



## Have You No Sense of Decency, Senator Warren?

by Ronald L. Rubin | December 06, 2017 11:55 AM



Senator Elizabeth Warren speaks during a protest in front of the CFPB headquarters on November 28, 2017 in Washington, D.C.  
Mark Wilson

This year's strangest political story may be Elizabeth Warren's attempted coup of the Consumer Financial Protection Bureau, the federal agency created by the 2010 Dodd Frank Act.

On the Friday after Thanksgiving, Richard Cordray, the CFPB's outgoing director, attempted a variation of the play football teams use when going for touchdowns during game-ending kickoff returns. Cordray announced he was resigning at the end of the day on November 24, and he promoted his chief of staff, Leandra English, to deputy director. Citing a Dodd-Frank Act provision, "the Deputy Director ... shall serve as acting Director in the absence or unavailability of the Director," he claimed his lateral pass to English made her the CFPB's acting director before President Trump could use the Federal Vacancies Reform Act to appoint his own.

Within hours, the president ended Cordray's keep-away game by appointing Budget Director Mick Mulvaney as acting director. Two days later, English filed an emergency motion in federal court to block the appointment. Warren and her progressive army launched a publicity counter-offensive. Her main weapon was a [2014 interview](#) in which then-congressman Mulvaney discussed the CFPB's [likely unconstitutional](#) "independence" (the president has limited ability to fire the director, and the agency's funding is guaranteed through Federal Reserve Bank profits rather than the congressional appropriation process). Mulvaney described the bureaucracy's unaccountability and non-compliance with congressional oversight as "a joke ... in a sad, sick way." Warren twisted the quote to "the CFPB is a sad, sick joke," and said it was evidence that Mulvaney, like all Republicans, approved of banks ripping off consumers. Trump, she said, was disregarding the law and attempting to destroy the agency she had

dreamed up in an article a decade earlier.

But Warren undoubtedly knew that the bureau's own lawyers had thoroughly researched the succession question and concluded that the Vacancies Act took precedence over the Dodd-Frank Act, and therefore the president had the right to appoint an acting director. Long before that fateful Thanksgiving Friday, Mary McLeod, the CFPB's general counsel, had delivered that opinion to Cordray. On Saturday, November 25, McLeod sent the agency's senior managers a detailed legal [memorandum](#), likely cut and pasted from an earlier memo to Cordray, informing them that "the statutory language, legislative history, precedent from the Office of Legal Counsel at the Department of Justice, and case law all point to the conclusion that the President may use the Vacancies Reform Act to designate an acting official, even when there is a succession statute under which another official may serve as acting."

Furthermore, English was hardly equipped to run the bureau, and obviously less qualified than several other CFPB officials. One was David Silberman, who led the bureau's Research, Markets and Regulations division, and had been acting deputy director since January 2016. Another was Christopher D'Angelo, Cordray's closest adviser since helping prepare for his 2011 Senate confirmation hearings. D'Angelo had been Cordray's chief of staff for more than three years in August 2016 when he was promoted to lead the agency's largest division, Supervision, Enforcement and Fair Lending. Unlike Silberman and D'Angelo, English was not a lawyer, and she had been chief of staff for less than a year.

What really mattered to Cordray was that in 2010-11, as part of the Department of Treasury's "[implementation team](#)," English had worked closely with Warren, who led the pre-operational agency as an assistant to President Obama. More recently, from January 3, 2016, to January 7, 2017, English had been an Obama political appointee at the Office of Personnel Management when she was detailed back to the bureau. On January 8, 2017, English was converted to a career position at the CFPB. "Burrowing"—bypassing competitive hiring processes to convert non-career, political staff to career positions—was one of the bureau's many illegal hiring practices. Senator Ron Johnson, chairman of the Senate Homeland Security and Governmental Affairs Committee, is now [investigating](#) English's hiring.

The most disgraceful part of Warren's public temper tantrum has been her unrelenting, malicious attacks on Mulvaney. Last Monday, she published a [letter](#) to White House Counsel Don McGahn demanding an ethics investigation into the OMB staffers who accompanied Mulvaney to the CFPB that morning, as if he could have hired new assistants over the weekend. On Tuesday, with television cameras rolling, Warren led a crowd [protesting](#) Mulvaney in front of the CFPB's headquarters—the brutalist building she chose for the CFPB in 2011, whose still incomplete \$50 million renovation has grown to [\\$215 million](#). Hours later, the court [denied](#) English's motion for a temporary restraining order. On Wednesday, Warren criticized Mulvaney for spending time at the bureau instead of OMB, labeling his efforts as "[an ideologically driven vanity project](#)." On Thursday, she published a [letter](#) to the CFPB's inspector general demanding an investigation of Mulvaney's 30-day freeze on new hiring, regulations, and distributions from the bureau's civil money penalty fund, calling the pause "a 30-day shutdown of the CFPB." As Mulvaney's second week at the bureau began, Warren and 43 other Democratic senators continued the onslaught in a [letter](#) advising President Trump that "[a]ssigning leadership of the CFPB to someone who already has a full-time job reporting to the White House and who does not believe in the CFPB's mission jeopardizes the agency's independence and effectiveness."

According to the CFPB's own senior managers—Democrats all—Warren's attacks were completely unjustified. Last Thursday, Cordray's protégé D'Angelo briefed hundreds of

bureau employees on the transition. He said that, contrary to media reports, the process was going remarkably smoothly, and Mulvaney was not trying to destroy the agency. In fact, Mulvaney was committed to consumer protection, even if the two might differ in their approaches. D'Angelo was surprised by how much Mulvaney knew about the bureau, and impressed that the acting director consumed as much information as Cordray had.

D'Angelo told employees that the 30-day freeze was quite reasonable, especially since Mulvaney had imposed a 90-day freeze upon taking charge at OMB; that the acting director was particularly focused on securing the bureau's huge collection of consumer data; that he had conducted several individual meetings with each of Cordray's senior managers, and instructed CFPB examiners and enforcement attorneys to continue their open matters uninterrupted; and that Mulvaney is working three full days a week at the bureau, including Saturdays, and three full days at OMB.

During the meeting, one employee told D'Angelo she was not a political person, and she had joined the CFPB because she believed in consumer protection. She was very upset at the bureau's politicization, and wondered if anyone could make it stop.

Only person can make it stop—Elizabeth Warren.

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