

Elizabeth Warren's Sad Sick Joke

By RONALD L. RUBIN April 3, 2018 6:30 AM



Sen. Elizabeth Warren at a hearing of the Senate Banking, Housing and Urban Affairs Committee, November 28, 2017. (Joshua Roberts/Reuters)

Mick Mulvaney lets the senator's attacks convince Democrats to restructure the CFPB.

If Elizabeth Warren's *Wall Street Journal* **piece** "Republicans Remain Silent as Mulvaney's CFPB Ducks Oversight" had run three days later, readers would have thought it was an April Fools' Day joke about the famously two-headed government agency.

Most Americans had not heard of the Consumer Financial Protection Bureau last Thanksgiving when its first director, Richard Cordray, resigned and **proclaimed** Warren acolyte Leandra English acting director, prompting President Trump to appoint cabinet member Mick Mulvaney to the same post. Senator Warren has not laughed much in the four months since a judge backed the president's choice.

It was no wonder the public tuned out the CFPB narrative that Democrats have repeated since they controlled Congress and the White House and passed the 2010 Dodd- Frank Act, which created the bureau. The plot never changes — before Cordray’s resignation, Republicans opposed the bureau because it kept the financial industry honest; now they restrain the CFPB so businesses can cheat consumers.

Facts never get in the way of the banal narrative. In February, Patrick Rucker of Reuters **reported** that, according to unnamed sources, after Equifax disclosed its historic data breach on September 7, 2017, Cordray “authorized an investigation that month” and that acting director Mulvaney had “not ordered subpoenas against Equifax or sought sworn testimony from executives, routine steps when launching a full-scale probe.” The “exclusive” was hardly news. The Dodd-Frank Act forbids the Federal Trade Commission and the CFPB from conducting independent inquiries into the same matter. Cordray may have *authorized* an investigation of the Equifax data breach, but the FTC ended up conducting the full-scale probe.

Cordray and Warren, who helped draft the law, surely recognized Rucker’s sleight-of-hand. Nevertheless, the senator tweeted, “Another middle finger from @MickMulvaneyOMB to consumers: he’s killed the @CFPB’s probe into the #EquifaxBreach.” Cordray, while campaigning for Ohio governor, wrote in the *Washington Post* that “the administration has . . . halted the investigation of Equifax,” with a link to the Reuters article as proof there had been something for Mulvaney to halt.

The real CFPB story has always been the agency’s structure — leadership by a single director whom the president can fire only for cause, with funding guaranteed through Federal Reserve Bank profits rather than congressionally appropriated tax dollars. Since 2010, Republicans have objected to the lack of legislative and executive checks on a regulator with so much impact on the economy. Democrats, confident there would never be a Republican director, characterized the near-absolute power as independence from political influence. Their complacency rested on a Dodd-Frank Act **provision** that

allowed the director to extend his five-year term until the Senate confirmed a replacement. Senate rules that permitted 41 senators to filibuster presidential nominees delayed Cordray's confirmation until July 16, 2013; a Republican nominee backed by 60 Republican senators was inconceivable.

However, the odds improved when frustrated Democrats all but eliminated such filibusters on November 21, 2013, and then lost control of the Senate a year later. In 2014, moderate Republicans began offering what amounted to low-cost insurance against a Republican director: **bills** that preserved the CFPB's guaranteed funding while restructuring the agency as a bipartisan commission after Cordray's term ended. Warren, who first proposed a Financial Products Safety Commission in an **article** in 2007, would have none of it. Even Trump's election, which tempted other Democrats to grab Republicans' offer before it expired, did not sway her. Nor did the judge's ruling that sealed Mulvaney's takeover.

The real CFPB story has always been the agency's structure — leadership by a single director whom the president can fire only for cause, with funding guaranteed through Federal Reserve Bank profits rather than congressionally appropriated tax dollars.

Ironically, the once-secretive CFPB has been more transparent since Mulvaney throttled its External Affairs Division, the propaganda machine Warren created in 2010 while leading the agency's yearlong start-up process as a presidential adviser. The division's copious press releases have been replaced by more-informative leaks from the bureau's **overwhelmingly Democratic** employees. Contrary to the stale narrative that liberals craft from the leaks, the acting director does not hate consumer protection; he just hates the CFPB's structure, which he once **described** as "a joke . . . in a sad, sick way." Warren's obstinacy has only allowed him to validate the now-famous comment and delight in the bully's comeuppance.

In February, Mulvaney invited a *Daily Caller* reporter to the CFPB headquarters Warren had procured in 2011. Cordray's \$124 million renovation of the Brutalist eyesore came to symbolize the bureau's elitist liberal entitlement. The reporter was escorted through a 2,660-square-foot athletic facility with two huge locker rooms, offices with electric height-adjustable workstations, a library with a sofa and lounge chairs but few books, a roof deck with spectacular views and motorized cantilevered umbrellas, and a courtyard with lavish fountains. The images recalled the familiar spectacle of triumphant soldiers touring a deposed dictator's opulent palace.

The mainstream media ignored the story and will likewise gloss over any other embarrassing evidence that was not deleted during the year between Trump's election and Cordray's resignation. But exposing his predecessor's sins is only Mulvaney's job. His knockout punch is demonstrating that the CFPB's structure allows its director to behave like the Republican stereotype.

Unlike other Trump nominees who renounced previous calls to eliminate the agencies they were tapped to lead, Mulvaney **told reporters** he was not shutting the CFPB down because the law did not permit him to do so. In his introduction to the agency's five-year **strategic plan** he declared that "we have committed to fulfill the Bureau's statutory responsibilities, but go no further." He requested no funding from the Fed for the first three months of 2018 and instead financed the CFPB's operations by draining its stockpiled reserves, a likely prelude to agency layoffs.

The beauty of Mulvaney's strategy is that it does not just neutralize the employee leaks, media bias, and Democratic narrative, it turns them to his advantage, as can be seen in the battle over "payday" loans. Before his resignation, Cordray issued a rule that would eliminate most of the expensive, short-term loans, which are legal in 35 states. Mulvaney quickly announced he would reconsider the rule, and Warren reflexively accused him of payback for \$63,000 that payday lenders had contributed to his four congressional campaigns.

Mulvaney, a free-market conservative, could easily have justified his opposition to a rule that would **deprive** many low-income Americans of their only available credit. Instead, he reminded Warren of her support for an earlier CFPB rule that benefited her own donors. Shortly thereafter, employee leaks about the bureau's closing three payday-lender investigations triggered the usual anti-Republican commentary. Rather than defend his policies, Mulvaney **reminded** his critics: "I am the judge, I am the jury, and I am the executioner in some of these investigations, and that is completely wrong. . . . If you don't like it, talk to the person who wrote the statute."

Oblivious that she is proving Mulvaney's case, Warren persists. Her *Journal* editorial, a paradigm of the Democratic narrative, begins, "Republicans never really cared about accountability. They only wanted the agency to be less effective at stopping financial firms from cheating people." The absurdity of her next sentence, "Congress designed the CFPB to be the government's *most* accountable regulator," is obvious from the bureau's history, but to drive the point home, Warren spends the rest of the piece describing how effortlessly Mulvaney ignores her. Her attempt to shame Republicans is laughable — Democrats remained silent for five years while Cordray **proved** that Congress is powerless to rein in the director.

Mulvaney is not, as Warren writes, "turning the CFPB into a politicized rogue agency." He is showing Democrats that it will continue to be one unless they **help restructure it**.

RONALD L. RUBIN — 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.