

THE FEDERAL GENERAL COUNSEL, LAW, AND OUR DEMOCRACY AT A CROSSROADS

Seth Frotman*

This speech, given by the general counsel of the Consumer Financial Protection Bureau (CFPB) on January 7, 2025, examines how federal government lawyers can help ensure that laws are faithfully administered to address the contemporary challenges facing American citizens. Despite the CFPB's successes in protecting consumers from predatory financial practices—particularly amid the rapid digital transformation of the economy—undemocratic forces have increasingly rigged the legal system to serve as both sword and shield for the powerful. The speech describes how judge-made doctrines like “major questions” have been weaponized to disempower Congress from writing statutes with enduring relevance. These challenges represent an existential threat to democratic self-governance.

INTRODUCTION

In the handful of months since these remarks were delivered at the University of Michigan, much has changed—and yet, many things have not.

We continue to see “cynical legal actions propped up by some judges” blocking the last set of rules that the Biden Administration painstakingly finalized.¹ As a result, people will pay more in junk fees,² workers will be trapped on unsafe worksites,³ and consumers will be at the mercy of many of the most powerful corporations in the world.

* Seth Frotman is a senior fellow at the UC Berkeley Center for Consumer Law and Economic Justice. From October 2021 to February 2025, he served as the general counsel and senior advisor to the director at the Consumer Financial Protection Bureau. This article is adapted from remarks at the Conference on Law and Macroeconomics at the University of Michigan in January 2025. The author wishes to thank Professor Jeremy Kress for the speaking invitation, and Brad Lipton and Nick Kime at the CFPB for their assistance in the drafting and editing process.

1. See *infra* Part V.

2. Jonathan Stempel, *Judge Scraps US Rule Capping Credit Card Late Fees at \$8*, REUTERS, <https://www.reuters.com/business/finance/judge-scraps-us-rule-capping-credit-card-late-fees-8-2025-04-15/> [https://perma.cc/MU2S-FD7K].

3. See, e.g., Mirna Alsharif & Joe Kottke, *Texas Judge Tosses Biden-Era Policy to Increase Nursing Home Staffing*, NBC NEWS, <https://www.nbcnews.com/news/us-news/texas-judge-tosses-biden-era-policy-increase-nursing-home-staffing-rcna200189> [https://perma.cc/UGX4-CPZA].

To be sure, we have recently seen screeching press releases from the American political right attacking nationwide injunctions⁴ and calling for impeachment proceedings for federal judges⁵—just not in response to any of the cynical litigation brought against government actions taken to help working people.

What *has* changed is that, after four years during which the Biden Administration engaged politely as rule after rule—deliberately researched and carefully promulgated—was struck down, the Trump Administration has adopted a “shock and awe” campaign to burn down the administrative state by any means necessary.⁶ And in the most brazen assault on the rule of law in our lifetimes, Trump allies have gone to war with the judiciary when it dares to uphold even the most basic legal principles.⁷

The Trump Administration repeatedly plays games with direct instructions from federal judges.⁸ The president’s lawyers have—apparently successfully⁹—petitioned the Supreme Court to end or limit the same nationwide injunctions that hobbled the Biden Administration,¹⁰ and the House of Representatives has passed legislation to end such injunctions on

4. See, e.g., *Chairman Jordan Calls for Combating the Abuse of Nationwide Injunctions Through the Appropriations Process*, HOUSE JUDICIARY COMM. (Apr. 1, 2025), <https://judiciary.house.gov/media/press-releases/chairman-jordan-calls-combating-abuse-nationwide-injunctions-through> [https://perma.cc/E4AL-SFVY].

5. See, e.g., *ICYMI: Rep. Ogles Files Articles of Impeachment Against Radical Activist Judge*, CONGRESSMAN ANDY OGLES (Feb. 25, 2025), <https://ogles.house.gov/media/press-releases/icymi-rep-ogles-files-articles-impeachment-against-radical-activist-judge> [https://perma.cc/GMG9-TM3K].

6. See Seth Frotman & Brad Lipton, *The 100 Days That Put the Nail in the Coffin of Administrative Law*, YALE J. ON REGUL. (May 21, 2025), <https://www.yalejreg.com/nc/the-100-days-that-put-the-nail-in-the-coffin-of-administrative-law-by-seth-frotman-brad-lipton/> [https://perma.cc/ZNU3-3TMK].

7. See Ned Parker et al., *These Judges Ruled Against Trump. Then Their Families Came Under Attack*, REUTERS, <https://www.reuters.com/investigations/these-judges-ruled-against-trump-then-their-families-came-under-attack-2025-05-02/> [https://perma.cc/BQ6P-QQB4] (last updated May 3, 2025).

8. See Peter Charalambous, *6 Times the Trump Administration Has Clashed With Opponents Over Court Orders*, ABC NEWS, <https://abcnews.go.com/Politics/6-times-trump-administration-clashed-opponents-court-orders/story?id=120846599> [https://perma.cc/KTK5-AS2Q]; see also Evan Weinberger, *The Reality Behind CFPB Contradictions That Raised Judge’s Ire*, BLOOMBERG L., <https://news.bloomberglaw.com/banking-law/the-reality-behind-cfpb-contradictions-that-raised-judges-ire> [https://perma.cc/567F-45GB].

9. See *Trump v. CASA, Inc.*, No. 24A884, slip op. at 2 (U.S. June 27, 2025), https://www.supremecourt.gov/opinions/24pdf/24a884_8n59.pdf [https://perma.cc/NCB7-JE7B].

10. See Andrew Chung & John Kruzell, *Trump Asks US Supreme Court to Intervene in His Bid to Curb Birthright Citizenship*, REUTERS, <https://www.reuters.com/world/us/trump-asks-us-supreme-court-intervene-bid-curb-birthright-citizenship-2025-03-13/> [https://perma.cc/ABT8-PVSC].

behalf of membership organizations.¹¹ President Trump, Vice President J. D. Vance, and other high-ranking officials loudly question the legitimacy of judges who dare to order a stop to baldly illegal conduct.¹² The Speaker of the House has discussed defunding the courts and disbanding circuits to get the judiciary out of Donald Trump's way.¹³ Republican members of Congress seek to impeach federal judges for opinions under the Administrative Procedure Act.¹⁴ The wild legal arguments and executive orders seeking to put herculean hurdles in the way of organizations trying to protect their members have no end.¹⁵

As the remarks below articulate, this is all about power.

The same people and forces in the executive branch today making claims of unlimited and unchecked authority had no issue running to court, hoping to bend and break the law—administrative law in particular—with crocodile tears about separation of powers and executive branch overreach when it served their corporate-aligned interests.¹⁶ Judges desperately trying to apply

11. Kevin Freking, *Republican-Led House Passes Bill To Limit Nationwide Orders From Federal District Judges*, ASSOCIATED PRESS, <https://apnews.com/article/gop-bill-district-court-injunction-trump-doge-764231e50ae5e7119a8bdc9c0d7daf89> [<https://perma.cc/P37U-FXXA>].

12. See Robert Tait, *Outrage After JD Vance Claims Judges Are Not Allowed to Check Executive Power*, THE GUARDIAN, <https://www.theguardian.com/us-news/2025/feb/10/jd-vance-judges-trump> [<https://perma.cc/K8SJ-V8L8>]; Evan Perez, *Attorney General Bondi Blasts Judge Who Blocked Executive Order Targeting Law Firm Trump Sought to Punish*, CNN, <https://www.cnn.com/2025/04/08/politics/law-firms-blocked-executive-order-bondi-trump/index.html> [<https://perma.cc/3LWQ-5DHX>]; Rachel Wolf, *Trump Questions Judges Who Block Deportations of 'Criminals, Including Murderers'*, FOX NEWS, <https://www.foxnews.com/politics/trump-questions-judges-who-block-deportations-criminals-including-murderers> [<https://perma.cc/RF2S-T3RQ>]; Martha McHardy, *Donald Trump Rails Against Judges Despite Justice Jackson's New Warning*, NEWSWEEK, <https://www.newsweek.com/donald-trump-judges-attack-justice-jackson-2067624> [<https://perma.cc/AJC6-6YVF>].

13. See Scott Wong, Melanie Zanona & Rebecca Kaplan, *Speaker Mike Johnson Floats Eliminating Federal Courts as GOP Ramps Up Attacks on Judges*, NBC NEWS, <https://www.nbcnews.com/politics/congress/speaker-mike-johnson-floats-eliminating-federal-courts-rcna197986> [<https://perma.cc/XL8Y-L3LK>].

14. See, e.g., H.R. Res. 157, 119th Cong. (2025) (resolution to impeach Judge John Bates based on Administrative Procedure Act opinion); see also Carl Hulse, *House Republicans Want to Impeach Judges. Here's How the Process Would Work*, N.Y. TIMES (Mar. 20, 2025), <https://www.nytimes.com/2025/03/20/us/politics/trump-judges-impeach-congress.html> [<https://perma.cc/3VLV-HS3A>].

15. See, e.g., *Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c)*, WHITE HOUSE (Mar. 11, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/> [<https://perma.cc/6VRT-MG9P>]; see also Nick Opoku, *Explainer: Trump Executive Order Seeking to Suppress Lawsuits with the Blanket Enforcement of Federal Rule of Civil Procedure Rule 65(c)*, COMMON CAUSE (Mar. 26, 2025), <https://www.commoncause.org/resources/explainer-trump-executive-order-seeking-to-suppress-lawsuits-with-the-blanket-enforcement-of-federal-rule-of-civil-procedure-rule-65-c/> [<https://perma.cc/ZEN8-9LKR>].

16. See, e.g., Michael Macagnone, *Republicans Rediscover Objections to Court Orders*, ROLL CALL, <https://rollcall.com/2025/02/21/republicans-rediscover-objections-to-court-orders/> [<https://perma.cc/R3VL-2JZA>].

neutral legal principles now face withering assault by the same forces that were all too happy to hijack certain parts of the judiciary for their ends in the past. None of the sanewashing by law reviews or panel discussions over fancy lunches should ever convince us that the so-called “conservative legal movement” really believes in anything else—anything except pure power.

So where do those of us who care about workers, consumers, and small-business owners go from here?

In the trying months and years ahead, amid the struggle against the never-ending stream of evil actions and general madness, we must not forget that we desperately need our own strategy for ensuring that our government works for working people—so the legal system does not again block progress on the thinly veiled basis of partisan ideology.

Our goal must not be to recover old norms that often failed to deliver for everyday Americans. We must not embrace a false sense of nostalgia. We cannot be satisfied with doctrines, supposedly protecting us from government overreach but manipulated by cynical arsonists, to block any progress—doctrines those same actors reject when applied to themselves. We should be thinking about how the basic principles of administrative law can be rebuilt, possibly from scratch, recognizing the role the rot in our system has played in getting us to where we are today.¹⁷

These last few months must also serve as a wake-up call that the law alone is not enough to stop lawlessness. Americans must be invested in a system that they believe is fundamentally on their side, so that economic and political power flows to people who believe in institutions that work for and protect everyone. The only way out of this darkness will be laws and a legal system that truly reflect our democracy, so our government can deliver on the real concerns and hardships facing the American people today and in the future.

I. THE FEDERAL GENERAL COUNSEL AND THE CFPB

The topic that I wish to discuss is a big one, which cuts to the heart of our democratic values and the discontent that so many people feel today. Having been the general counsel and a senior advisor to Director Chopra at the CFPB for the last three years, I would like to share some lessons about how lawyers can help ensure the government actually delivers on the law’s promise and intent. My job has been to ensure that the CFPB is thinking about how to faithfully administer the laws passed by our elected representatives so that the organization can meet the challenges that people face today. We are very proud of the work that the CFPB has done to ensure the consumer financial marketplace works for every American, especially in light of the economy’s rapid “digital transformation” that has affected so much of our lives. Yet, I can also say with confidence that the frustration so many people feel with so many aspects of our society reflects real failings in our institutions: the law, the legal system, and even our democracy itself.

17. See Frotman & Lipton, *supra* note 6.

I believe that the challenges with our institutions have a few fairly straightforward questions at their core:

- Can the federal government plan and effectuate meaningful policy?
- Can the laws Congress passes to address economic pain and instability be implemented as our elected representatives intended?
- Do our institutions work for working people, instead of just for the rich and powerful?

In my experience helping to run a government agency and leading a top-notch legal team through many battles, I have seen these questions being asked in earnest every day—and too often, the answers are “no.” While we have had plenty of success, I am consistently left with the gnawing sense that the answers are undermining our democratic self-governance.

The CFPB has, over the past three years, achieved much to address the issues, concerns, and practices that so many people are facing. But I am speaking now because I am not sure enough people realize how hard-fought our successes have been—and how much harder it may be across policy areas in the future.

I think it’s fair to say that, at most organizations of any size, the general counsel’s office is involved in nearly everything the organization does. At the CFPB, I have sought to make the general counsel’s office more than a place where the people trying to get stuff done make a quick stop, hoping to check a box. I have worked to ensure that all the unbelievably talented staff at the CFPB are thinking about what can—and must—be done to address the challenges people face in their everyday lives so that our government actually makes a difference. And to fight back against the undemocratic forces that today have rigged the law to serve as a sword and shield for the rich and powerful.

The CFPB was created after the Great Financial Crisis so that the government would never again fail to protect Americans’ fundamental financial security.¹⁸ The work of the CFPB is to help ensure everyday people get a shot at a good life—to provide for their own futures and those of their families.¹⁹ Our

18. See *Wall Street Reform: The Dodd-Frank Act*, WHITE HOUSE PRESIDENT BARACK OBAMA, <https://obamawhitehouse.archives.gov/economy/middle-class/dodd-frank-wall-street-reform> [<https://perma.cc/C7VC-HPHY>] (“In the fall of 2008, a financial crisis of a scale and severity not seen in generations left millions of Americans unemployed and resulted in trillions in lost wealth. Our broken financial regulatory system was a principal cause of that crisis. It was fragmented, antiquated, and allowed large parts of the financial system to operate with little or no oversight. And it allowed some irresponsible lenders to use hidden fees and fine print to take advantage of consumers. To make sure that a crisis like this never happens again, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law.”); see also Elizabeth Warren, *Unsafe at Any Rate*, DEMOCRACY: J. IDEAS, Summer 2007, <https://democracyjournal.org/magazine/5/unsafe-at-any-rate/> [<https://perma.cc/8C9E-PADQ>].

19. See *Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau: Hearing Before the H. Comm. on Fin. Servs.*, 116th Cong. 120–36, 122 (2019) (prepared statement of Seth Frotman, Exec. Dir., Student Borrower Prot. Ctr.),

mission is to ensure that the market for consumer financial products and services is “fair, transparent, and competitive.”²⁰

To the average person, that translates into things like: “When I borrow money to buy a car to get to work, will the loan set me up to fail?”²¹ “When I pursue an education and a chance for a better life, will I be scammed into taking out loans for a worthless credential and a lifetime of debt²²—targeted because I’m a woman, or because I’m Black?”²³ “If I lose my job and need to talk to someone at a financial institution, will they answer, or will a ‘chatbot’ give me the runaround?”²⁴ “When I sell my house, will I be able to get a fair price, or will I need to ‘whitewash’ the photos on the wall so that the appraiser doesn’t know who I am?”²⁵ I could go on. These are issues that affect hundreds of millions of people,²⁶ and they especially affect those with the least resources in our society—who are often the ones most easily taken advantage of.²⁷

<https://www.congress.gov/116/chrg/CHRG-116hhrg36461/CHRG-116hhrg36461.pdf> [<https://perma.cc/2Z7F-75XC>] (“At stake is the answer to whether the American dream—a house to raise our family, a car to get to work, a college education to earn a better life—will be the province of only a select few, while the rest have their money stolen at every turn, or worse, face denials and discrimination based on factors like race or sex. That is why the CFPB matters.”).

20. 12 U.S.C. § 5511(a).

21. See, e.g., Complaint, CFPB v. Credit Acceptance Corp., No. 1:23-cv-00038, 2023 WL 5013303 (S.D.N.Y. Aug. 7, 2023).

22. See, e.g., Washington et al., v. Prehired, LLC (*In re Prehired, LLC*), No. 23-50438-JTD (Bankr. D. Del. Nov. 20, 2023) (stipulated final judgement and order); Bloomtech Inc. (d/b/a Bloom Institute of Technology or Bloomtech, f/k/a Lambda, Inc.) and Austen Allred, CFPB No. 2024-CFPB-0001 (Apr. 17, 2024); CFPB v. Climb Credit, Inc. et al., No. 1:24-cv-07868 (S.D.N.Y. Dec. 5, 2024) (proposed stipulated final judgement and order).

23. See, e.g., Second Amended Class Action Complaint at 7–8, Roberson v. Health Career Inst. LLC, No. 9:22-cv-81883 (S.D. Fla. Aug. 31, 2023); Statement of Int. of the Consumer Fin. Prot. Bureau in Support of Plaintiffs at 4, Roberson v. Health Career Inst., LLC, No. 9:22-cv-81883 (S.D. Fla. Apr. 14, 2023); see also Roberson v. Health Career Inst. LLC, No. 9:22-cv-81883, 2024 WL 151345 (S.D. Fla. Jan. 14, 2024); Seth Frotman, *Protecting People from Discriminatory Targeting*, CONSUMER FIN. PROT. BUREAU (Apr. 14, 2023), <https://www.consumerfinance.gov/about-us/blog/protecting-people-from-discriminatory-targeting/> [<https://perma.cc/MS6S-92BX>].

24. See *Chatbots in Consumer Finance*, CONSUMER FIN. PROT. BUREAU (June 6, 2023), <https://www.consumerfinance.gov/data-research/research-reports/chatbots-in-consumer-finance/chatbots-in-consumer-finance/> [<https://perma.cc/NT74-PFYN>].

25. See Statement of Int. of the U.S. at 4, Connolly v. Lanham, No. 1:22-CV-02048 (D. Md. Mar. 30, 2023); Connolly v. Lanham, 685 F. Supp. 3d 312, 320 (D. Md. 2023); see also Seth Frotman, Zixta Q. Martinez & Jon Seward, *Protecting Homeowners from Discriminatory Home Appraisals*, CONSUMER FIN. PROT. BUREAU (Mar. 13, 2023), <https://www.consumerfinance.gov/about-us/blog/protecting-homeowners-from-discriminatory-home-appraisals/> [<https://perma.cc/6RFJ-WW4L>].

26. See, e.g., *The CFPB*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/about-us/the-bureau/> [<https://perma.cc/5PLA-83B3>] (estimating the “number of consumers or consumer accounts eligible to receive relief from the CFPB’s enforcement and supervisory work” at more than 205 million) (last updated Dec. 3, 2024).

27. See Seth Frotman, Gen. Couns., Consumer Fin. Prot. Bureau, Prepared Remarks at the Poverty Law Conference (Sep. 13, 2024),

I believe that we in the government—including, and indeed especially, the lawyers—have the awesome responsibility of making sure that what we do actually makes a difference for the American people. That’s the test: Whether the pages and pages of laws and regulations—the words and the footnotes and the citations—are improving people’s lives.

I want to be clear: I am not saying that we at the CFPB have been perfect. But by trying to make our government work for working people, we have learned some important lessons about how the government should administer the law, as well as the state of the law and legal system today.

II. APPLYING THE LAW TO MODERN CIRCUMSTANCES AND CONTEMPORARY PROBLEMS

One key lesson I want to share is that making the law work to actually address people’s concerns, as Congress intended, necessarily requires thinking about how the law applies to modern circumstances and contemporary problems. Our job as lawyers is not simply to know the ins and outs of the laws we administer; it is also to understand what is happening in society around us.

The CFPB was created in the wake of the 2008 financial crisis, when subprime mortgages blew up entire communities and took the global economy down with them. Before that crisis, consumer financial protection was spread around a diffuse set of regulators, none of whom had consumer protection as their number one priority.²⁸ These regulators ignored signs that banks and other financial institutions were setting people up to fail with loans that they could not possibly pay back, pursuing profits in the Wall Street flavor of that day—“mortgage-backed securities.”²⁹ Whole business models were built on the premise that big business could get rich even if consumers failed.³⁰ Although some state regulators recognized and tried to combat these trends, federal regulators did little to protect consumers from abusive practices and even stepped in to block state efforts to address predatory lending.³¹ And when the

<https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-seth-frotman-at-the-poverty-law-conference/> [https://perma.cc/F3T7-QVGH].

28. See H.R. REP. NO. 111-367, at 91 (2009) (“Consumer protection in the financial arena is governed by various agencies with different jurisdictions and regulatory approaches. This disparate regulatory system has been blamed in part for the lack of aggressive enforcement against abusive and predatory loan products that contributed to the financial crisis, such as subprime and nontraditional mortgages.”).

29. See FIN. CRISIS INQUIRY COMM’N, THE FINANCIAL CRISIS INQUIRY REPORT 102-26 (2011).

30. See Statement of Policy Regarding Prohibition on Abusive Acts or Practices, 88 Fed. Reg. 21883, 21884 (Apr. 12, 2023) (“The financial crisis was set in motion by a set of avoidable interlocking forces—but at its core were mortgage lenders profiting (by immediately selling on the secondary market) on loans that set people up to fail because they could not repay.” (citing FIN. CRISIS INQUIRY COMM’N, *supra* note 29, at 104-11, 113-18)); see also Rohit Chopra, *Enforcing the Post-Financial Crisis Ban on Abusive Conduct*, 14 U.C. IRVINE L. REV. 625, 638 (2024).

31. See FIN. CRISIS INQUIRY COMM’N, *supra* note 29, at 125-26 (“The Commission concludes that . . . the Office of the Comptroller of the Currency and the Office of Thrift Supervision

housing market collapsed, not only did individual people suffer, but the global economy was thrown into turmoil.³²

In the wake of this economic collapse, Congress undertook the most significant rewriting of the nation's financial laws in generations. The Dodd-Frank Wall Street Reform and Consumer Protection Act, passed in 2010 and signed by President Obama, made wholesale changes to the federal framework for consumer financial protection.³³ This included the creation of the CFPB—concentrating the formerly diffuse regulation of consumer finance into one agency³⁴—as well as a new body of law, the Consumer Financial Protection Act.³⁵ Congress intentionally gave the CFPB powerful and, crucially, flexible tools to address the problems confronting Americans in their financial lives.³⁶ We are entrusted with administering the Consumer Financial Protection Act and eighteen other federal statutes and their implementing regulations—both laws and rules that existed before the financial crisis and new ones that Congress created based on the lessons learned.³⁷ We update, build upon, and

preempted the applicability of state laws and regulatory efforts to national banks and thrifts, thus preventing adequate protection for borrowers and weakening constraints on this segment of the mortgage market.”); Arthur E. Wilmarth, Jr., *The Dodd-Frank Act's Expansion of State Authority to Protect Consumers of Financial Services*, 36 J. CORP. L. 893, 909–19 (2011); *see also* Lending and Investment, 61 Fed. Reg. 50951, 50952, 50965 (Sep. 30, 1996) and Subsidiaries and Equity Investments, 61 Fed. Reg. 66561, 66563 (Dec. 18, 1996) (rules by the Office of Thrift Supervision preempting state laws that addressed predatory lending by federally chartered thrifts and their subsidiaries); Preemption Determination and Order, 68 Fed. Reg. 46264 (Aug. 5, 2003) and Bank Activities and Operations; Real Estate Lending and Appraisals, 69 Fed. Reg. 1904 (Jan. 13, 2004) (orders and rules by the Office of the Comptroller of the Currency preempting state laws that addressed predatory lending by nationally chartered banks); KATHLEEN C. ENGEL & PATRICIA A. MCCOY, *THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS* 157–59 (2011).

32. *See* S. REP. NO. 111–176, at 11 (2010) (“Th[e] financial crisis was precipitated by the proliferation of poorly underwritten mortgages with abusive terms, followed by a broad fall in housing prices as those mortgages went into default and led to increasing foreclosures.”); *see also* FIN. CRISIS INQUIRY COMM’N, *supra* note 29, at 230 (“The Commission concludes that the collapse of the housing bubble began the chain of events that led to the financial crisis.”).

33. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203 (2010).

34. *See* H.R. REP. NO. 111–367, at 90 (2009) (describing how the Consumer Financial Protection Act would consolidate “all consumer protection functions related to financial products, including rulemaking, supervision and examination, and enforcement” in the CFPB, and how the Bureau would “have its own authority to issue rules prohibiting unfair, deceptive, and abusive acts”); H.R. REP. NO. 111–517, at 874 (2009) (stating that “[t]he Bureau will have authority to issue rules applicable to all financial institutions, including depository institutions that offer financial products and services to consumers”); Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 REV. BANKING & FIN. L. 321, 343 (2013) (“The CFPB has rulemaking, supervision, and enforcement authority over an extremely broad swath of the consumer financial services industry . . .”).

35. *See* Pub. L. No. 111–203, §§ 1001–1100H (2010) (codified as 12 U.S.C. §§ 5481–5603).

36. *See infra* notes 47–55 and accompanying text.

37. The CFPB administers the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. §§ 3801 et seq.), Consumer Leasing Act of 1976 (15 U.S.C. §§ 1667 et seq.), Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.), Fair Credit Billing Act (15 U.S.C. §§ 1666 et seq.),

defend those rules; examine companies to ensure they follow them; and bring enforcement actions in court to hold people and corporations accountable when they don't.

Fast-forward to today. The marketplace for consumer financial products and services has evolved markedly since the days when subprime mortgages and foreclosure statistics led the nightly news.³⁸ Yet, Americans are still facing real challenges, risks, and harm in their financial lives, often with devastating consequences for working people. To give the most obvious example, the technology industry has come crashing into consumer finance.³⁹ Anyone who has paid for groceries with their phone knows that the world has changed. And that vastly understates the impact the rise of the digital economy has had on people's financial lives. The issue dominating the day is no longer subprime mortgages, but there is no shortage of exploding financial products. Technology platforms and other large players have leveraged and abused their centrality in the economy.⁴⁰ Data is now harvested, bought, and sold every time

Homeowners Protection Act of 1998 (12 U.S.C. §§ 4901 et seq.), Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 et seq.), Home Mortgage Disclosure Act of 1975 (12 U.S.C. §§ 2801 et seq.), Home Ownership and Equity Protection Act of 1994 (15 U.S.C. §§ 1601 et seq.), Real Estate Settlement Procedures Act of 1974 (12 U.S.C. §§ 2601 et seq.), S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. §§ 5101 et seq.), Truth in Lending Act (15 U.S.C. §§ 1601 et seq.), Truth in Savings Act (12 U.S.C. §§ 4301 et seq.), Interstate Land Sales Full Disclosure Act (15 U.S.C. §§ 1701 et seq.), portions of the Electronic Fund Transfer Act (15 U.S.C. §§ 1693 et seq.), Fair Credit Reporting Act (15 U.S.C. §§ 1681 et seq.), Federal Deposit Insurance Act (12 U.S.C. §§ 1831t(b-f)), Gramm-Leach-Bliley Act of 2009 (15 U.S.C. §§ 6802-6809), and Omnibus Appropriations Act of 2009 (12 U.S.C. § 5538). In addition to these enumerated consumer laws, the CFPB has authority to enforce certain other laws, such as the Military Lending Act, and it supervises institutions for compliance with these laws. See 10 U.S.C. § 987; Examinations for Risks to Active-Duty Servicemembers and Their Covered Dependents, 86 Fed. Reg. 32723 (June 23, 2021).

38. See *infra* notes 39-45 and accompanying text; see also, e.g., Rohit Chopra, Dir., Consumer Fin. Prot. Bureau, Prepared Remarks of CFPB Director Rohit Chopra at the Brookings Institution Event on Payments in a Digital Century (Oct. 6, 2023), <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-at-the-brookings-institution-event-on-payments-in-a-digital-century/> [<https://perma.cc/RBQ5-FLAV>] (discussing how “new private gatekeepers have emerged” within electronic payment networks, and “[s]ome are mobile payment apps . . . [and o]thers are Big Tech firms”).

39. See, e.g., Consumer Fin. Prot. Bureau, Comment Letter on Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector (Aug. 12, 2024), <https://www.regulations.gov/comment/TREAS-DO-2024-0011-0069> [<https://perma.cc/EQU5-QY3K>]; PAUL TIerno, CONG. RSCH. SERV., R47104, BIG TECH IN FINANCIAL SERVICES (2022), <https://crsreports.congress.gov/product/pdf/R/R47104> [<https://perma.cc/G2NM-BT7W>]; Christopher K. Odinet, *Predatory Fintech and the Politics of Banking*, 106 IOWA L. REV. 1739 (2021).

40. See, e.g., Matthew Bruckner, Christopher K. Odinet & Todd Phillips, *Social Media's Financial Turn: Privacy and Consumer Protection in X's Payment Platform*, YALE J. ON REGUL. (Jan. 4, 2025), <https://www.yalejreg.com/nc/social-medias-financial-turn-privacy-and-consumer-protection-in-xs-payment-platform-by-matthew-bruckner-christopher-k-odinet-todd-phillips/> [<https://perma.cc/DT2K-JR5B>].

someone pays for something.⁴¹ Firms across the economy rely on detailed and invasive datasets to power algorithmic decisionmaking, which too often exacerbates existing disparities and distress.⁴² Fraud runs rampant on platforms that facilitate “peer-to-peer” money transfers.⁴³ And rapid changes in the labor market have affected everything from the surveillance of people at work⁴⁴ to how they get paid.⁴⁵

Yet, before Director Chopra took the helm, the CFPB had done very little to think about or confront the changes in the consumer financial marketplace. The CFPB had taken virtually no action in response to Big Tech’s stampede into the consumer financial marketplace, let alone address the broader challenges of the economy’s digital transformation. That is no longer the case.

41. See CONSUMER FIN. PROT. BUREAU, THE CONVERGENCE OF PAYMENTS AND COMMERCE: IMPLICATIONS FOR CONSUMERS 16 (2022), https://files.consumerfinance.gov/f/documents/cfpb_convergence-payments-commerce-implications-consumers_report_2022-08.pdf [<https://perma.cc/VH9U-PCZP>]; CONSUMER FIN. PROT. BUREAU, STATE CONSUMER PRIVACY LAWS AND THE MONETIZATION OF CONSUMER FINANCIAL DATA 9 (2024), https://files.consumerfinance.gov/f/documents/cfpb_state-privacy-laws-report_2024-11.pdf [<https://perma.cc/48WL-U44D>]; Rohit Chopra, Dir., Consumer Fin. Prot. Bureau, Opening Statement of Director Rohit Chopra Before the Senate Committee on Banking, Housing, and Urban Affairs (June 12, 2024), <https://www.consumerfinance.gov/about-us/newsroom/opening-statement-of-director-rohit-chopra-before-the-senate-committee-on-banking-housing-and-urban-affairs-2024/> [<https://perma.cc/N7RL-MGLJ>] (“[L]arge financial firms like PayPal and JPMorgan Chase are planning to use sensitive data about people’s income and spending to fuel surveillance-based targeting and advertising.”).

42. See CFPB Issues Guidance on Credit Denials by Lenders Using Artificial Intelligence, CONSUMER FIN. PROT. BUREAU (Sep. 19, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-on-credit-denials-by-lenders-using-artificial-intelligence/> [<https://perma.cc/7JXE-ZLUS>]. See generally RELMAN COLFAX PLLC, FAIR LENDING MONITORSHIP OF UPSTART NETWORK’S LENDING MODEL (2024), <https://www.relman-law.com/assets/htmldocuments/Upstart%20Final%20Report.pdf> [<https://perma.cc/5HTY-3ZUV>]; Comment Letter on Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector, *supra* note 39.

43. See [Proposed] Statement of Int. of the Consumer Fin. Prot. Bureau in Support of Plaintiff at 1, *New York v. Citibank, N.A.*, No. 1:24-cv-00659-JPO (S.D.N.Y. May 28, 2024); Complaint at 3, *Consumer Fin. Prot. Bureau v. Early Warning Services, LLC et al.*, No. 2:24-cv-03652-SMB (D. Az. Dec. 20, 2024).

44. See, e.g., Consumer Financial Protection Circular 2024–06: Background Dossiers and Algorithmic Scores for Hiring, Promotion, and Other Employment Decisions, 89 Fed. Reg. 88875 (Nov. 12, 2024).

45. See Complaint at 1–2, *Consumer Fin. Prot. Bureau v. Walmart Inc. et al.*, No. 0:24-cv-4610 (D. Minn. Dec. 23, 2024); Seth Frotman, Gen. Couns., Consumer Fin. Prot. Bureau, Prepared Remarks of General Counsel and Senior Advisor to the Director Seth Frotman at the Innovative Payments Conference (May 9, 2023), <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-general-counsel-and-senior-advisor-director-seth-frotman-at-innovative-payments-conference/> [<https://perma.cc/96L5-5SBQ>]; see also Christopher L. Peterson & Marshall Steinbaum, *Coercive Rideshare Practices: At the Intersection of Antitrust and Consumer Protection Law in the Gig Economy*, 90 U. CHI. L. REV. 623, 623, 632–36 (2023).

Congress created the CFPB “to reduce the chance that another generation will have to go through a crisis of similar magnitude.”⁴⁶ A key aspect of that reform was creating powerful, generalized tools for the agency to use to prevent consumer harm.⁴⁷ As the Senate report for the Dodd-Frank Act said: “The CFPB will have enough flexibility to address future problems as they arise. Creating an agency that only had the authority to address the problems of the past, such as mortgages, would be too short-sighted. Experience has shown that consumer protections must adapt to new practices and new industries.”⁴⁸

Beyond the Dodd-Frank Act’s legislative history, this can be clearly seen in countless examples in the text of the many laws passed from 1968 to 2010 that the CFPB is responsible for implementing and enforcing. Title Fifteen of the U.S. Code is filled with flexible language⁴⁹ that is intended to be durable—designed by Congress to apply to practices in the market as they evolve.⁵⁰ To give a central example, the Consumer Financial Protection Act prohibits financial institutions from engaging in unfair, deceptive, or abusive acts or practices.⁵¹ This authority builds on a provision of the Federal Trade Commission Act (FTC Act) from nearly one hundred years ago that is general enough to adapt to changing circumstances.⁵² As the legislative history of the FTC Act

46. *Treasury Deputy Secretary Neal Wolin Written Testimony Before the Senate Banking Committee on “Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act”*, U.S. DEP’T OF THE TREASURY (Sep. 30, 2010), <https://home.treasury.gov/news/press-releases/tg881> [<https://perma.cc/LC66-T3QJ>] (“The Act builds a stronger financial system by addressing major gaps and weaknesses in regulation that helped cause the financial crisis that led to the recession. It puts in place buffers and safeguards to reduce the chance that another generation will have to go through a crisis of similar magnitude.”).

47. See S. REP. NO. 111–176, at 18 (2010) (stating that the CFPB will be “a dedicated consumer entity that can respond quickly and effectively to . . . new threats to consumers”); *Wall Street Reform: The Dodd-Frank Act*, *supra* note 18 (“The most far reaching Wall Street reform in history, Dodd-Frank will prevent the excessive risk-taking that led to the financial crisis. The law also provides common-sense protections for American families, creating new consumer watchdog to prevent mortgage companies and pay-day lenders from exploiting consumers. These new rules will build a safer, more stable financial system—one that provides a robust foundation for lasting economic growth and job creation.”); Chopra, *supra* note 30, at 637.

48. S. REP. NO. 111–176, at 11.

49. See, e.g., Consumer Credit Protection Act, Pub. L. No. 90–321, § 121, 82 Stat. 146, 152 (1968) (creating the Truth in Lending Act, including § 121, a “[g]eneral requirement of disclosure” for “[e]ach creditor . . . to whom consumer credit is extended and upon whom a finance charge is or may be imposed”).

50. See, e.g., Real Estate Settlement Procedures Act (Regulation X); Digital Mortgage Comparison-Shopping Platforms and Related Payments to Operators, 88 Fed. Reg. 9162, 9163 (Feb. 13, 2023) (noting that RESPA section 8, which prohibits certain referral fees for real estate settlement service providers involving federally related mortgage loans, “applies broadly”); *Rider v. Uphold HQ Inc.*, 657 F. Supp. 3d 491, 498–99 (S.D.N.Y. 2023) (holding that cryptocurrencies qualify as “funds” under the Electronic Fund Transfer Act).

51. 12 U.S.C. § 5531.

52. See Samuel Levine, Dir., Bureau of Consumer Prot., Fed. Trade Comm’n, Keynote Remarks at the Cleveland-Marshall College of Law Cybersecurity and Privacy Protection Conference (May 19, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks-Samuel-Levine-Cleveland-Marshall-College-of-Law.pdf [<https://perma.cc/LZ48-WXVX>] (“Today, we live in a

says, and as the Supreme Court has acknowledged,⁵³ “[T]here were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”⁵⁴ The same is true for many of the other federal consumer financial protection laws.⁵⁵

Under the law, then, if the CFPB is not addressing emerging risks and harm to consumers, we are not doing our job. You simply cannot enforce the federal consumer financial laws without understanding the larger changes in the economy, many of which are driven by new technology. As CFPB’s general counsel, my role has been to make certain that the lawyers (and the agency as a whole) are always interrogating whether we are complying with the words and intent of Congress—that the agency not just respond to the last crisis, but takes action to prevent the next one.⁵⁶ This has meant a drive across the CFPB to use every tool that Congress entrusted us with—enforcement, supervision, regulations, guidance documents, amicus briefs, market monitoring, resolving complaints from individual consumers, and more—to address new risks as well as old ones.

The CFPB has taken action to supervise Big Tech and providers of other widely used digital payment apps.⁵⁷ But that is just the beginning. The CFPB has made clear that, in the modern consumer protection framework that Congress envisioned, states are full partners with the federal government, rather than adversaries, in identifying and addressing harmful, cutting-edge

world in which vast numbers of products and services are connected and able to collect enormous amounts of personal data about every conceivable aspect of our lives You can expect that the Commission’s unfairness authority will be a key tool as we work to curb harmful commercial surveillance practices.”).

53. *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 239–40 (1972) (noting that Congress “explicitly considered, and rejected . . . enumerating the particular practices to which [unfairness] was intended to apply”); *see also* *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 454 (1986) (“The standard of ‘unfairness’ under the FTC Act is, by necessity, an elusive one . . .”).

54. S. REP. NO. 63–597, at 13 (1914).

55. *See supra* notes 49–50 and accompanying text.

56. *See* Rohit Chopra, *The CFPB is Looking Out for Families, Workers, and Communities*, CONSUMER FIN. PROT. BUREAU (Oct. 12, 2021), <https://www.consumerfinance.gov/about-us/blog/the-cfpb-is-looking-out-for-families-workers-and-communities/> [<https://perma.cc/QR7A-4V2J>] (“[W]e must anticipate emerging risks so we can act before a crisis, rather than acting after it is too late.”); *Testimony of Seth Frotman Before the United States Congress House Financial Services Committee: A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Services Accountable*, STUDENT BORROWER PROT. CTR. (Sep. 10, 2019), <https://www.congress.gov/116/meeting/house/109897/witnesses/HHRG-116-BA00-Wstate-FrotmanS-20190910.pdf> [<https://perma.cc/W2VZ-PFK4>] (“We must put aside the notion that simply because investment bankers are not lining the sidewalks of 7th Avenue while holding the contents of their desks in a box . . . that somehow our nation does not need to act.”).

57. *See, e.g.*, *Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications*, 89 Fed. Reg. 99582 (Dec. 10, 2024); *CFPB Orders Federal Supervision of Google Following Contested Designation*, CONSUMER FIN. PROT. BUREAU (Dec. 6, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-federal-supervision-of-google-following-contested-designation/> [<https://perma.cc/L2EL-762E>].

practices.⁵⁸ We have used our authority to monitor markets for emerging risks, including in the payment system, where there has been an explosion in financial companies racing to capture and monetize data as a new path to profits.⁵⁹ We have shined a light on how rules imposed by mobile operating systems like Apple and Google can have a significant impact on innovation, consumer choice, and the growth of open and decentralized banking and payments.⁶⁰ We have focused on how Congress anticipated that marketing and advertising practices from financial institutions and their service providers could harm consumers.⁶¹

And across many markets, we have explained how existing law has continued relevance to new and evolving practices. For example, the CFPB has noted that the law stops financial firms from engaging in shady kickback arrangements, whether they were inked across a table in a conference room or through an online comparison tool.⁶² We have made clear that there is not, and has never been, a “technology exception” to our nation’s fair lending laws.⁶³ The federal consumer financial laws apply in the massive online economies where people use real money to buy fake money, and to the words spat out by “chatbots” that have increasingly replaced human customer service

58. See generally Authority of States To Enforce the Consumer Financial Protection Act of 2010, 87 Fed. Reg. 31940 (May 26, 2022); Rohit Chopra & Seth Frotman, *State Enforcement As A Federal Legislative Tool*, HARV. J. LEGIS., Jan. 15, 2025, at 1.

59. See CFPB Orders Tech Giants to Turn Over Information on Their Payment System Plans, CONSUMER FIN. PROT. BUREAU (Oct. 21, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-tech-giants-to-turn-over-information-on-their-payment-system-plans/> [https://perma.cc/QM5M-AMLY].

60. See CFPB Off. of Competition & Innovation and Off. of Mkts., *Big Tech’s Role in Contactless Payments: Analysis of Mobile Device Operating Systems and Tap-to-Pay Practices*, CONSUMER FIN. PROT. BUREAU (Sep. 7, 2023), <https://www.consumerfinance.gov/data-research/research-reports/big-techs-role-in-contactless-payments-analysis-of-mobile-device-operating-systems-and-tap-to-pay-practices/full-report/> [https://perma.cc/Z55U-JPK9]; see also Paige Smith, *Apple Pay, Other Tech Firms Come Under CFPB Oversight (1)*, BLOOMBERG L., <https://news.bloomberglaw.com/banking-law/apple-pay-other-tech-firms-come-under-cfpb-regulatory-oversight> [https://perma.cc/DQU9-BULV] (“Since the CFPB proposed the rule last year, Apple opened up use of its near-field communication payment chip, changing its long-held practice of limiting banks or other payment firms’ use of the technology.”).

61. See Limited Applicability of Consumer Financial Protection Act’s “Time or Space” Exception With Respect to Digital Marketing Providers, 87 Fed. Reg. 50556 (Aug. 17, 2022).

62. See Real Estate Settlement Procedures Act (Regulation X); Digital Mortgage Comparison-Shopping Platforms and Related Payments to Operators, 88 Fed. Reg. 9162, 9162–63 (Feb. 13, 2023); Consumer Financial Protection Circular 2024-01: Preferencing and Steering Practices by Digital Intermediaries for Consumer Financial Products or Services, 89 Fed. Reg. 17706, 17707, 17709 (Mar. 12, 2024).

63. See Consumer Financial Protection Circular 2022-03: Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms, 87 Fed. Reg. 35864, 35865 (June 14, 2022); Consumer Financial Protection Circular 2023-03: Adverse Action Notification Requirements and Proper Use of Sample Forms, 89 Fed. Reg. 27361, 27362 (Apr. 17, 2024).

representatives.⁶⁴ The CFPB has explained that targeting consumers who are least able to protect themselves is unlawful in any consumer financial market, not just the mortgage market that prompted the 2008 crisis,⁶⁵ and that the Truth in Lending Act applies to “Buy Now, Pay Later” practices that have expanded rapidly in the last few years.⁶⁶ And we have articulated how the consumer reporting laws provide much-needed transparency for workers regarding the black box algorithms that increasingly dictate every aspect of their working lives.⁶⁷

The CFPB has also applied the prohibition on unfair, deceptive, or abusive acts or practices to the many ways that people are being deceived, ripped off, or otherwise taken advantage of today. Along with the New York Attorney General’s office, the CFPB sued a major subprime auto lender that abusively manipulated the prices of vehicles based on how borrowers were projected to perform in an algorithmic model.⁶⁸ We brought actions against companies that trick and trap people into paying fees using digital “dark patterns” and other forms of sophisticated user interface design.⁶⁹ The CFPB also sued a

64. See *Banking in Video Games and Virtual Worlds*, CONSUMER FIN. PROT. BUREAU (Apr. 4, 2024), <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-video-games/> [https://perma.cc/35AY-7JZV]; *Chatbots in Consumer Finance*, CONSUMER FIN. PROT. BUREAU (June 6, 2023), <https://www.consumerfinance.gov/data-research/research-reports/chatbots-in-consumer-finance/chatbots-in-consumer-finance/> [https://perma.cc/NT74-PFYN].

65. See Statement of Policy Regarding Prohibition on Abusive Acts or Practices, 88 Fed. Reg. 21883, 21883 (Apr. 12, 2023); see also Chopra, *supra* note 30, at 625.

66. See generally Truth in Lending (Regulation Z); Use of Digital User Accounts To Access Buy Now, Pay Later Loans, 89 Fed. Reg. 47068 (May 31, 2024); see also CONSUMER FIN. PROT. BUREAU, BUY NOW, PAY LATER: MARKET TRENDS AND CONSUMER IMPACTS 72–73 (2022), https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf [https://perma.cc/TV9S-6C6S].

67. See Consumer Financial Protection Circular 2024–06: Background Dossiers and Algorithmic Scores for Hiring, Promotion, and Other Employment Decisions, 89 Fed. Reg. 88875 (Nov. 12, 2024).

68. See Complaint at 1–2, *Consumer Fin. Prot. Bureau v. Credit Acceptance Corp.*, No. 1:23-cv-00038 (S.D.N.Y. Jan. 4, 2023).

69. See *CFPB Charges TransUnion and Senior Executive John Danaher with Violating Law Enforcement Order*, CONSUMER FIN. PROT. BUREAU (Apr. 12, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-charges-transunion-and-senior-executive-john-danaher-with-violating-law-enforcement-order/> [https://perma.cc/5T4U-NNSA] (“TransUnion used an array of dark patterns to trick people into recurring payments and to make it difficult to cancel them.”); *CFPB Sues Payment Platform Used by YMCA Camps and Charity Race Organizers for Illegally Cramming Consumers with Junk Membership Fees*, CONSUMER FIN. PROT. BUREAU (Oct. 18, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-payment-platform-used-by-ymca-camps-race-organizers-for-junk-fee/> [https://perma.cc/66WQ-DLUE] (“ACTIVE has driven up enrollments in Active Advantage through the use of dark patterns.”); see also *Supervisory Highlights, Issue 37*, CONSUMER FIN. PROT. BUREAU, Dec. 2024, at 1, 15–16, https://files.consumerfinance.gov/f/documents/cfpb_Supervisory-Highlights-Issue-37_Winter-2024.pdf [https://perma.cc/P5BP-K7B3] (“Examiners found that lenders designed consumer interfaces for paycheck advance products . . . to include statements and illustrations representing

company that abused its market dominance charge consumers unavoidable fees for prepaid cards used to return money to consumers.⁷⁰ And as so much financial activity moves online to marketplaces and other platforms, we have made clear that manipulating reviews to trick or confuse consumers can be unfair.⁷¹

The CFPB has been thinking about how people's lives have changed in the past decade, how that makes them susceptible to illegal practices, and, crucially, how we need to apply our laws and authorities in light of that evolution. In short, we have been doing exactly what Congress instructed us to do.

The same applies to many other laws that protect consumers, workers, and people as they go about their day. I know it's fashionable to criticize Washington, D.C., and some of those critiques have merit. But D.C. is, in fact, where our elected representatives come together to reach compromise on our nation's laws. And the reality is that hundreds of representatives and their hard-working staffs are not obtuse. Members of Congress do not intend to pass laws that will be irrelevant the moment that the ink dries.⁷²

III. THE CYNICAL EFFORT TO REWRITE THE LAW FOR THE POWERFUL

Yet, for the last four years, this bedrock proposition—that most laws are written to be durable and relevant in people's lives—has been relentlessly attacked. In the case of the CFPB, at issue are laws like the Dodd-Frank Act and the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act, which were passed by the 2009–2010 Congress and signed by President Obama.⁷³ It is abundantly obvious that these lawmakers, of all people—keenly

that if consumers paid tips, the tips would help specific numbers of customers and were a way to help other borrowers. In fact, lenders added tips to general revenues.”)

70. See JPay, LLC, CFPB No. 2021-CFPB-0006, 1–2 (Oct. 19, 2021); see also *Statement of CFPB Director Rohit Chopra on the JPay Enforcement Action*, CONSUMER FIN. PROT. BUREAU (Oct. 19, 2021), <https://www.consumerfinance.gov/about-us/newsroom/statement-of-cfpb-director-rohit-chopra-on-the-jpay-enforcement-action/#footnote-3> [<https://perma.cc/8A6P-FPKT>] (“The Consumer Financial Protection Act prohibits abusive acts or practices in the offering of consumer financial products or services. The Bureau determined that JPay’s practices met the statutory test outlined in 12 U.S.C. 5531(d)(2)(B) (prohibiting taking ‘unreasonable advantage of the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service’). Specifically, the fact that JPay was able to accumulate market power through its single-source contracts gave JPay a captive customer base. Consumers had little to no ability to protect their interests given this market structure.”).

71. See generally *Bulletin 2022-05: Unfair and Deceptive Acts or Practices That Impede Consumer Reviews*, 87 Fed. Reg. 17143 (Mar. 28, 2022).

72. See, e.g., Brief of U.S. Senator Sheldon Whitehouse et al. as Amici Curiae in Support of Respondents at 23–24, *West Virginia v. EPA*, 597 U.S. 697 (2022) (regarding legislation curbing the emission of specific pollutants compared to pollutants generally responsible for climate change, “Congress is well-within its power to pass a specific law about a single category of air pollutants while also maintaining a broad, forward-looking regulatory authority to address air pollutants generally, in a way consistent with evolving science and technology”).

73. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, (2010) (passing in the Senate by a vote of 60–39 (Roll Call Vote 111th Congress, Vote No. 207 (July 15, 2010)) and the House by a vote of 237–192 (Roll Call No. 413, H.R. 4173 (June 30,

aware of the existing framework's failure to prevent the last catastrophe—drafted these laws to address evolving problems. These statutes' core provisions have not been amended in any meaningful way by Congress—which means that, under the principles of our Constitutional system, their words are still the law.⁷⁴ Yet, too many efforts to apply the law to modern circumstances have been blocked in courts—outside the democratic process—as part of a larger ideological crusade.

Take the judge-made “major questions” doctrine. Rooted in a few statutory interpretation opinions from prior decades, the doctrine has now been weaponized to disempower Congress from writing statutes with enduring relevance.⁷⁵ The Supreme Court began to routinely invoke this doctrine a few years ago, to much criticism from the bar and legal academia.⁷⁶ And now the

2010)); Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111–24, (2009) (passing in the Senate by a vote of 90–5 (Roll Call Vote 111th Congress, Vote No. 194 (May 19, 2009)) and the House by a vote of 357–70 (Roll Call No. 228, (Apr. 30, 2009))); *H.R.4173 - Dodd-Frank Wall Street Reform and Consumer Protection Act*, CONG., <https://www.congress.gov/bill/111th-congress/house-bill/4173/all-actions> [<https://perma.cc/B4E8-NJNN>]; *H.R.627 - Credit CARD Act of 2009*, CONG., <https://www.congress.gov/bill/111th-congress/house-bill/627/all-actions> [<https://perma.cc/ZL5G-PBBL>]. See also Carl Hulse, *With Support, Congress Seizes on Credit Cards*, N.Y. TIMES (May 12, 2009), <https://www.nytimes.com/2009/05/13/us/politics/13cong.html> [<https://perma.cc/7VTS-89SG>] (“Just how unhappy the public is was reflected on the Senate floor. In nearly two days of Senate debate so far this week, not one senator has stepped forward to defend the card companies or blame consumers who have run up substantial credit card debt for causing some of their own problems.”).

74. See, e.g., *West Virginia v. EPA*, 597 U.S. 697, 778 (2022) (Kagan, J., dissenting) (“[C]ontra the majority, it is [the enacting] Congress’s choice which counts, not any later one’s.”).

75. See, e.g., Daniel T. Deacon & Leah M. Litman, *The New Major Questions Doctrine*, 109 VA. L. REV. 1009, 1010 (2023) (“[The Major Questions Doctrine] supplies an additional means for minority rule in a constitutional system that already skews toward minority rule. What’s more, it invites politically infused judgments by the federal courts, further eroding democratic control of policy.”).

76. See, e.g., Ronald M. Levin, *The Major Questions Doctrine: Unfounded, Unbounded, and Confounded*, 112 CALIF. L. REV. 899 (2024); Alan B. Morrison, *As Compared to What?*, 13 REG. REV. DEPTH 29 (2024); Beau J. Baumann, *Americana Administrative Law*, 111 GEO. L.J. 465 (2023); Mila Sohoni, *The Major Questions Quartet*, 136 HARV. L. REV. 262 (2022); Lisa Heizerling, *The Major Answers Doctrine*, 16 N.Y.U. J.L. & LIBERTY 506 (2023); Blake Emerson, *Administrative Answers to Major Questions: On the Democratic Legitimacy of Agency Statutory Interpretation*, 102 MINN. L. REV. 2019 (2018); Natasha Brunstein & Donald L. R. Goodson, *Unheralded and Transformative: The Test for Major Questions After West Virginia*, 47 WM. & MARY ENV’T L. & POL’Y REV. 47 (2022); Josh Chafetz, *The New Judicial Power Grab*, 67 ST. LOUIS U. L.J. 635 (2023); Jodi L. Short & Jed H. Shugerman, *Major Questions About Presidentialism: Untangling the “Chain of Dependence” Across Administrative Law*, 65 B.C. L. REV. 511 (2024); Michael Coenen & Seth Davis, *Minor Courts, Major Questions*, 70 VAND. L. REV. 777 (2017); Max Sarinsky, *This Is How To Rebut Major Questions Arguments*, YALE J. REGUL. (Mar. 25, 2024), <https://www.yalejreg.com/nc/this-is-how-to-rebut-major-questions-arguments-by-max-sarinsky/> [<https://perma.cc/8CKN-Y76P>]; David M. Driesen, *Does the Separation of Powers Justify the Major Questions Doctrine?*, 2024 U. ILL. L. REV. 1177 (2024); Jody Freeman & Matthew C. Stephenson, *The Anti-Democratic Major Questions Doctrine*, 2022 SUP. CT. REV. 1 (2022); Warren Grimes, *The Major Questions Doctrine: Judicial Activism That Undermines the Democratic Process*, 54 LOY. U. CHI. L. J. 825 (2023); Thomas O. McGarity, *The Major Questions Wrecking*

doctrine has metastasized through the lower courts as a basis to strike down any government action that can be characterized (or mischaracterized) as “new” and “major,” even where the agency is simply applying the text and intent of the law to the world as it exists today.⁷⁷

For example, in 2022, the CFPB’s Office of Supervision updated its “examination manual”⁷⁸ to include the commonsense notion that racial, religious, or other insidious forms of discrimination could, depending on the circumstances, violate the Consumer Financial Protection Act’s prohibition on unfairness.⁷⁹ In other words, we said that discrimination can be unfair. There is a history of agencies making similar claims,⁸⁰ and especially in an age of algorithmic bias and concern over fair access to the banking system, this hardly seemed to us like a major “question of major economic and political significance.”⁸¹

Moreover, the 2010 Congress didn’t write anything into the statute’s text that suggests discrimination is not unfair. As a textual matter, a discriminatory act or practice could certainly satisfy the statutory standard for unfairness.⁸² And, of course, there is no carve-out in the law’s text for discrimination.⁸³ Yet,

Ball, 41 VA. ENV’T L.J. 1 (2023); Kevin Tobia, Daniel E. Walters & Brian Slocum, *Major Questions, Common Sense?*, 97 S. CAL. L. REV. 1153 (2024); see also Chris Geidner, *The Supreme Court’s Conservatives Have a Flexible New ‘Doctrine’*, MSNBC, <https://www.msnbc.com/opinion/msnbc-opinion/student-loan-case-supreme-court-conservatives-wield-flimsy-doctrine-rcna72769> [<https://perma.cc/KA3X-EVUK>].

77. See generally Natasha Brunstein, *Major Questions in Lower Courts*, 75 ADMIN. L. REV. 661 (2023).

78. See Brief of Appellants at 9, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 23-40650 (5th Cir. Aug. 7, 2024) (“The CFPB is authorized to conduct examinations of the entities it supervises. Over the course of an exam, the CFPB collects information from the supervised entity, assesses the adequacy of the entity’s compliance management systems, identifies practices that may violate federal law, and consults with the entity regarding potential follow-up actions . . . No exam covers all topics . . . To assist its examiners, the CFPB issues a Supervision and Examination Manual.”).

79. See *CFPB Targets Unfair Discrimination in Consumer Finance*, CONSUMER FIN. PROT. BUREAU (Mar. 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-targets-unfair-discrimination-in-consumer-finance/> [<https://perma.cc/QP7U-XY59>].

80. See Jeff Sovern, *Is Discrimination Unfair?*, 41 GA. ST. U. L. REV. 631, 671 (2025) (“For many decades, administrative agencies, including the FTC, have seen objectionable discrimination as unfair within the meaning of the UDAP statutes they enforce.”).

81. See Brief of Appellants, *supra* note 78, at 12; see also Brief of Professors of Consumer L. as Amici Curiae in Support of Appellants at 4, 25, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 23-40650 (5th Cir. Aug. 14, 2024).

82. See Brief of Appellants, *supra* note 78, at 43–44 (“Without the gloss of the major questions doctrine (which does not apply anyway, see below), discriminatory acts and practices can clearly satisfy § 5531’s standard for unfairness . . . Section 5531 provides that the Bureau can declare an act or practice unfair if it satisfies three criteria: 1) ‘the act or practice causes or is likely to cause substantial injury to consumers’; 2) the injury is not ‘reasonably avoidable by consumers’; and 3) the ‘injury is not outweighed by countervailing benefits to consumers or to competition.’ 12 U.S.C. § 5531(a), (b) . . . As a textual matter, a discriminatory act or practice could satisfy the standard for unfairness.”).

83. See 12 U.S.C. § 5531.

when the big banks sued us in Texas, a district judge ruled that discrimination is actually not unfair.⁸⁴ The judge wrote an exception into the law, relying on the major questions doctrine to override the United States Congress and the 237 representatives and 60 senators who voted for the unfairness provision.⁸⁵ Apparently, there are actually secret words in the statute—written in invisible ink that only corporate lawyers and certain judges can see. The case is, as they say, now on appeal.⁸⁶

Unfortunately, that case is not an outlier. In lower courts across the country, judges have repeatedly struck down agency action under statutes that Congress clearly drafted to apply to evolving circumstances simply because the agency was doing just that.⁸⁷ As Justice Kagan has put it, after decades of lectures about the need to be “textualist[s],” judges are now using the major questions doctrine as a “get-out-of-text-free card[.]”⁸⁸

More importantly, the major questions doctrine is just one tactic used to twist or altogether rewrite the law to protect the powerful from any government action.⁸⁹ We have repeatedly seen judicial decisions overturn the clear consensus that our elected representatives from across the country reached in Washington. A federal judge ruled that the Equal Credit Opportunity Act only allows the CFPB to address discrimination after someone submits a loan application, meaning that Congress gave the agency no power to prohibit

84. See Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, 691 F. Supp. 3d 730, 732 (E.D. Tex. 2023).

85. *Id.* at 743. Dodd-Frank Wall Street Reform and Consumer Protection Act Pub. L. No. 111–203, (2010) (passing in the Senate by a vote of 60–39 (Roll Call Vote 111th Congress, Vote No. 207 (July 15, 2010)) and the House by a vote of 237–192 (Roll Call No. 413, H.R. 4173 (June 30, 2010)); *H.R.4173 - Dodd-Frank Wall Street Reform and Consumer Protection Act*, *supra* note 73.

86. See Notice of Appeal, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 6:22-cv-381-JCB (E.D. Tex. Nov. 6, 2023). In April 2025, the Trump Administration CFPB and the plaintiffs jointly dismissed the appeal. See [Corrected] Joint Stipulation to Dismiss Appeal, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 23-40650 (5th Cir. Apr. 30, 2025).

87. See, e.g., *Tex. Bankers Ass’n v. Off. of the Comptroller*, 728 F. Supp. 3d 412, 425 (N.D. Tex. 2024). See generally Brunstein, *supra* note 77.

88. *West Virginia v. EPA*, 597 U.S. 697, 779 (2022) (Kagan, J., dissenting).

89. See David Tatel, *The Supreme Court vs. the Administrative State*, AM. ACAD. IN BERLIN (Mar. 12, 2024), <https://www.americanacademy.de/videoaudio/the-supreme-court-vs-the-administrative-state/> [<https://perma.cc/M8VV-7DF2>] (describing “the tools —especially the so-called major questions doctrine —that the Supreme Court is using to limit the authority of [government] agencies, and the threat it poses to the American people and American democracy”); see also Judge David Tatel on *Vision- A Memoir of Blindness and Justice*, NAT’L CONST. CTR. (July 18, 2024), <https://constitutioncenter.org/media/files/Judge-David-Tatel-on-Vision-A-Memoir-of-Blindness-and-Justice-WTP.pdf> [<https://perma.cc/RS9Z-GRK3>].

“whites only” or “women need not apply” signs.⁹⁰ Fortunately, the appeals court overturned that one.⁹¹

After more than three years on the front lines, I have no qualms about saying that nearly any question, no matter how small, can now be “major,” and there is virtually no mousehole that can’t hide an elephant.⁹²

I do not want to give the impression that we have not had many successes in protecting people from very real harm. Far from it. Industry may think they have an ace in the hole with well-funded forum shopping litigation, but the CFPB has tenaciously stuck to its mission of protecting the American people. In enforcement action after enforcement action, the CFPB has held the largest financial institutions accountable,⁹³ driven individual accountability,⁹⁴ and tried to ensure that repeat offenders do not see fines and penalties as simply a

90. See *Bureau of Consumer Fin. Prot. v. Townstone Fin., Inc.*, No. 20-cv-4176, 2023 WL 1766484, at *7–8 (N.D. Ill. Feb. 3, 2023), *rev'd*, 107 F.4th 768 (7th Cir. 2024); David Dayen, *The Return of ‘Whites Only’ Signs?*, AM. PROSPECT (Aug. 23, 2023), <https://prospect.org/justice/2023-08-23-return-of-whites-only-signs-lending/> [<https://perma.cc/4SE5-JY82>].

91. See *Consumer Fin. Prot. Bureau v. Townstone Fin., Inc.*, 107 F.4th 768, 771 (7th Cir. 2024).

92. See *supra* notes 75–77, 89.

93. See, e.g., Rohit Chopra, *Prepared Press Call Remarks of CFPB Director Rohit Chopra on the Zelle Lawsuit Announcement*, CONSUMER FIN. PROT. BUREAU (Dec. 20, 2024), <https://www.consumerfinance.gov/about-us/newsroom/prepared-press-call-remarks-of-cfpb-director-rohit-chopra-on-the-zelle-lawsuit-announcement/> [<https://perma.cc/7RB2-VM2F>]; *Federal Regulators Fine Bank of America \$225 Million Over Botched Disbursement of State Unemployment Benefits at Height of Pandemic*, CONSUMER FIN. PROT. BUREAU (July 14, 2022), <https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-fine-bank-of-america-225-million-over-botched-disbursement-of-state-unemployment-benefits-at-height-of-pandemic/> [<https://perma.cc/TJD9-T7ZH>]; see also *The CFPB’s Enforcement Work in 2023 and What Lies Ahead*, CONSUMER FIN. PROT. BUREAU (Jan. 29, 2024), <https://www.consumerfinance.gov/about-us/blog/the-cfpbs-enforcement-work-in-2023-and-what-lies-ahead/> [<https://perma.cc/5Q6W-HDZU>].

94. See, e.g., *CFPB Takes Action Against Coding Boot Camp BloomTech and CEO Austen Allred for Deceiving Students and Hiding Loan Costs*, CONSUMER FIN. PROT. BUREAU (Apr. 17, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-coding-boot-camp-bloomtech-and-ceo-austen-allred-for-deceiving-students-and-hiding-loan-costs/> [<https://perma.cc/U45L-MVQE>]; *CFPB Charges TransUnion and Senior Executive John Danaher with Violating Law Enforcement Order*, CONSUMER FIN. PROT. BUREAU (Apr. 12, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-charges-transunion-and-senior-executive-john-danaher-with-violating-law-enforcement-order/> [<https://perma.cc/5T4U-NNSA>]; *CFPB Takes Action Against Credit Repair Cloud and CEO Daniel Rosen for Enabling Credit Repair Companies that Harvest Illegal Fees*, CONSUMER FIN. PROT. BUREAU (Aug. 8, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-credit-repair-cloud-and-ceo-daniel-rosen-for-enabling-credit-repair-companies-that-harvest-illegal-fees/> [<https://perma.cc/2MRY-RPWH>]; *CFPB Sues Horizon Card Services and CEO Robert Kane for Illegally Baiting, Gouging, and Trapping Families in High-Fee Credit Cards*, CONSUMER FIN. PROT. BUREAU (Sep. 13, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-horizon-card-services-and-ceo-robert-kane-for-illegally-baiting-gouging-and-trapping-families-in-high-fee-credit-cards/> [<https://perma.cc/5G6R-MFRC>].

cost of doing business.⁹⁵ We have also been ambitious about what visionary supervision can accomplish, addressing issues like bias in algorithmic lending⁹⁶ and exotic contract clauses that deny people their rights,⁹⁷ and driving hundreds of millions of dollars in illegal junk fees back to consumers.⁹⁸

I am proud of how much the CFPB has accomplished for working people. But the undemocratic campaign against applying the law to the world as it is today presents a real obstacle to addressing the tremendous changes happening across the economy—with even more on the horizon—that are causing financial pain for so many.

IV. UPDATING EXISTING APPLICATIONS OF THE LAW FOR THE WORLD TODAY

As part of ensuring that our implementation of the federal consumer financial laws keeps up with the world as it evolves, the CFPB has also revisited existing applications of the law to make sure they still make sense. This is really very simple: If the world changes but interpretations of the law do not, then

95. See, e.g., *CFPB Bans Navient from Federal Student Loan Servicing and Orders the Company to Pay \$120 Million for Wide-Ranging Student Lending Failures*, CONSUMER FIN. PROT. BUREAU (Sep. 12, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-navient-from-federal-student-loan-servicing-and-orders-the-company-to-pay-120-million-for-wide-ranging-student-lending-failures/> [https://perma.cc/EKZ9-MFG9]; *CFPB Shuttters Lending by VC-Backed Fintech for Violating Agency Order*, CONSUMER FIN. PROT. BUREAU (Dec. 21, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-shuttters-lending-by-vc-backed-fintech-for-violating-agency-order/> [https://perma.cc/4P9Y-2J9R].

96. See CONSUMER FIN. PROT. BUREAU, FAIR LENDING REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU 8 (2024), https://files.consumerfinance.gov/f/documents/cfpb_fair-lending-report_fy-2023.pdf [https://perma.cc/HT3N-4GJU].

97. See *Supervisory Highlights, Issue 28*, CONSUMER FIN. PROT. BUREAU, Nov. 2022, at 1, 21, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-28_2022-11.pdf [https://perma.cc/T4LA-ECQS] (finding “[d]eceptive waiver[s] of borrowers’ rights in loan security agreements”); *Supervisory Highlights, Issue 24*, CONSUMER FIN. PROT. BUREAU, June 2021, at 1, 27–28, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf [https://perma.cc/3W4G-FBPQ] (finding “[d]eceptive waivers of borrowers’ rights in security deed riders and loan security agreements”); see also Seth Frotman & Lorelei Salas, *New Tactics From Companies Trying To Charge Illegal Junk Fees*, CONSUMER FIN. PROT. BUREAU (Dec. 19, 2024), <https://www.consumerfinance.gov/about-us/blog/new-tactics-from-companies-trying-to-charge-illegal-junk-fees/> [https://perma.cc/46AR-VH2N]; Seth Frotman & Lorelei Salas, *Protecting You From Unlawful Debt Collection at Work*, CONSUMER FIN. PROT. BUREAU (Jan. 2, 2025), <https://www.consumerfinance.gov/about-us/blog/protecting-you-from-unlawful-debt-collection-at-work/> [https://perma.cc/B4UH-XHUL].

98. See *Supervisory Highlights, Issue 37*, CONSUMER FIN. PROT. BUREAU, Dec. 2024, at 1, 2–5, https://files.consumerfinance.gov/f/documents/cfpb_Supervisory-Highlights-Issue-37_Winter-2024.pdf [https://perma.cc/5DF5-SSDE] (“[M]ortgage originators and servicers have also recently reported issuing refunds related to unfair, deceptive, or otherwise unlawful fees and charges . . . In short, mortgage servicers have reported issuing \$4,251,815 in refunds for 91,931 affected loans. Mortgage originators reported issuing \$115,605,024 in refunds for 134,912 affected loans Since the CFPB heightened its supervisory attention on overdraft and [insufficient funds] fees in 2022, financial institutions have agreed to refund nearly \$250 million to consumers.”).

the law is not being applied appropriately to the facts as they exist now. So, in the last few years, the CFPB has closely examined the laws and regulations that we administer (many of which we inherited from other agencies), including how those documents have been interpreted by courts and deployed by litigants and others at the state and federal level.

One of the things the CFPB has done is to examine all the laws and regulations under our authority to make sure we are complying with Congress's mandates. We have instructed our lawyers to inspect every line of those laws and rules—literally page by page. We found that there are important provisions, extremely relevant to the world as it exists now, that had never been addressed by the agency. I should note that the CFPB is hardly unique in this regard. Too often, federal agencies let their authorities languish, or, worse, treat them as polite suggestions from the legislative branch.⁹⁹ Then, inertia builds up, and, ironically, the very agency that failed to implement the statute succumbs to the idea that, because the provision was not treated as consequential before, it is controversial or even legally dubious to rely on it now.¹⁰⁰ Yet, if Congress wrote a statutory provision that applies to something happening right now, we should not make excuses for failing to apply the law that way. And so, part of our job as agency lawyers is to know every legal provision and ensure that they are being applied appropriately.

We have taken this task seriously. You can see this in the CFPB's advisory opinion highlighting a critical, but essentially ignored, provision of federal law ensuring that people have access to basic information from their bank without roadblocks or fees.¹⁰¹ The CFPB, for the first time, also made use of statutory authority to supervise financial institutions that present risks to consumers.¹⁰²

99. See, e.g., ELEC. PRIV. INFO. CTR., WHAT THE FTC COULD BE DOING (BUT ISN'T) TO PROTECT PRIVACY: THE FTC'S UNUSED AUTHORITIES 2 (2021), <https://epic.org/wp-content/uploads/privacy/consumer/EPIC-FTC-Unused-Authorities-Report-June2021.pdf> [<https://perma.cc/7NAX-JD4Z>]; David Seligman, *Protecting Worker Power with Antitrust*, ONLABOR (Feb. 19, 2019), <https://onlabor.org/protecting-worker-power-with-antitrust/> [<https://perma.cc/ZTH7-JM9D>].

100. Director Rohit Chopra has spoken at some length about how this went on at the FTC. See, e.g., FED. TRADE COMM'N, OFF. OF COMM'R ROHIT CHOPRA, COMMISSION FILE NO. P065404, STATEMENT OF COMMISSIONER ROHIT CHOPRA REGARDING THE REPORT TO CONGRESS ON THE FTC'S USE OF ITS AUTHORITIES TO PROTECT CONSUMER PRIVACY AND SECURITY 1 (2020), https://www.ftc.gov/system/files/documents/public_statements/1577067/p065404dpipchoprastatement.pdf [<https://perma.cc/Q687-6FW8>]; Rohit Chopra & Samuel A.A. Levine, *The Case for Resurrecting the FTC Act's Penalty Offense Authority*, 170 U. PA. L. REV. 71, 72 (2021).

101. See Consumer Information Requests to Large Banks and Credit Unions, 88 Fed. Reg. 71279 (Oct. 16, 2023).

102. See, e.g., *CFPB Orders Federal Supervision for Installment Lender Following Contested Designation*, CONSUMER FIN. PROT. BUREAU (Feb. 23, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-federal-supervision-for-installment-lender-following-contested-designation/> [<https://perma.cc/Y3G6-4PW4>]; *CFPB Orders Federal Supervision of Google Following Contested Designation*, CONSUMER FIN. PROT. BUREAU (Dec. 6, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-federal-supervision-of-google-following-contested-designation/> [<https://perma.cc/L2EL-762E>].

This is crucially important to ensure that—unlike the regulatory agencies in the lead-up to the financial crisis—we do not have any blind spots in the oversight of financial markets.¹⁰³ We also wrote regulations making the first use of our authority to register nonbank participants in consumer financial markets to ensure better transparency about repeat violators of the law.¹⁰⁴ And we finalized long-languishing rules regarding small business lending transparency¹⁰⁵ and people’s rights regarding their financial data.¹⁰⁶

Being faithful to the law also requires reviewing existing regulations and other interpretations to ensure they are still, as the world evolves, consistent with the statute that Congress passed. Many agencies sit back and see how the law develops over years or decades—or, worse, treat the process as “one and done.” But as the agency charged with administering the federal consumer financial laws, we have been aware that eager litigants may pull courts away from the text of statutes and regulations. It is our job to monitor litigation, to see where parties have tried to twist the law or create loopholes that do not exist, and to file amicus briefs to ensure the law is correctly interpreted.¹⁰⁷ We countered a false premise—with no basis whatsoever in the statute—that people aren’t entitled to accountability for mistakes on their credit report that can be characterized as “legal” in nature.¹⁰⁸ We vindicated the idea that our

103. See Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders, 87 Fed. Reg. 70703, 70704 (Nov. 21, 2022) (“The Bureau’s risk-designation authority gives the Bureau’s supervision program the ability to move as quickly as the marketplace. For instance, fast-growing companies in nontraditional areas of the consumer finance market may be engaged in novel activities that warrant supervisory attention because of their risks to consumers. And there can also be supervisory gaps in more traditional areas of the market that ought to be filled. Through the supervisory process, CFPB examiners can work with the company in question to fully understand and manage its risks. This preferably would occur before there has been any violation of law or consumer harm, rather than after.”).

104. See Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders, 89 Fed. Reg. 56028 (July 8, 2024).

105. See Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35150 (May 31, 2023).

106. See Required Rulemaking on Personal Financial Data Rights, 89 Fed. Reg. 90838 (Nov. 18, 2024).

107. See, e.g., Statement of Int. of the Consumer Fin. Prot. Bureau in Support of Plaintiffs, *Roberson v. Health Career Inst.*, No. 9:22-cv-81883-RAR (S.D. Fla. Apr. 14, 2023); Statement of Int. of the U.S., *Connolly v. Lanham*, 685 F. Supp. 3d 312 (D. Md. Mar. 30, 2023) (No. 1:22-cv-2048-SAG).

108. See, e.g., Brief of the Consumer Fin. Prot. Bureau and the Fed. Trade Comm’n as Amici Curiae in Support of Plaintiff-Appellant and Reversal at 2–3, *Sessa v. Trans Union, LLC*, 74 F.4th 38 (2d Cir. 2022) (No. 22-87); see also Seth Frotman, *Credit Reporting Companies and Furnishers Have Obligations to Assure Accuracy in Consumer Reports*, CONSUMER FIN. PROT. BUREAU (May 6, 2022), <https://www.consumerfinance.gov/about-us/blog/credit-reporting-companies-and-furnishers-have-obligations-to-assure-accuracy-in-consumer-reports> [https://perma.cc/AAM5-D8C8]; *FTC Joins Amicus Brief Opposing Liability Shield for Sloppy Credit Reports*, FED. TRADE COMM’N (May 6, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-joins-amicus-brief-opposing-liability-shield-sloppy-credit-reports> [https://perma.cc/R8X8-AJ64].

nation's fair lending laws protect existing customers from discrimination.¹⁰⁹ And we defeated efforts to bless unauthorized and illegal junk fees for people simply making payments on their mortgage or finding how much they owe to pay it off.¹¹⁰

Another area of focus, especially given the dismal role of federal regulators in the lead-up to the 2008 crisis, which Congress expressly reproached in Dodd-Frank,¹¹¹ has been to ensure that the laws we administer aren't inappropriately used to block, or "preempt," states from protecting consumers from harmful practices.¹¹² The CFPB made clear that states and localities have the ability to limit dubious data on their resident's credit reports, including information about medical or rental debt that is often riddled with errors and has little predictive value.¹¹³ We responded to an industry request to cut back state laws providing crucial disclosures about small business lending by issuing a determination that there is not a conflict between laws that protect consumers and laws that protect small businesses.¹¹⁴ And we supported the Solicitor

109. See Brief of the Consumer Fin. Prot. Bureau et al. as Amici Curiae in Support of Appellant and Reversal at 1–8, *Fralish v. Bank of America, N.A.*, No. 21-2846 (7th Cir. Dec. 16, 2021); see also Seth Frotman, *CFPB Is Standing Up for Civil Rights Protections*, CONSUMER FIN. PROT. BUREAU (Dec. 17, 2021), <https://www.consumerfinance.gov/about-us/blog/cfpb-standing-up-civil-rights-protections/> [<https://perma.cc/2QMH-B58D>].

110. See Seth Frotman, *Unlawful Fees in the Mortgage Market*, CONSUMER FIN. PROT. BUREAU (Feb. 27, 2024), <https://www.consumerfinance.gov/about-us/blog/unlawful-fees-in-the-mortgage-market/#:~:text=As%20the%20CFPB%20has%20advised,a%20law%20affirmatively%20allowing%20them> [<https://perma.cc/7KUM-VMK9>]; Brief of the Consumer Fin. Prot. Bureau and the Fed. Trade Comm'n as Amici Curiae in Support of Plaintiffs-Appellees at 6–10, *Booze v. Ocwen Loan Servicing, LLC*, No. 23-12578 (11th Cir. Feb. 27, 2024); Seth Frotman, *Junk Fees That Harm Competition*, CONSUMER FIN. PROT. BUREAU (Aug. 6, 2024), <https://www.consumerfinance.gov/about-us/blog/junk-fees-that-harm-competition/> [<https://perma.cc/57FR-9GD6>]; Brief of the Consumer Fin. Prot. Bureau as Amicus Curiae in Support of Plaintiffs at 1–2, *Salom v. Nationstar Mortgage LLC*, No. 2:24-cv-00444-BJR (W.D. Wa. Aug. 8, 2024); Brief of the Consumer Fin. Prot. Bureau as Amicus Curiae in Support of Plaintiffs-Appellants at 8–12, *Thomas-Lawson v. Carrington Mortgage Services, LLC*, No. 21-55459 (9th Cir. Oct. 21, 2021).

111. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, § 1044 (2010) (codified at 12 U.S.C. § 25b).

112. See *Director Rohit Chopra Remarks – December NAAG Meeting*, CONSUMER FIN. PROT. BUREAU (Dec. 7, 2021), <https://www.consumerfinance.gov/about-us/newsroom/director-chopra-remarks-december-naag-meeting/> [<https://perma.cc/PT6H-GZB9>].

113. *The Fair Credit Reporting Act's Limited Preemption of State Laws*, 87 Fed. Reg. 41042 (July 11, 2022); see also *CFPB Affirms Ability for States to Police Credit Reporting Markets*, CONSUMER FIN. PROT. BUREAU (June 28, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-affirms-ability-for-states-to-police-credit-reporting-markets/> [<https://perma.cc/7C99-9CWQ>].

114. *Truth in Lending: Determination of Effect on State Laws (California, New York, Utah, and Virginia)*, 88 Fed. Reg. 19214 (Mar. 31, 2023); see *CFPB Issues Determination that State Disclosure Laws on Business Lending are Consistent with the Truth in Lending Act*, CONSUMER FIN. PROT. BUREAU (Mar. 28, 2023), <https://www.consumerfinance.gov/about-us/newsroom/state-disclosure-laws-business-lending-consistent-with-truth-in-lending-act/> [<https://perma.cc/YW9C-FYWQ>].

General's position—contrary to the view that the Office of the Comptroller of the Currency had expressed¹¹⁵—against a sweeping preemption standard that Congress explicitly rejected.¹¹⁶ The Solicitor General's position was ultimately adopted by the Supreme Court, 9–0.¹¹⁷

Ensuring our regulations remain relevant has also entailed taking on some of industry's most-valued protections. We often hear about the need to delete old rules. Certainly, if existing regulations do not make sense in the modern world, they should be reformed. But that should not be a one-way ratchet. If administrative law means anything, then the safe harbors, carve-outs, and liability shields that well-paid industry lobbyists and lawyers fought to create must be treated with the same level of scrutiny as provisions that protect consumers. And the CFPB is responsible for reams of regulations promulgated by other agencies in earlier eras¹¹⁸—many of which contain unwarranted loopholes and exceptions.

Much of the CFPB's recent regulatory agenda has focused on ensuring that these existing regulations are consistent with the laws that Congress actually wrote. In the credit card market, the CFPB updated a decade-old regulation implementing a statutory provision of the 2009 CARD Act.¹¹⁹ This provision, on its face, should protect people from predatory credit card fee practices.¹²⁰ Yet, with scant justification, the Federal Reserve Board, shortly before the CFPB was created, issued an industry-friendly “safe harbor”¹²¹ that is now nothing more than a \$14 billion a year boondoggle borne by the worst-off borrowers.¹²² The CFPB also recently finalized a regulation on overdraft fees, updating a fifty-five-year-old carve-out from the Truth in Lending Act.¹²³ This revision reflects that the dominance of checks—the circumstances

115. See Brief of the Off. of the Comptroller of the Currency as Amicus Curiae in Support of Defendant-Appellant Bank of America, N.A., *Cantero v. Bank of Am., N.A.*, 49 F.4th 121 (2d Cir. 2022) (No. 21-400).

116. See Brief for the U.S. as Amicus Curiae in Support of Vacatur, *Cantero v. Bank of Am., N.A.*, 602 U.S. 205 (2024) (No. 22-529).

117. *Cantero v. Bank of Am., N.A.*, 602 U.S. 205 (2024).

118. See Identification of Enforceable Rules and Orders, 76 Fed. Reg. 43569 (July 21, 2011).

119. Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19128 (Mar. 15, 2024).

120. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 102, 123 Stat. 1734, 1738–40 (2009).

121. See Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. at 19129; see also Truth in Lending, 75 Fed. Reg. 37526, 37527 (June 29, 2010).

122. *CFPB Bans Excessive Credit Card Late Fees, Lowers Typical Fee from \$32 to \$8*, CONSUMER FIN. PROT. BUREAU (Mar. 5, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-excessive-credit-card-late-fees-lowers-typical-fee-from-32-to-8/> [<https://perma.cc/U36L-A9BA>] (“The rule will curb fees that cost American families more than \$14 billion a year.”); see, e.g., Katharina Buchholz, *2022 Credit Card Late Fees Cost Consumers Record \$15 Billion [Infographic]*, FORBES, <https://www.forbes.com/sites/katharinabuchholz/2024/03/06/2022-credit-card-late-fees-cost-consumers-record-15-billion-infographic/> [<https://perma.cc/TEC2-X2MS>].

123. Overdraft Lending: Very Large Financial Institutions, 89 Fed. Reg. 106768, 106768 (Dec. 30, 2024).

underlying the old rule—has long passed, and would ensure competition among similar credit products by applying statutory protections consistently under the law.¹²⁴ These reforms are similar in that both would help consumers by cutting back outdated safe harbors that the world’s largest financial institutions relied on to shield themselves from market forces and charge consumers billions in junk fees.¹²⁵

Not surprisingly, our efforts have been relentlessly challenged by trade associations, revolving-door lawyers, and their allies who file in favored venues where they think the outcomes are preordained while rhapsodizing like they are the second coming of Clarence Darrow.¹²⁶ Why do they do it? Because time and time again, it works. The CFPB’s credit card late fee rule explained in painstaking detail that Congress intended such fees to be “reasonable and proportional” and expressly provided the agency with rulemaking authority to establish standards implementing this provision.¹²⁷ The CFPB relied on extensive research to find that, “[a] decade on from the [Federal Reserve] Board’s implementation” of that provision, “the more robust data now available indicate that the late fee amounts charged by larger card issuers have again ballooned out of proportion . . . exactly the situation Congress intended to avert with the CARD Act.”¹²⁸ Yet trade groups got the rule blocked by convincing a Texas district court that, actually, the 2009 Congress and President Obama required the agency to allow banks to punish consumers with punitive fees.¹²⁹ Our overdraft rule has also been challenged¹³⁰—in a lawsuit filed the very day that we issued the regulation—because industry evidently believes it is illegal for an agency to ever narrow an exemption that makes them a lot of

124. See *CFPB Closes Overdraft Loophole to Save Americans Billions in Fees*, CONSUMER FIN. PROT. BUREAU (Dec. 12, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-closes-overdraft-loophole-to-save-americans-billions-in-fees/> [<https://perma.cc/Y9FX-WH8K>] (“In 1969, the Federal Reserve Board exempted banks from TILA protections for infrequent cases where a bank was honoring a check that had not cleared and subjected the customer to overdraft fees.”).

125. See Lilith Fellowes-Granda & David Correa, *The CFPB is Cleaning Up Junk Fees*, CTR. FOR AM. PROGRESS (Apr. 9, 2024), <https://www.americanprogress.org/article/the-cfpb-is-cleaning-up-junk-fees/> [<https://perma.cc/F7VU-582T>].

126. Christopher Connelly, *Looking to Push Back Biden’s Consumer Protections, Industry Groups Flock to Texas Courts*, KERA NEWS, <https://www.keranews.org/news/2024-06-06/looking-to-push-back-bidens-consumer-protections-industry-groups-flock-to-texas-courts> [<https://perma.cc/FN4T-US3Z>].

127. Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19128, 19129–41 (Mar. 15, 2024) (explaining background, rulemaking process, legal authority, and data considered for rulemaking).

128. Brief in Support of Defendants’ Motion to Dissolve Preliminary Injunction and Lift the Stay of the Late Fee Rule at 5, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 4:24-cv-00213-P (N.D. Tex. July 18, 2024).

129. See Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, 767 F. Supp. 3d 357, 360 (N.D. Tex. 2024).

130. See Complaint for Declaratory and Injunctive Relief, Miss. Bankers Ass’n v. Consumer Fin. Prot. Bureau, No. 3:24-cv-00792-CWR-LGI (S.D. Miss. Dec. 12, 2024).

money. Administrative law has become a sword to strike down any attempt to reign in corporate abuse as well as a shield to protect the loopholes and safe harbors that allow the well-off and well-connected to capitalize on rules and regulations rigged in their favor.

One significant question we should be asking is whether the law's hostility toward agencies and their expertise will be applied fairly. Has the dog caught the car? The Federal Register is littered with billion-dollar industry boondoggles, promulgated over generations with little or even no justification, backed by administrative records long lost in a far-off warehouse. When these provisions are challenged, how will purportedly neutral legal principles be applied when the outcome would favor consumers, workers, and those without power? Will industry-driven loopholes and carve-outs be held to the same exacting standards?

If that sounds naïve—if people will obviously not receive the same protections from “government overreach” as corporations and industry—then we need to recognize that administrative law is just another place where we have one legal system for the powerful and another for everybody else.

V. THE THREAT TO OUR DEMOCRACY

After hundreds of days serving as the CFPB general counsel, I could make a list of takeaways a mile long. But tying these lessons together is a larger theme: how the law and our legal system today is undermining our democracy. We must not overlook the debilitating effect that the legal system—whose only guiding principle too often seems to be power and protecting those with it—is having on real people's lives and our democracy itself.

Over the past few years, legal challenges killed or left languishing countless efforts across the federal government to provide meaningful improvement to the household finances and economic stability of hundreds of millions of Americans. That list includes ensuring the freedom to switch to a different job,¹³¹ protecting people from being ripped off by credit card¹³² and airline junk fees,¹³³ protecting servicemembers and others from unscrupulous practices at the car dealership,¹³⁴ providing relief for students ripped off by

131. *Ryan, LLC v. Fed. Trade Comm'n*, 746 F. Supp. 3d 369, 390 (N.D. Tex. 2024); see also Danielle Kaye, *Judge Blocks F.T.C.'s Noncompete Rule*, N.Y. TIMES (Aug. 20, 2024), <https://www.nytimes.com/2024/08/20/business/economy/noncompete-ban-ftc-texas.html> [<https://perma.cc/N8HU-UPEE>].

132. *Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau*, 733 F. Supp. 3d 558, 566 (N.D. Tex. 2024); see also Nate Raymond, *US Judge Won't Revive Rule Capping Credit Card Late Fees at \$8*, REUTERS, <https://www.reuters.com/legal/us-judge-wont-lift-block-rule-capping-credit-card-late-fees-8-2024-12-06/> [<https://perma.cc/2CSS-DRZ3>].

133. *Airlines for Am. v. Dep't of Transp.*, 110 F.4th 672, 674, 677 (5th Cir. 2024); see also Lori Aratani, *Airlines Sued to Block Fee Disclosures. They Just Won the First Round.*, WASH. POST (July 30, 2024), <https://www.washingtonpost.com/transportation/2024/07/30/airline-fees-disclosure-transparency-court-ruling/> [<https://perma.cc/5D3X-N38L>].

134. *FTC Pauses CARS Rule Effective Date*, FED. TRADE COMM'N (Jan. 18, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-pauses-cars-rule-effective->

predatory schools,¹³⁵ ensuring overtime pay for workers,¹³⁶ lowering student loan payments,¹³⁷ and ensuring that contract and franchise workers are treated fairly.¹³⁸ I could go on.

These are not obscure issues, or ones only of interest to people in D.C., or at think tanks, or universities. These are matters that affect most people on most days. And they are issues that are talked about and debated in presidential and congressional campaigns, that people vote on—implicitly and even explicitly. Despite that, the American people’s voice and vote have grown increasingly irrelevant to the change our government is able to deliver. That’s because the actual laws that are passed have grown increasingly irrelevant to the legal system.

Much of our job as government lawyers has become trying to manage the dubious direction that much of the law has taken: venue and standing decisions blessing increasingly audacious forum shopping;¹³⁹ nationwide injunctions and vacatur handed out like candy;¹⁴⁰ administrative law that makes

date [<https://perma.cc/HWN9-EPE5>] (“The Federal Trade Commission has issued an order postponing the effective date of the Combatting Auto Retail Scams (CARS) Rule while a legal challenge against the rule is pending.”); *see also* Brief for the Consumer Fed’n of Am. et al. as Amici Curiae in Support of Respondent, Nat’l Auto. Dealers Ass’n v. Fed. Trade Comm’n, 127 F.4th 549 (5th Cir. 2025) (No. 24-60013) (“After receiving more than 27,000 comments, the FTC issued the CARS Rule in January 2024. The Rule is simple and common-sense: It creates transparency, thereby helping consumers to make informed choices and promoting a competitive marketplace for honest dealers. It is a measured regulatory action to limit material misrepresentations, bait-and-switch tactics, hidden charges, and charges for useless add-on products or services . . .”).

135. *Career Colls. & Schs. of Tex. v. U.S. Dep’t of Educ.*, 98 F.4th 220, 256 (5th Cir. 2024), *cert. granted in part sub nom.*, *Dep’t of Educ. v. Career Colls. & Schs. of Tex.*, 145 S. Ct. 1039 (2025); *see also* Ben Unglesbee, *Federal Court Blocks Borrower Defense Rules, Says Legal Challenge Will Likely Succeed*, HIGHER ED DIVE (Apr. 8, 2024), <https://www.highered-dive.com/news/5th-circuit-blocks-borrower-defense-education-department-for-profit-colleges/712583/> [<https://perma.cc/8MFN-LDVX>].

136. *Texas v. U.S. Dep’t of Lab.*, 756 F. Supp. 3d 361, 367–69 (E.D. Tex. 2024); *see also* Daniel Wiessner, *US Judge Strikes Down Biden Overtime Pay Rule*, REUTERS, <https://www.reuters.com/world/us/us-judge-strikes-down-biden-overtime-pay-rule-2024-11-15/> [<https://perma.cc/3YND-HD7B>].

137. *Missouri v. Biden*, No: 24-2332, 2024 WL 3462265 (8th Cir. July 18, 2024); *see also* Adam S. Minsky, *In Major Order, Appeals Court Blocks Student Loan Forgiveness and Lower Payments for 8 Million Borrowers*, FORBES, <https://www.forbes.com/sites/adamminsky/2024/07/18/in-major-ruling-appeals-court-blocks-student-loan-forgiveness-and-lower-payments-for-8-million-borrowers/> [<https://perma.cc/EM8P-2QWT>].

138. *Chamber of Com. of U.S. v. Nat’l Lab. Rels. Bd.*, 723 F. Supp. 3d 498, 502 (E.D. Tex. 2024); *see also* Daniel Wiessner, *Judge Blocks US Labor Board Rule on Contract and Franchise Workers*, REUTERS, <https://www.reuters.com/legal/us-judge-blocks-us-labor-boards-rule-involving-contract-franchise-workers-2024-03-09/> [<https://perma.cc/TW7W-R3RP>].

139. *See, e.g.*, Stephen I. Vladeck, *Don’t Let Republican ‘Judge Shoppers’ Thwart the Will of Voters*, N.Y. TIMES (Feb. 5, 2023), <https://www.nytimes.com/2023/02/05/opinion/republicans-judges-biden.html> [<https://perma.cc/435T-BXAD>].

140. *See generally* *District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701 (2024).

anything the government says judicially reviewable;¹⁴¹ and completely undemocratic statutory interpretation.¹⁴² The law itself has become broken, and the cumulative effect is making it harder and harder to deliver on the laws that our citizens, through their elected representatives, chose to enact for the benefit of anyone other than the powerful and well-connected.

Despite all this, the CFPB still has had significant success. In 2022, the Fifth Circuit ruled that the CFPB's funding mechanism was unconstitutional, calling into question every single CFPB action (not to mention the financing of much of the federal government).¹⁴³ Yet the CFPB went on to win the case at the Supreme Court, 7–2, in an opinion authored by Justice Thomas.¹⁴⁴ In an age where the administrative state has lost case after case for so many years, upholding the CFPB's funding was a seminal victory for the agency's independence as well as for consumers. At the end of last year, a federal judge in Washington, D.C., appointed by President Trump,¹⁴⁵ flatly rejected a request for an injunction against our advisory opinion restating the widely accepted principle that debt collectors should not demand amounts that people do not actually owe.¹⁴⁶ The CFPB prevailed in Texas on a challenge to our regulation to ensure critical transparency in the small business lending market.¹⁴⁷ We also successfully defended our authority to enforce the law against Wall Street trusts that bizarrely claimed that, even though they file lawsuits against human beings to collect on loans, they somehow are not “debt collectors.”¹⁴⁸

Still, the challenges and setbacks we faced at the CFPB provide a frankly frightening window into the larger challenges our country faces now and will continue to face in the future. Although we prevailed at the Supreme Court, unspoken in the Court's opinion was the damage the ordeal did to the government's enforcement and administration of the law—staying over a dozen enforcement actions and giving Wall Street a chance to run out the clock on

141. See, e.g., *supra* note 78, *infra* notes 157–158 and accompanying text.

142. See *supra* notes 75–92 and accompanying text.

143. Cmty. Fin. Servs. Ass'n of Am. v. Consumer Fin. Prot. Bureau, 51 F.4th 616, 644 (5th Cir. 2022); see Mekela Panditharatne, *How a Supreme Court Case Could Upend the Consumer Financial Protection Bureau*, BRENNAN CTR. FOR JUST. (Oct. 3, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/how-supreme-court-case-could-upend-consumer-financial-protection-bureau> [<https://perma.cc/XX7Z-KBMS>].

144. Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., 601 U.S. 416, 419–21 (2024).

145. See PN587 — Dabney Langhorne Friedrich — *The Judiciary*, CONGRESS.GOV, <https://www.congress.gov/nomination/115th-congress/587> [<https://perma.cc/V4VY-C38P>].

146. ACA Int'l Inc. v. Consumer Fin. Prot. Bureau, No. 1:24-cv-03118 (D.D.C. Dec. 16, 2024) (denying preliminary injunction and temporary restraining order because plaintiffs were unlikely to succeed on the merits of their claims).

147. Tex. Bankers Ass'n v. Consumer Fin. Prot. Bureau, No. 7:23-CV-144, 2024 WL 3939598, at *1 (S.D. Tex. Aug. 26, 2024).

148. Consumer Fin. Prot. Bureau v. Nat'l Collegiate Master Student Loan Tr., 96 F.4th 599, 616 (3d Cir. 2024), *cert. denied*, 145 S. Ct. 984 (2024).

significant rules that were stayed for more than a year.¹⁴⁹ There have been many more cynical legal actions propped up by some judges. The national banking trade associations joined the Longview Chamber of Commerce to file a lawsuit in Tyler, Texas, challenging our examination manual update indicating that discrimination could be unfair.¹⁵⁰ The federal judge found venue and standing based on a few anonymous affidavits that did not name a single affected financial institution.¹⁵¹ In a case filed about a year later, Synchrony Bank, headquartered in Utah, seemed to brazenly buy a membership in the Fort Worth Chamber of Commerce in an attempt to establish venue for a challenge to the CFPB's credit card late fee rule in perhaps the only jurisdiction they thought they could win in.¹⁵² The Trump-appointed judge¹⁵³ tried twice to transfer the case from his courtroom but was sent a writ of mandamus each time by the Fifth Circuit¹⁵⁴ before ultimately enjoining the rule.¹⁵⁵

That's just the top of our list, and that's just one agency. But in no way are these abuses limited to cases involving the CFPB. The banking regulators were blocked from updating the nation's anti-redlining rules because the definition of "community" was deemed a major question.¹⁵⁶ The Department of Education had an injunction granted against it on a proposal they had yet to even

149. See, e.g., Rachel Rodman, Keith Gerver & Kathleen Comerford, *CFPB Enforcement Lags in Federal Court Due to Supreme Court Case*, BLOOMBERG L., <https://news.bloomberglaw.com/us-law-week/cfpb-enforcement-lags-in-federal-court-due-to-supreme-court-case> [<https://perma.cc/6R62-CN8Q>].

150. See Complaint at 1, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, 691 F.Supp.3d 730 (E.D. Tex. 2023) (No. 6:22-CV-381).

151. See Brief of Appellants at 35, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 23-40650 (5th Cir. Aug. 7, 2024) ("[W]hile the Plaintiff associations are identified by name, their members—the real parties in interest—are not."). The "major question" decision described above was also based on these affidavits. See *supra* notes 84–85 and accompanying text.

152. See Decl. of Steve Montgomery at 3, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 4:24-cv-00213-O (N.D. Tex. Mar. 15, 2024) (noting omission of Synchrony Bank from Fort Worth Chamber of Commerce directory prior to litigation); Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 4:24-cv-00213-P (N.D. Tex. Mar. 18, 2024) (noting in order for expedited briefing regarding venue that "only one plaintiff of the six in this matter has even a remote tie to the Fort Worth Division").

153. See PN207 — Mark T. Pittman — *The Judiciary*, CONGRESS.GOV, <https://www.congress.gov/nomination/116th-congress/207> [<https://perma.cc/U3NL-PUCE>].

154. See *In re Fort Worth Chamber of Commerce*, 100 F.4th 528, 531 (5th Cir. 2024) (granting petition for writ of mandamus, vacating transfer order, and ordering district court to reopen the case).

155. See Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, 767 F. Supp. 3d 357, 363–64 (N.D. Tex. 2024) (denying motion to dissolve preliminary injunction and concluding that the Fort Worth Chamber has standing because their "mission to promote a 'thriving business climate' in Fort Worth will be affected if card issuers belonging to its organization are subjected to the Final Rule's changes").

156. *Tex. Bankers Ass'n v. Off. of the Comptroller*, 728 F.Supp.3d 412, 416, 420–25 (N.D. Tex. 2024); see also Evan Weinberger, *Anti-Redlining Overhaul for Banks Paused by Texas Federal Judge*, BLOOMBERG L., <https://news.bloomberglaw.com/banking-law/anti-redlining-overhaul-for-banks-paused-by-texas-federal-judge> [<https://perma.cc/2DMZ-HHFG>].

finalize.¹⁵⁷ The Department of Health and Human Services had a tweet about humans taking horse pills deemed judicially reviewable agency action.¹⁵⁸ The FTC rule on noncompete agreements was blocked on the theory that the FTC is prohibited from writing any unfair competition rules.¹⁵⁹ The Department of Transportation was blocked from requiring airlines to disclose their fees because to do so would “irreparably harm” the airlines by requiring them to “expend significant resources reengineering their websites.”¹⁶⁰

In addition to the difficulty of litigating these cases, we government lawyers have also been trying to give sensible legal advice to clients, including policymakers and enforcement attorneys attempting to administer the laws they raised their hands and faithfully swore to execute. The way things are going, it may eventually become hard to tell government officials that anything written in the U.S. Code or F.3d even matters. I worry we may reach a point where policymakers feel that following the law—and their lawyers’ advice—is a game for suckers.

In light of all this heads I win, tails you lose legal nonsense, it is hard to blame the millions upon millions of Americans who have given up on the system and on legal institutions that increasingly pretend they are predicated on principle. If, over the course of a presidential administration, a federal agency is unable to change a regulation based on a raft of new data or to update a fifty-five-year-old rule rooted in the days when everyone routinely used checks, it may be time to unsparingly and unequivocally state that much of the system is rigged, and many of our institutions are broken. So, we must ask ourselves: What is the fall out? Memo after memo, brief after brief, opinion after opinion, I find myself with the gnawing question: At this moment in time, can our government effectuate national policymaking that tries to help those without power? Far too often, the answer is no.

157. *Missouri v. U.S. Dep’t of Educ.*, No. CV 224-103, 2024 WL 4069224, at *1 (S.D. Ga. Sep. 5, 2024); *see also* Katherine Knott, *Federal Judge Halts Biden’s Debt Relief Plan Before It’s Finalized*, INSIDE HIGHER ED (Sep. 6, 2024), <https://www.insidehighered.com/news/quick-takes/2024/09/06/federal-judge-halts-bidens-new-debt-relief-plan> [<https://perma.cc/NSQ7-C7FS>].

158. *Apter v. Dep’t of Health & Hum. Servs.*, 80 F.4th 579, 583 (5th Cir. 2023); *see also* Ufonobong Umanah, *FDA’s ‘Not a Horse’ Covid-19 Twitter Posts Are Agency Actions*, BLOOMBERG L., <https://news.bloomberglaw.com/us-law-week/fdas-not-a-horse-covid-19-twitter-posts-are-agency-actions> [<https://perma.cc/66PK-V9EL>].

159. *See* *Ryan, LLC v. Federal Trade Comm’n*, 746 F.Supp.3d 369, 384 (N.D. Tex. 2024); *see also* Robert Freedman, *FTC Exceeded Its Authority with Noncompete Ban, Judge Says*, LEGAL DIVE (Aug. 21, 2024), <https://www.legaldive.com/news/ftc-exceeded-authority-noncompete-ban-judge-ada-brown/724871/> [<https://perma.cc/JM4H-4BR3>]. *But see* Rohit Chopra & Lina M. Khan, *The Case for “Unfair Methods of Competition” Rulemaking*, 87 U. CHI. L. REV. 357 (2020); Lev Menand & Tim Wu, *On the FTC’s Authority to Promulgate Trade Regulation Rules*, YALE J. ON REG. (June 6, 2024), <https://www.yalejreg.com/nc/on-the-ftcs-authority-to-promulgate-trade-regulation-rules-by-lev-menand/> [<https://perma.cc/M8J4-P8K8>].

160. *Airlines for Am. v. Dep’t of Transp.*, 110 F.4th 672, 674, 677 (5th Cir. 2024); *see also* Aratani, *supra* note 133.

And that necessarily leads to the next and even more troubling question: Given the extent to which our legal system is deployed to block the legitimate action of the elected branches, what does that say about the state of our democracy? It is hard not to see this as a coordinated and ruthlessly effective effort to render the voters' and their representatives' decisions meaningless—to try to nullify the decisions actually made in the halls of Congress, not to mention the debate we had in the 2020 national campaign. We often hear complaints that only people in a handful of swing states decide nationwide policy. If only that were the case. It is increasingly apparent that some number of unelected judges have appointed themselves our nation's decisionmakers.¹⁶¹ Those who care about the law have allowed it to get hijacked, and it is no surprise that Americans have the lowest opinion of the judiciary in recent memory.¹⁶²

And let me say one thing that is often unstated. Does anybody think that if the Biden Administration had just clipped its wings a little, moderated around the edges here or there, that somehow these opinions would be different? Of course not. So, we'll now get yet another test of whether the law is based on principle. Will policy questions affecting millions of people and billions of dollars still be "major" when a different administration makes those decisions?¹⁶³ Or do doctrines like major questions, standing, venue, and vacatur depend on the political party of the plaintiffs, or whether they are special interests protecting corporate power instead of everyday citizens?

This is not just about what happened these past few years. If future presidents can't do what they promise because lawyers in robes block them, will that be worth cheering for? If the law instead now bends to suit their will, what does that say about the rule of law? Is the fate of our country—how people are treated as consumers and workers and human beings—going to be decided by national debates and elections or by a handful of attorneys pushing their own political agenda?

161. See generally Samuel Moyn, *Resisting the Juristocracy*, BOS. REV. (Oct. 5, 2018), <https://www.bostonreview.net/articles/samuel-moyn-resisting-juristocracy/> [<https://perma.cc/MQ7S-VX75>]; Domenic Powell, *Court-Proofing the Administrative State*, REGUL. REV. (Dec. 30, 2024), <https://www.theregview.org/2024/12/30/powell-court-proofing-the-administrative-state/> [<https://perma.cc/F5VP-Z22U>].

162. See, e.g., Benedict Vigers & Lydia Saad, *Americans Pass Judgment on Their Courts*, GALLUP (Dec. 16, 2024), <https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx> [<https://perma.cc/CZJ3-SFKE>] (noting that since 2020, confidence in U.S. courts has dropped twenty-four percentage points).

163. See generally GOVERNING FOR IMPACT, DEPLOYING THE MAJOR QUESTIONS DOCTRINE TO THWART PROJECT 2025 (2024), https://governingforimpact.org/wp-content/uploads/2024/12/MQD-Claims-Primer-Templated-Major-Questions-final-11_26_2024s-2.pdf [<https://perma.cc/C7EN-3RC6>]; Daniel Farber, *Donald Trump vs. the Major Questions Doctrine*, CTR. FOR PROGRESSIVE REFORM (July 31, 2023), <https://progressivereform.org/cpr-blog/donald-trump-vs-the-major-questions-doctrine/> [<https://perma.cc/3FGF-HBJ6>].

CONCLUSION

In closing, we are now at a crossroads. I am proud of the work we have done at the CFPB these last few years, thinking about how the law should be implemented to address the challenges of working people. We pushed the boulder a little bit of the way up the hill. But, clearly, it was not enough. And while I appreciate the temptation to believe that things will get better soon—the darkest moment is before the dawn, and all that—I’m not so sure. Some very smart people are thinking about how we can make a real, noticeable difference in Americans’ day-to-day economic lives. I don’t think enough people realize how challenging this will be, given the state of the law and the legal system, including where we expect the judiciary to go in the next few years.

We at the CFPB have proudly been part of a broader effort across the government—including herculean work at places like the Federal Trade Commission, National Labor Relations Board, the Department of Justice’s Antitrust Division, and the Department of Transportation—to try to end the days when those charged with administering the law not only go along with a system that favors those with money and power but actively facilitate it.¹⁶⁴ As Director Chopra has put it, we have tried to “close[] the chapter of the 40 years . . . where law has really been weaponized to make the powerful people in our society more powerful.”¹⁶⁵ I am so grateful to have had the opportunity to contribute to that project.

164. See, e.g., Callum Jones, ‘She’s Going to Prevail’: FTC Head Lina Khan Is Fighting for an Anti-Monopoly America, THE GUARDIAN, <https://www.theguardian.com/us-news/2024/mar/09/lina-khan-federal-trade-commission-antitrust-monopolies> [https://perma.cc/4B75-MDYJ]; Factsheet: The FTC—For the First Time in Decades—Held Corporate Actors Accountable to Protect Small Businesses, Workers, and Consumers, AM. ECON. LIBERTIES PROJECT (Jan. 28, 2025), <https://www.economicliberties.us/our-work/factsheet-the-ftc-is-holding-corporate-actors-accountable-protecting-small-businesses-workers-and-consumers-2/> [https://perma.cc/Z4EJ-2XR9]; Johnathan Kanter, Assistant Att’y Gen., Antitrust Div., U.S. Dep’t of Just., Farewell Address (Dec. 17, 2024), <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-farewell-address> [https://perma.cc/ZJG5-3H6G]; Doha Mekki, Principal Deputy Assistant Att’y Gen., U.S. Dep’t of Just., Antitrust Div., Remarks for the Annual Dinner of the Committee to Support the Antitrust Laws (Oct. 29, 2024), <https://www.justice.gov/opa/speech/principal-deputy-attorney-general-doha-mekki-delivers-remarks-annual-dinner> [https://perma.cc/2ZQV-4TMF]; Timothy Noah, Jennifer Abruzzo Has Become One of the Quiet Heroes of the Biden Administration, NEW REPUBLIC (Apr. 20, 2022), <https://newrepublic.com/article/166143/jennifer-abruzzo-nlr-quiet-hero-biden-administration> [https://perma.cc/YU3L-X3U2]; Lauren Kaori Gurley, The Lawyer Who Could Deliver on Biden’s Wish to be the Most Pro-Union President, WASH. POST, <https://www.washingtonpost.com/business/2022/10/15/jennifer-abruzzo-union-biden-nlr/> [https://perma.cc/QEU3-E3BC] (last updated Oct. 17, 2022); David Dayen, The Transportation Department’s New Path, THE AM. PROSPECT (Apr. 25, 2024), <https://prospect.org/infrastructure/transportation/2024-04-25-transportation-departments-new-path/> [https://perma.cc/FM7Q-TZN6]; David Shephardson, US to ‘Beat Up’ Airlines When Necessary for Passengers, Buttigieg Says, REUTERS (July 21, 2023), <https://www.reuters.com/business/aerospace-defense/us-beat-up-airlines-when-necessary-passengers-transport-chief-2023-07-21/> [https://perma.cc/5FKY-3Z4N].

165. Hal Singer, *Protecting the Consumer: A Conference at the University of Utah with CFPB Director Rohit Chopra*, INST. FOR NEW ECON. THINKING (Dec. 9, 2024),

Yet over the past three years, it was hard not to realize—in the face of the massive, multimillion-dollar effort against everything we did—how little cavalry there was. We have some wonderful friends and supporters, but not nearly enough. There are simply not that many lawyers who get to wake up every day thinking about how to use the law to help everyday people. Legal aid attorneys, consumer and worker advocates, government lawyers—these are my heroes. But they are vastly outnumbered by the battalions of attorneys working the system in favor of the powerful.¹⁶⁶ There are too many lawyers pushing the boulder further and further back down the hill—the zealots and extremists who weaponize the law in support of their political ideology and the many more lawyers who enable them.

I began by asking whether the federal government can plan and effectuate meaningful policy, whether the laws that Congress passed to address economic pain and uncertainty can be implemented as our elected representatives intended, and whether our institutions work for working people. We should all be concerned, not only about what the answers are today, but about where we will be tomorrow if the law, legal system, and legal profession do not fundamentally change course.

We need to confront the threats brought on by tech giants and a “platform-driven” economy, attacks on our privacy, increasing control of big business over workers and consumers alike, and all the ways that people are struggling. Yet, we won’t be able to have an Economy for All or a Care Agenda or an Abundance Agenda—or any other prescription for a given problem or for the country writ large—if we do not confront the obstacles standing in the way of the government’s ability to deliver. All the policy ideas in the world—all the proposed regulations and model bills and campaign promises—won’t make a difference if the legal system blocks our democracy.

We are at a crossroads in our country today because nothing is ever going to change if we do not fix what is broken with our institutions. We need real solutions, and we need them now. We need to address the crisis of lawbreaking that is devastating working people. We need real reform of the legal system, and to make changes that will last. We need government lawyers thinking more about the laws that they administer, helping lead their agencies to meet

<https://www.ineteconomics.org/perspectives/blog/keynote-fireside-chat-with-rohit-chopra-director-of-the-cfpb> [<https://perma.cc/NRV6-KYME>].

166. See generally Caroline Fredrickson, *What I Most Regret About My Decades of Legal Activism*, THE ATLANTIC (Sep. 18, 2023), <https://www.theatlantic.com/ideas/archive/2023/09/federal-judiciary-biden-court-appointments/675336/> [<https://perma.cc/VJ2S-ZNMR>]. See also NALP, JOBS & JDS EMPLOYMENT FOR THE CLASS OF 2024 – SELECTED FINDINGS 4 (2025), https://www.nalp.org/uploads/Classof2024SelectedFindings_final.pdf [<https://perma.cc/JCZ7-SV6Z>]; Brittany L. Long, *ANALYSIS: More Law Students Into Public Interest but Firms Win*, BLOOMBERG L., https://www.bloomberglaw.com/bloomberglawnews/bloomberg-law-analysis/XDGAQUOO000000?bna_news_filter=bloomberg-law-analysis#jcite [<https://perma.cc/XZS5-6Z2L>].

the challenges of the moment and never being satisfied with how things have always been done.

Let's get to work.