# Richard Cordray Delivers the Consumer Financial Protection Bureau Punchline

CFPB director Richard Cordray testifies on Capitol Hill in 2014. (Reuters photo: Jonathan Ernst)



by RONALD L. RUBIN *November 27, 2017 4:00 AM*

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Ambitious, cerebral, and socially awkward, Cordray had alternated between stints as an accomplished lawyer and a mediocre politician before he lost Ohio's attorney-general election in 2010 and Elizabeth Warren, then a presidential assistant, hired him to lead the nascent bureau's enforcement division. The following July, President Obama bypassed Warren and instead nominated Cordray to be the CFPB's first director. In the marathon standoff that ensued, Republican senators filibustered the nomination, Obama installed Cordray by using an unconstitutional recess appointment, Democrats threatened to change the filibuster rules, and Republicans surrendered. On July 16, 2013, the Senate confirmed the temporary director to a five-year term.

Perhaps it was this two-year ordeal that turned Cordray into a cynical partisan mercenary. The University of Chicago Law School graduate understood the harm that anti-market policies cause consumers, but whenever newly elected Senator Warren and progressive groups pressured him to pursue their agenda, he faithfully delivered. By 2017, there was no denying the ugly truth. Cordray cared about consumers, but he was consumed by politics.

Since 2010, Republicans have argued that the CFPB's unique structure — an independent agency whose single director the president can fire only for cause, with guaranteed funding through Federal Reserve Bank profits rather than the congressional appropriation process — is a recipe for government abuse, if not unconstitutional. Cordray proved them right.

Warren built a political battleship, and Cordray deployed it. The bureau's powerful media division dictated policy to its regulatory professionals and relentlessly exaggerated the agency's achievements in daily press releases and social-media posts. Political operatives used the CFPB's super-independence to stonewall congressional subpoenas and hide unethical investigation tactics, internal discrimination problems, and other inconvenient facts. Republican critics were dismissed as Wall Street sycophants.

Meanwhile, millions of dollars were diverted from the CFPB to Democratic allies. From 2014 to 2017, the bureau paid $11 million a year to rent office space in an Obama fundraiser's building. The Dodd-Frank Act allowed the CFPB to send the civil money penalties collected in its enforcement actions to a trustee of its choice, who, after taking a healthy cut, distributed the funds to ostensible victims in unrelated matters. The maneuver both enriched Democratic trustees and transformed fines extracted from defenseless businesses based on their deep pockets rather than actual consumer harm into "over $12 billion in damages returned to 29 million injured consumers." To spread such propaganda, the bureau paid over $43 million to GMMB, the liberal advocacy group that created ads for the Obama and Hillary Clinton presidential campaigns.

The 2016 election almost ended Cordray's tenure. Despite high-profile litigation and debate over what, if any, justification the new Republican president needed to fire him, the legal remedy for unwarranted removal would probably have been back pay, not reinstatement. Cordray survived only because the president's advisers felt that making the director a martyr would help his expected Ohio gubernatorial campaign. They underestimated him.

Cordray spent the first half of 2017 quietly promoting and entrenching faithful Democratic employees to obstruct his Republican successor. On June 30, he awarded GMMB an additional $14.79 million contract. Ten days later, he delivered a gift to big Democratic donors in the plaintiff's bar: a rule banning financial businesses from using contractual arbitration clauses to prevent consumers from joining class-action lawsuits. Cordray argued that the lawsuits were necessary to prevent deceptive practices because individuals rarely sue over improper bank fees and other small damages. Of course, the CFPB was created to prosecute such violations, but he said that limited resources prevented it from sufficiently protecting consumers. He then unveiled a video titled "CFPB's New Arbitration Rule: Take Action Together," an expensive GMMB creation reminiscent of Clinton's "Stronger Together" ads. Republicans were forced to use the Congressional Review Act to block the rule; Democrats gained a talking point for the midterm elections.

Progressives' final wish was a CFPB rule to put most small-dollar, short-term "payday" lenders out of business. Cordray conceded that payday lenders barely break even, their borrowers are willing to pay high fees, and the rule would deprive many low-income consumers of their only source of credit. Since 2015, he had failed to persuade banks to offset the anticipated harm by offering similar, cheaper loans. Nevertheless, Cordray announced the rule on October 5. On November 15, two days before its publication in the Federal Register, he announced he would resign by the end of the month.

But Cordray had a big problem. President Trump was expected to use the Federal Vacancies Reform Act of 1998 to appoint Budget Director Mick Mulvaney — a former member of the House Financial Services Committee who had criticized the unaccountable CFPB's dysfunction as "a joke . . . in a sick, sad way" — to be the bureau's acting director. Cordray feared that Mulvaney would discover evidence the CFPB has been hiding for years, including the bureau's failure to investigate the Wells Fargo fraud; data manipulation in its failed attempt to regulate car dealers by guessing buyers' races and alleging discriminatory lending; inspector-general admonishments to stop obstructing congressional oversight; and some particularly explosive sexual-harassment claims against CFPB senior managers.

On the Friday after Thanksgiving, Cordray attempted to forestall these damaging revelations until the 2018 elections by appointing his chief of staff, Leandra English, CFPB deputy director. David Silberman, who led the bureau's rulemaking division, had been acting deputy director since January 2016. In a professional government agency, he would have been the obvious internal choice. But Silberman was not a reliable co-conspirator, so Cordray kept the deputy director position and his options open for two years.

Citing language in the Dodd-Frank Act — "the Deputy Director . . . shall serve as acting Director in the absence or unavailability of the Director" — Cordray announced that English would become acting director upon his resignation that day. The issue has not been litigated, but the Vacancies Act almost certainly allows the president to appoint his own acting director. Cordray knew the liberal media would portray Mulvaney's appointment as one more Republican attempt to crush the consumer agency, and he hoped Trump would back down. Instead, the president quickly appointed Mulvaney, leading to a weekend of lawsuits and headlines about an embattled agency with two leaders.

Cordray’s sickening stunt left no doubt about the absurdity of claims that he and the CFPB were ever politically independent. For this, we can all give thanks.

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*— 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.*