "scandal only came to light thanks to the bureau." In fact, a *Los Angeles Times* article exposed the fraud in 2013, and the CFPB allowed it to continue for three years while the Los Angeles City Attorney and Comptroller of the Currency led investigations that produced the $185 million settlement.

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Those who defend the CFPB status quo by extolling the bureau's "mission" are almost as dishonest as Krugman. Their straw-man argument implies that Republicans are calling for the bureau's elimination, a goal all but its most strident critics abandoned years ago. Furthermore, the bureau almost immediately strayed from its official mission of consumer protection into consumer advocacy. The 20th century taught us that advocates most of all should never be given absolute power.

CFPB supporters are outraged that President Trump might remove Director Richard Cordray before he completes his five-year term. But Cordray has been director since January 4, 2012. He remains in office only because his illegal recess appointment was followed by confirmation 18 months later as Democrats threatened to change Senate filibuster rules. The Supreme Court subsequently held the three other recess appointments President Obama made on January 4, 2012, unconstitutional. However one feels about Cordray, he's served a full term.

How would Republicans "gut" the CFPB? Exclusive jurisdiction over debt-collection laws could be returned to the Federal Trade Commission, and non-discriminatory–lending laws to the Department of Justice. Arbitration regulations could be limited to ensuring clear and meaningful waiver disclosures. The CFPB's mission could be restricted to "establishing guidelines for consumer disclosure" and "evaluating financial products to eliminate the hidden tricks and traps that make some of them far more dangerous than others."

Republicans have not proposed these "draconian" limits, but Senator Warren did — in the agency she called for in "Unsafe at Any Rate," the 2007 article that led to the CFPB's creation. The agency she originally envisioned in "Unsafe" was to be led by a bipartisan commission rather than a single director. She now insists that only an independent director can protect consumers.

What's particularly puzzling about Warren's staunch opposition to restructuring the CFPB as a commission is that even if Cordray were to remain in office until July 2018, President Trump would nominate one of those bank-loving, consumer-hating Republicans to replace him. Surely she would prefer a commission.

Only two explanations resolve this logical contradiction. First, barring removal, Cordray can remain in office until the Senate confirms a new director. Democrats might be hoping to filibuster Trump's nominee until the 2018 election restores their Senate majority, and then block or vote down potential Republican directors until the 2020 presidential election.

Second, the CFPB has spent the last five years stonewalling congressional oversight and document requests. Bipartisan commissions are internally transparent, meaning a restructuring would give even minority Republican commissioners access to confidential CFPB inspector-general reports, employee files, and internal e-mails and documents. Senator Warren's reputation rests largely on the CFPB, and she knows what the bureau is hiding. She'd like to keep those secrets hidden until her reelection to the Senate in 2018 — and perhaps a bigger race in 2020.

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