Consumer Financial Protection Bureau v. Community Financial Services Association of America (2024)

Justice Thomas delivered the opinion of the Court.

Our Constitution gives Congress control over the public fisc, but it specifies that its control must be exercised in a specific manner. The Appropriations Clause commands that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Art. I, § 9, cl. 7. For most federal agencies, Congress provides funding on an annual basis. This annual process forces them to regularly implore Congress to fund their operations for the next year. The Consumer Financial Protection Bureau is different. The Bureau does not have to petition for funds each year. Instead, Congress authorized the Bureau to draw from the Federal Reserve System the amount its Director deems "reasonably necessary to carry out" the Bureau's duties, subject only to an inflation-adjusted cap. In this case, we must decide the narrow question whether this funding mechanism complies with the Appropriations Clause. We hold that it does.

I

A

Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in response to the 2008 financial crisis. The Act created an independent financial regulator within the Federal Reserve System known as the Bureau of Consumer Financial Protection. . . .

In addition to vesting the Bureau with sweeping authority, Congress shielded the Bureau from the influence of the political branches. To insulate the Bureau from the President's control, Congress put a single Director with a 5-year term at the Bureau's helm and made the Director removable only for inefficiency, neglect, or malfeasance. This Court held in *Seila Law LLC* v. *Consumer Financial Protection Bureau* (2020), that the combination of single-Director leadership and for-cause removal protection unconstitutionally circumscribed the President's ability to oversee the Executive Branch.

This case involves another one of the Bureau's novel structural features, one that limits Congress' control. Congress supplies most federal agencies with the funds necessary for their operations only on an annual basis, so those agencies must ask Congress for renewed funding each year. For the Bureau, however, Congress diminished this accountability by providing the Bureau a standing source of funding outside the ordinary annual appropriations process. Each year, the Bureau may requisition from the earnings of the Federal Reserve System "the amount determined by the [Bureau's] Director to be reasonably necessary to carry out" its duties, subject only to a statutory cap. The Bureau cannot request more than 12 percent of the Federal Reserve System's total operating expenses as reported in fiscal year 2009 (adjusted for inflation). In fiscal year 2022, that cap was about $734 million. The Bureau can also retain and invest unused funds from year to year, though the Director must take into account any surplus when requesting additional funds.

B

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. . . .Drawing on the Constitution's text and history, the [Fifth Circuit Court of Appeals] concluded that the Appropriations Clause "does more than reinforce Congress's power over fiscal matters; it affirmatively obligates Congress to use that authority 'to maintain the boundaries between the branches and preserve individual liberty from the encroachments of executive power.'" By giving the Bureau a "self-actualizing, perpetual funding mechanism," the court reasoned, Congress in effect abandoned this obligation. It was not enough that Congress enacted the law authorizing the Bureau's funding because a "law alone does not suffice—an *appropriation* is required." The court thus held that the Bureau's funding mechanism violates the Appropriations Clause.

We granted certiorari to address the narrow question whether the statute that provides funding to the Bureau violates the Appropriations Clause. We now reverse.

II

Under the Appropriations Clause, an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes. The statute that provides the Bureau's funding meets these requirements. We therefore conclude that the Bureau's funding mechanism does not violate the Appropriations Clause.

A

The Appropriations Clause provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Art. I, § 9, cl. 7. Textually, the command is unmistakable—"no money can be paid out of the Treasury unless it has been appropriated by an act of Congress." *Cincinnati Soap Co.* v. *United States* (1937). Our decisions have long given the Appropriations Clause this straightforward reading.

. . . The associations' challenge turns solely on whether the Bureau's funding mechanism constitutes an "Appropriatio[n] made by Law." . . .The Court of Appeals . . . suggested that appropriations must also "meet the Framers' salutary aims of separating and checking powers and preserving accountability to the people." The associations defend this understanding and argue that the statute that provides the Bureau's funding undermines these aims by allowing the agency to indefinitely choose its own level of annual funding, subject only to an illusory cap. That is, the associations contend that the Bureau's funding mechanism is too open-ended in duration and amount to satisfy the requirement that there be an "Appropriatio[n] made by Law."

Based on the Constitution's text, the history against which that text was enacted, and congressional practice immediately following ratification, we conclude that appropriations need only identify a source of public funds and authorize the expenditure of those funds for designated purposes to satisfy the Appropriations Clause.

1

The Constitution's text requires an "Appropriatio[n] made by Law." Art. I, § 9, cl. 7. Our concern is principally with the meaning of the word "appropriation." The Constitution's use of the term "appropriation" in the Appropriations Clause and in other Clauses provides important contextual clues about its meaning. To state the obvious, the Appropriations Clause itself makes clear that an appropriation

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must authorize withdrawals from a particular source—the public treasury. It provides that money may be "drawn from the Treasury" only "in Consequence of Appropriations made by Law." Cl. 7. The section preceding the Appropriations Clause further suggests that appropriations assign funds for specific uses: Congress has the power to "raise and support Armies," but subject to the limitation that "no Appropriation of Money to that Use shall be for a longer Term than two Years." § 8, cl. 12.

At the time the Constitution was ratified, "appropriation" meant "[t]he act of sequestering, or assigning to a particular use or person, in exclusion of all others." 1 N. Webster, An American Dictionary of the English Language (1828). In ordinary usage, then, an appropriation of public money would be a law authorizing the expenditure of particular funds for specified ends.

Taken as a whole, this evidence suggests that, at a minimum, appropriations were understood as a legislative means of authorizing expenditure from a source of public funds for designated purposes.

2

Pre-founding history supports the conclusion that an identified source and purpose are all that is required for a valid appropriation. The concept of legislative "appropriations" grew out of the broader struggle for popular control of the purse in England. Throughout the Middle Ages, the King enjoyed near total fiscal independence. . . . Because this revenue inhered in the King himself, Parliament had little claim to direct how it was spent.

But, when these unencumbered ordinary revenues did not satisfy the demands of royal governance, most often during wartime, the King had to seek what Blackstone called "*extraordinary* revenue." Extraordinary revenues were financed through various forms of taxation and therefore required parliamentary authorization. see Magna Charta, ch. 12 (1215). In granting extraordinary revenues, Parliament began exercising an attendant power to specify how the Crown used these funds. That is, Parliament "claimed the power to appropriate the supplies granted to the king."

Conditions in the 17th century shifted the balance of power toward Parliament. A combination of rising prices and increasing demands made it so that the King's ordinary revenues could not satisfy the costs of royal governance, even in times of peace. The King's financial weakness, and Parliament's increasing assertiveness in appropriating extraordinary revenues, led to intragovernmental strife. The ensuing power struggle culminated in the Glorious Revolution, in which Parliament stripped away the remnants of the King's hereditary revenues and thereby secured supremacy in fiscal matters.

Following the Glorious Revolution, Parliament's usual practice was to appropriate government revenue "to particular purposes more or less narrowly defined." Additionally, Parliament began limiting the duration of its revenue grants. For example, the duties on tonnage and poundage [taxes on imports or exports] were no longer granted to the King for life, but only for a term of years. Limiting the duration of these and other revenue grants ensured that the King could not rule without Parliament. . . .

Even with this newfound fiscal supremacy, Parliament did not micromanage every aspect of the King's finances. . . . Parliament deemed it proper to cover the expenses of the King's household and the civil government by appropriating revenue to that purpose for life. And, parliamentary grants of supplies

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ordinarily gave the Crown broad discretion regarding how much to spend within an appropriated sum. Statutes granting money often stated that the Crown could spend "any Sum not exceeding" a particular amount. These grants were permissive. . . . . Other parliamentary appropriations acts, however, *required* that money be spent for particular purposes. M. Rappaport, The Selective Nondelegation Doctrine and the Line Item Veto, 76 Tulane L. Rev. 265, 327, n. 211 (2001) (Rappaport).

The appropriations practice in the Colonies and early state legislatures was much the same. "When called upon to grant supplies," the lower houses in the colonial assemblies "insisted upon appropriating them in detail." Many early state constitutions vested the legislative body with power over appropriations. Rappaport. And, in exercising that authority, state legislative bodies often opted for open-ended, discretionary appropriations. . . .

By the time of the Constitutional Convention, the principle of legislative supremacy over fiscal matters engendered little debate and created no disagreement. It was uncontroversial that the powers to raise and disburse public money would reside in the Legislative Branch. The only disagreement was about whether the right to originate taxation and appropriations bills should rest in a legislative body with proportionate representation. Having reached a tentative agreement on that difference, the Committee of Detail reported a draft constitution giving the House of Representatives the power to originate all revenue and appropriations laws. This proposed draft contained the prototype of what later became the Appropriations Clause. It provided that "[a]ll bills for raising or appropriating money ... shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives." Ultimately, the Convention agreed to grant the House an exclusive power to originate revenue laws but not for appropriations laws.

In short, the origins of the Appropriations Clause confirm that appropriations needed to designate particular revenues for identified purposes. Beyond that, however, early legislative bodies exercised a wide range of discretion. Some appropriations required expenditure of a particular amount, while others allowed the recipient of the appropriated money to spend up to a cap. Some appropriations were time limited, others were not. And, the specificity with which appropriations designated the objects of the expenditures varied greatly.

3

The practice of the First Congress also illustrates the source-and-purpose understanding of appropriations. This practice "provides contemporaneous and weighty evidence of the Constitution's meaning." *Bowsher* v. *Synar* (1986).

Many early appropriations laws made annual lump-sum grants for the Government's expenses. Congress' first annual appropriations law, for instance, divided Government expenditures into four broad categories and authorized disbursements up to certain amounts for those purposes. For example, the law appropriated a "sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list," which covered most nonmilitary executive officers' salaries and expenses. And, it appropriated "a sum not exceeding one hundred and thirty-seven thousand dollars for defraying the expenses of the department of war." The law specified that the disbursements would "be paid out of the monies which

arise, either from the requisitions heretofore made upon the several states, or from the duties on impost and tonnage." Subsequent annual appropriations laws followed a similar pattern.

The appropriation of "sums not exceeding" a specified amount did not by itself mandate that the Executive spend that amount; as was the case in England, such appropriations instead provided the Executive discretion over how much to spend up to a cap. . . .

Congress took even more flexible approaches to appropriations for several early executive agencies and allowed the agencies to indefinitely fund themselves directly from revenue collected. Soon after convening, Congress enacted laws that imposed a detailed schedule of duties on imported goods and tonnage. It then divided the Nation into customs districts and established a vast federal bureaucracy to oversee the collection of those duties. Rather than fund those customs officials through annual appropriations, Congress opted for a fee-based model. Customs collectors were compensated through tonnage- and transaction-based fees specified by law, and through a commission on the amount of duties raised within their districts. . . .

Congress adopted a similarly open-ended funding scheme for the Post Office. Instead of appropriating funds on an annual basis, Congress authorized the Postmaster General to "defray the expense" of carrying the mail of the United States with the revenues generated through postage assessments. The postal statute also provided the Postmaster General a $2,000 annual salary "to be paid ... out of the revenues of the post-office." . . . These fee-based funding schemes continued year after year without Congress passing an annual appropriation for these agencies.

These fee- and commission-based funding schemes were not an American innovation; they emulated the colonial precursors to the Customs Service and Post Office. . . .

Postratification practice therefore confirms our interpretation of the Appropriations Clause. Early appropriations displayed significant variety in their structure. Each, however, adhered to the minimum requirements of an identifiable source of public funds and purpose.

B

The Bureau's funding statute contains the requisite features of a congressional appropriation. The statute authorizes the Bureau to draw public funds from a particular source—"the combined earnings of the Federal Reserve System," in an amount not exceeding an inflation-adjusted cap. And, it specifies the objects for which the Bureau can use those funds—to "pay the expenses of the Bureau in carrying out its duties and responsibilities."

Further, the Bureau's funding mechanism fits comfortably with the First Congress' appropriations practice. In design, the Bureau's authorization to draw an amount that the Director deems reasonably necessary to carry out the agency's responsibilities, subject to a cap, is similar to the First Congress' lump-sum appropriations. And, the commission- and fee-based appropriations that supplied the Customs Service and Post Office provided standing authorizations to expend public money in the same way that the Bureau's funding mechanism does.

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For these reasons, we conclude that the statute that authorizes the Bureau to draw funds from the combined earnings of the Federal Reserve System is an "Appropriatio[n] made by Law." We therefore hold that the requirements of the Appropriations Clause are satisfied.

III

The associations make three principal arguments for why the Bureau's funding mechanism violates the Appropriations Clause, each of which attempts to build additional requirements into the meaning of an "Appropriatio[n] made by Law." None is persuasive.

A

At the outset, the associations argue that the Bureau's funding is not "drawn ... in Consequence of Appropriations made by Law" because the agency, rather than Congress, decides the amount of annual funding that it draws from the Federal Reserve System. This argument proceeds from a mistaken premise. Congress determined the amount of the Bureau's annual funding by imposing a statutory cap. The Bureau's funding statute provides that "the amount that shall be transferred to the Bureau in each fiscal year shall not exceed" 12 percent "of the total operating expenses of the Federal Reserve System" as reported in 2009 and adjusted for inflation. The only sense in which the Bureau decides its own funding, then, is by exercising its discretion to draw less than the statutory cap. But, as we have explained, "sums not exceeding" appropriations, which provided the Executive with the same discretion, were commonplace immediately after the founding. Thus, we cannot conclude that Congress violated the Appropriations Clause by permitting the Bureau to decide how much funding to draw up to a cap.

B

Next, the associations suggest that the Bureau's funding statute is not a valid appropriation because it is not time limited. On their reading, the Appropriations Clause requires both Chambers of Congress to periodically agree on an agency's funding, which ensures that each Chamber reserves the power to unilaterally block those funding measures through inaction. The Bureau's funding mechanism, the associations insist, inverts this baseline by allowing it to draw funds—forever—unless both Chambers of Congress step in and affirmatively prevent the agency from doing so.

But, the Constitution's text suggests that, at least in some circumstances, Congress can make standing appropriations. The Constitution expressly provides that "no Appropriation of Money" to support an army "shall be for a longer Term than two Years." Hamilton explained that this restriction ensures that, for the army, Congress cannot "vest in the Executive department ... permanent funds" and must instead "once at least in every two years ... deliberate upon the propriety of keeping a military force on foot," "come to a new resolution on the point," and "declare their sense of the matter, by a formal vote in the face of their constituents." The Federalist No. 26. The Framers were thus aware of the dynamic that the associations highlight, but they did not explicitly limit the duration of appropriations for other purposes.

The First Congress' practice confirms this understanding. Recall that the appropriations that supplied funding to the Customs Service and the Post Office were not time limited. The associations resist the analogy to the Post Office and other fee-based agencies, arguing that such agencies do not enjoy the same level of fiscal independence as the Bureau. Fee-based agencies, the associations reason, "could not demand funds from the federal fisc, but rather needed to persuade the people they served to pay them, and

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the public could refuse to purchase to influence their conduct." The associations, however, make no attempt to explain why the possibility that the public's choices could restrain fee-based agencies' revenue is relevant to the question whether a law complies with the constitutional imperative that there be an appropriation.

C

Finally, the associations contend that the Bureau's funding mechanism provides a blueprint for destroying the separation of powers, and that it invites tyranny by allowing the Executive to operate free of any meaningful fiscal check. If the Bureau's funding mechanism is consistent with the Appropriations Clause, the associations reason, then Congress could do the same for any—or every—civilian executive agency. And that, they conclude, would be the very unification of the sword and purse that the Appropriations Clause forbids.

The associations err by reducing the power of the purse to only the principle expressed in the Appropriations Clause. To be sure, the Appropriations Clause presupposes Congress' powers over the purse. But, its phrasing and location in the Constitution make clear that it is not itself the source of those powers. The Appropriations Clause is phrased as a limitation: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Art. I, § 9. And, it is placed within a section of other such limitations. Compare *ibid.* ("No Bill of Attainder or ex post facto Law shall be passed") and *ibid.* ("No Tax or Duty shall be laid on Articles exported from any State"), with § 8 ("The Congress shall have Power To ... "). The associations offer no defensible argument that the Appropriations Clause requires more than a law that authorizes the disbursement of specified funds for identified purposes. Without such a theory, the associations' Appropriations Clause challenge must fail. See *Haaland* v. *Brackeen* (2023).

IV

The dissent's theory fares no better. The dissent accepts that the question in this case is ultimately about the meaning of "Appropriations." It faults us for consulting dictionaries to ascertain the original public meaning of that word, insisting instead that "Appropriations" is a "term of art whose meaning has been fleshed out by centuries of history." But, as we have explained at length, both preratification and postratification appropriations practice support our source-and-purpose understanding. What is more, the dissent never offers a competing understanding of what the word "Appropriations" means. After winding its way through English, Colonial, and early American history about the struggle for popular control of the purse, the dissent declares that "the Appropriations Clause demands legislative control over the source and disposition of the money used to finance Government operations and projects." The dissent never connects its summary of history back to the word "Appropriations." And, even setting that problem aside, it is unclear why the dissent's theory leads to a different outcome: Congress controls the "source and disposition of the money used to finance Government operations and projects" by enacting a law that identifies the source of public funds and authorizes the expenditure of those funds for designated purposes.

The dissent's rendition of history largely ignores the historical evidence that bears most directly on the meaning of "Appropriations" at the founding—preratification appropriations laws. For example, the dissent spends pages recounting how Parliament secured fiscal supremacy and wielded that power to superintend the King. Although that history is a helpful starting point, it at most explains why

appropriations must be "made by Law"—not what it means for the legislature to make an "Appropriation." The dissent does not meaningfully grapple with the many parliamentary appropriations laws that preserved a broad range of fiscal discretion for the King. It makes no attempt to explain "sums not exceeding" appropriations. . . .

The dissent's treatment of early American history does not advance its point either. It highlights the undisputed point that colonial and state legislative bodies exercised the power of the purse, while sidestepping the discretionary and open-ended appropriations they enacted. The dissent quibbles with the open-ended appropriations laws that we rely on, speculating that state constitutions somehow constrained the breadth of those laws. But, the dissent never explains how these constitutional provisions informed what it meant for state legislative bodies to make an "appropriation" and, in any event, its critique misses the point: It was commonplace for preratification appropriations laws to be open-ended in a way that is not consistent with the specificity that the dissent's theory appears to require.

When the dissent turns to postratification history, it engages with several appropriations laws enacted by the First Congress. The dissent acknowledges, as it must, that the fee- and commission-based funding schemes for the Customs Service and Post Office show that Congress exercised broad discretion over how to appropriate money. To square these funding schemes with its understanding of the Appropriations Clause, the dissent points out that Congress required "fees in excess of what was needed to defray the cost of providing services be turned over to the Treasury." This requirement, the dissent reasons, "ensured that Congress maintained control over the ways in which [the appropriated] money was spent." But, if what matters is that Congress controls how funds are spent, then we are all in agreement—appropriations must designate the purposes for which money can be spent.

Even under the dissent's "legislative control" theory, its attempt to distinguish the Customs Service and the Post Office from the Bureau is not convincing. The dissent points out that Congress had control over the Customs Service, for instance, because Customs had a "carefully delineated mission" and "early tariff Acts spelled out in excruciating detail the various fees" customs officers could collect, as well as the salaries the officers could be paid from those receipts. According to the dissent, the Bureau is different because "[i]ts powers are broad and vast," "[i]t does not collect fees," and "it is permitted to keep and invest surplus funds." But, it is unclear why these differences matter under the dissent's theory. After all, to make a valid appropriation, Congress must designate the objects for which the appropriated funds may be used—as it did here. Although there may be other constitutional checks on Congress' authority to create and fund an administrative agency, specifying the source and purpose is all the control the Appropriations Clause requires.

V

The statute that authorizes the Bureau to draw money from the combined earnings of the Federal Reserve System to carry out its duties satisfies the Appropriations Clause.

Justice Kagan, with whom Justice Sotomayor, Justice Kavanaugh, and Justice Barrett join, concurring.

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I join in full the Court's opinion holding that the funding mechanism for the Consumer Financial Protection Bureau complies with the Appropriations Clause. . . . The CFPB's funding scheme, if transplanted back to the late-18th century, would have fit right in.

I write separately to note that the same would have been true at any other time in our Nation's history. "'Long settled and established practice' may have 'great weight'" in interpreting constitutional provisions about the operation of government. *Chiafalo* v. *Washington* (2020) (quoting *The Pocket Veto Case* (1929)); see also The Federalist No. 37. And here just such a tradition supports everything the Court says about the Appropriations Clause's meaning. The founding-era practice that the Court relates became the 19th-century practice, which became the 20th-century practice, which became today's. For over 200 years now, Congress has exercised broad discretion in crafting appropriations. Sometimes it has authorized the expenditure of a sum certain for an itemized purpose on an annual basis. And sometimes it has departed from that model in one or more ways. All the flexibility and diversity evident in the founding period has thus continued unabated, making it ever more obvious that the CFPB's funding accords with the Constitution.

For one thing, Congress has never thought it necessary to designate specific amounts for specific items. Over the years, many appropriations have instead given the Executive leeway to decide how to allocate funds, up to a ceiling, among a set of activities. . . . Examples of such grants "abound in our history." *Clinton* v. *City of New York* (1998) (Scalia, J., concurring in part and dissenting in part). . . . The constitutionality of such measures, Justice Scalia observed, "has never seriously been questioned"—in part because of their prevalence. *Clinton*, 524 U. S., at 467. Our government practice has been "replete with instances of general appropriations" to be "expended as directed by designated government agencies." *Cincinnati Soap Co.* v. *United States* (1937). The CFPB's authority to take and allocate moneys up to a statutory cap is just one more instance to add to the list.

Similarly, Congress has never thought appropriations must be annual, or even time-limited. (Appropriations that *are* time-limited themselves show variety: Most are annual, but some last for longer periods—say, two or five years.) "Standing" appropriations—those making funds "always available for specified purposes" without "requir[ing] repeated [legislative] action"—have a long history. . . . So again, Congress's non-time-limited grant to the CFPB for amounts (up to a cap) "reasonably necessary to carry out" its duties falls within an established tradition. . . .

I would therefore add one more point to the Court's opinion. As the Court describes, the Appropriations Clause's text and founding-era history support the constitutionality of the CFPB's funding. And so too does a continuing tradition. Throughout our history, Congress has created a variety of mechanisms to pay for government operations. Some schemes specified amounts to go to designated items; others left greater discretion to the Executive. Some were limited in duration; others were permanent. Some relied on general Treasury moneys; others designated alternative sources of funds. Whether or not the CFPB's mechanism has an exact replica, its essentials are nothing new. And it was devised more than two centuries into an unbroken congressional practice, beginning at the beginning, of innovation and adaptation in appropriating funds. The way our Government has actually worked, over our entire experience, thus provides another reason to uphold Congress's decision about how to fund the CFPB.

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Justice Jackson, concurring.

. . . When the Constitution's text does not provide a limit to a coordinate branch's power, we should not lightly assume that Article III implicitly directs the Judiciary to find one. The Constitution was "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs." *McCulloch* v. *Maryland* (1819). An essential aspect of the Constitution's endurance is that it empowers the political branches to address new challenges by enacting new laws and policies—without undue interference by courts. To that end, we have made clear in cases too numerous to count that nothing in the Constitution gives federal courts "'some amorphous general supervision of the operations of government.'" *Raines* v. *Byrd* (1997) (quoting *United States* v. *Richardson* (1974) (Powell, J., concurring)). Put another way, the principle of separation of powers manifested in the Constitution's text applies with just as much force to the Judiciary as it does to Congress and the Executive. See *Public Workers* v. *Mitchell* (1947).

This case illustrates why. . . .

Respondents, two associations of payday lenders, represent exactly the type of entity the Bureau's progenitors sought to regulate and whose influence Congress may have feared. In urging us to find the Bureau's funding scheme unconstitutional, then, respondents would not only have us find unstated limits in the Constitution's text, they would have us undercut the considered judgments of a coordinate branch about how to respond to a pressing national concern.

Of course, to say that Congress had reasons for designing the Bureau's funding scheme in the manner it did is not to endorse those policy choices. "With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal." *Nebbia* v. *New York* (1934). Instead, the Constitution places primary responsibility for checking the political branches with the People. See *King* v. *Burwell* (2015) ("In a democracy, the power to make the law rests with those chosen by the people"). It is to them that the Court rightly returns any remaining policy questions posed by today's case.

Justice Alito, with whom Justice Gorsuch joins, dissenting.

Since the earliest days of our Republic, Congress's "power over the purse" has been its "most complete and effectual weapon" to ensure that the other branches do not exceed or abuse their authority. The Federalist No. 58(J. Madison). The Appropriations Clause protects this power by providing that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Art. I, § 9, cl. 7. This provision has a rich history extending back centuries before the founding of our country. Its aim is to ensure that the people's elected representatives monitor and control the expenditure of public funds and the projects they finance, and it imposes on Congress an important duty that it cannot sign away. "Any other course" would give the Executive "a most dangerous discretion." *Reeside* v. *Walker* (1851).

Unfortunately, today's decision turns the Appropriations Clause into a minor vestige. The Court upholds a novel statutory scheme under which the powerful Consumer Financial Protection Bureau (CFPB) may bankroll its own agenda without any congressional control or oversight. According to the Court, all that

the Appropriations Clause demands is that Congress "identify a source of public funds and authorize the expenditure of those funds for designated purposes." Under this interpretation, the Clause imposes no temporal limit that would prevent Congress from authorizing the Executive to spend public funds in perpetuity. Nor does the Court's interpretation require Congress to set an upper limit on the amount of money that the Executive may take. Today's decision does not even demand that an agency's funds come from the Treasury. As the Solicitor General admitted at argument, under this interpretation, the Appropriations Clause would permit an agency to be funded entirely by private sources. In short, there is apparently nothing wrong with a law that empowers the Executive to draw as much money as it wants from any identified source for any permissible purpose until the end of time.

That is not what the Appropriations Clause was understood to mean when it was adopted. In England, Parliament had won the power over the purse only after centuries of struggle with the Crown. Steeped in English constitutional history, the Framers placed the Appropriations Clause in the Constitution to protect this hard-won legislative power.

I

. . . Elected in the atmosphere that followed the financial crisis of 2008, the Congress that created the CFPB also sought to free the CFPB from supervision by subsequent Congresses that might wish to superintend the Bureau's exercise of its vast powers. . . . In devising this novel scheme, Congress appears to have anticipated that it might be challenged under the Appropriations Clause, and Congress therefore attempted to shield its new creation by providing that "[f]unds obtained by or transferred to the [CFPB] shall not be construed to be Government funds or appropriated monies."[1] And to impede congressional oversight of the CFPB's use of this money, the Act added that the Bureau's funds are not "subject to review by the Committees on Appropriations."

4

The Framers would be shocked, even horrified, by this scheme. Beginning with the First Congress, agencies were generally funded by annual appropriations from the Treasury. While there have been departures from this dominant model, nothing like the CFPB's funding scheme has previously been seen. In the decision below, the Fifth Circuit held that the CFPB's unparalleled financial independence violates the Appropriations Clause and "the constitutional separation of powers." Because I agree that the CFPB's funding structure is unconstitutional, I would affirm the Fifth Circuit's judgment.

II

A

. . . Thus, the only remaining textual question is whether the CFPB gets its funding from "Appropriations" in the sense in which the Constitution uses that term.

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[1] FN4: Congress obviously cannot evade the Appropriations Clause simply by placing a different label on an authorization to obtain and spend money that falls within the meaning of an "Appropriatio[n]" under that provision. And here, the Government argues that the statutory provision cited in the text was not meant to have that effect, but was adopted for other purposes.

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The Court answers that question by consulting a few old dictionaries, which it says establish that "[i]n ordinary usage, ... an appropriation of public money would be a law authorizing the expenditure of particular funds for specified ends." It accordingly concludes that the Appropriations Clause requires no more than a law, a fund, and a purpose.

This analysis overlooks the fact that the term "Appropriations," as used in the Constitution, is a term of art whose meaning has been fleshed out by centuries of history. To be sure, in interpreting the Constitution, we *start* with the presumption that " 'its words and phrases' " carry their "'normal and ordinary'" meaning. *District of Columbia* v. *Heller* (2008)). But our analysis cannot end there. Some provisions use terms with specialized and well-established meanings that we cannot use dictionaries to brush aside. "'[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.'" *Sekhar* v. *United States*(2013); see also A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 73–77 (2012). Applied here, this rule means that the term "Appropriatio[n]" should be interpreted in light of "legal tradition and ... centuries of practice." *Morissette* v. *United States*(1952). I therefore turn to that history.

B

1

The delegates to the Constitutional Convention did not invent the appropriations requirement. Rather, that important safeguard arose from centuries of "British experience." *Consumer Financial Protection Bureau* v. *All Am. Check Cashing, Inc.*(CA5 2022) (en banc) (Jones, J., concurring). The Framers were aware of the requirement's deep roots and the critical role it had played in "the history of the British Constitution." The Federalist No. 58. . . . .

A short summary of this process illustrates the important role of the appropriations requirement. During the Middle Ages, kings relied almost entirely on what was called "ordinary" revenue. This included income from lands owned by the Crown, customs duties, and feudal dues. Consequently, there was little meaningful difference "between the national revenue and the king's private pocket-money."

The Crown's financial independence gave it the ability to govern with little parliamentary interference. . . .

In the 17th century, however, this pattern began to change. By that time, "the king's ordinary revenues were no longer even remotely sufficient to cover the normal costs of royal governance," and the heavy expenditures of James I and Charles I exacerbated the problem. J. Chafetz, Congress's Constitution 47 (2017). Rather than seeking appropriations from Parliament, the early Stuart kings engaged in controversial efforts to obtain additional ordinary income through the use of various royal "prerogative[s]." Among other things, they unilaterally imposed duties on imports, stepped up the collection of feudal dues, sold monopolies, and forced individuals to loan money on pain of imprisonment.

These measures aroused opposition and, in any event, did not yield sufficient funds. As a result, James I and Charles I periodically found it necessary to ask Parliament to impose new taxes in order to obtain the funds they wanted. When they did so, the Commons began to flex the power of the purse and to demand

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a measure of royal accountability. Disputes between the Commons and the Stuart kings about the power of the purse played a pivotal role in the transition from royal to parliamentary financial supremacy. . . .

After the Revolution of 1688, Parliament took strong measures to curb the Crown's financial independence. The 1689 Bill of Rights declared "[t]hat levying Money for or to the Use of the Crowne by pretence of Prerogative, without Grant of Parlyament for longer time or in other manner than the same is or shall be granted is Illegall." In other words, to ensure "that it was supreme in directing the use of [all] public funds," Parliament "asserted that any use of funds by the monarch that lacked Parliament's authorization was unlawful."

These steps, however, did not cement Parliament's power of the purse. Royal officers continued to collect revenue and to evade the appropriations requirement by exaggerating collection costs, giving very little in "net receipts" to Parliament, and keeping the rest for the use of the Crown. . . .

Parliament also appointed a commission to prevent the Crown from defying the appropriations requirement. In that commission's very first report, it recommended that "[r]evenue should come from the Pocket of the Subject directly into the Exchequer." Permitting revenue departments to retain or divert any public funds, the Commissioners concluded, would create a "private Interest ... in direct Opposition to that of the Public." Finally, Parliament took an increasingly "firmer line ... against *virement*, that is, the transfer of funds appropriated for one department for the use of another department."

2

The Court's treatment of this history begins by conceding most of what I have recounted. The Court notes that after the Revolution of 1688, "Parliament's usual practice was to appropriate government revenue 'to particular purposes more or less narrowly defined,'" and "Parliament began limiting the duration of its revenue grants." "'Every year,'" the Court continues, the King and his ministers "'had to come, cap in hand, to the House of Commons, and more often than not the Commons drove a bargain and exacted a *quid pro quo* in return for supply.'" . . .

C

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. . . Indeed, by 1787, all but one of the 11 State Constitutions provided their respective legislatures with some control over appropriations; and no State allowed the executive to draw money from the state treasury without legislative approval.

The Framers built on this legacy at the Constitutional Convention when they adopted the Appropriations Clause, which they "well understood" would "complet[e] the power vested in Congress over money." The Clause not only "gives to the Legislature an exclusive authority of raising and granting money," but it also obligates Congress to keep that authority from "the hands of the Executive" at all times thereafter. It makes the President "depen[d] on the will of [Congress] for supplies of money" in the first instance and puts him continually "in a state of subordinate dependence" to the people's elected representatives. The Appropriations Clause enables Congress, "*without the concurrence of the other branches*, to check, by refusing money, any mischief in the operations carrying on in any department of the Government."

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Early budgets illustrate how the appropriations power was understood. Although the Constitution does not require that appropriations be limited to a single year, that was the dominant practice in the years immediately following the adoption of the Constitution. And while the first few appropriations laws were brief and lacked details about how the money was to be spent, the amounts approved closely tracked the estimates submitted by Secretary of the Treasury Alexander Hamilton. Indeed, the second appropriations act expressly incorporated the estimates of specific expenses contained in Hamilton's report to Congress. As a result, Congress clearly contemplated that the money would be devoted toward particular purposes.

In the mid-1790s, appropriations laws became even more specific. . . .

To be sure, not all early funding laws followed the dominant model of specified short-term appropriations. Agencies that provided services to a particular segment of the public were funded by fees that were paid by the recipients of those services. [Citing statutes that provided for funding of the Post Office, National Mint, and Customs Service, through collection of fees.] If these fees exceeded the costs of providing the services, however, these agencies were required to send the surplus to the Treasury, which oversaw the collection and use of such fees.

As the Government notes, this practice had deep historical roots, and was presumably based on the idea that the cost of providing certain services should be borne by the recipients of those services rather than the general public. At the same time, the requirement that fees in excess of what was needed to defray the cost of providing services be turned over to the Treasury ensured that Congress maintained control over the ways in which this money was spent. Under these arrangements, therefore, Congress exercised close control over both the amount of money that the agencies in question obtained and the way in which that money was used. The agencies received and were allowed to use the amount of money necessary to provide their narrowly prescribed services. All the rest was sent to the Treasury and could then be used only as authorized by a congressional appropriation.

2

In discussing this early American history, the Court begins by essentially conceding the principal lesson outlined above. As the Court candidly puts it, "'[w]hen called upon to grant supplies,' the lower houses in the colonial assemblies 'insisted upon appropriating them in detail.'" *Ante*, at 10. The best the Court can muster to support its assertion that "state legislative bodies often opted for open-ended, discretionary appropriations" are a few minor state laws that, when understood in relation to the Constitutions of the States in question, provide no support for the Court's argument.

*** * ***

In sum, centuries of historical practice show that the Appropriations Clause demands legislative control over the source and disposition of the money used to finance Government operations and projects.[2]

[2] FN14: Not content to rest on the Court's argument, which relies on the Court's understanding of the original meaning of the Appropriations Clause, four Justices advance an entirely different rationale, namely, that congressional practice in the ensuing centuries supports the constitutionality of the CFPB's scheme. (Kagan, J., concurring). This argument is doubly flawed. First, the concurrence cannot point to any other law that created a funding scheme like the CFPB's. Second, as explained by Justice Scalia, the separation of powers mandated by the Constitution cannot be altered by a course of practice at odds with our national charter. See *NLRB* v. *Noel Canning*(2014) (opinion concurring in judgment). "[P]olicing the 'enduring structure' of constitutional government when the political branches fail to do so is 'one of the most vital functions of this Court.'"

III
A

As the previous discussion shows, today's case turns on a simple question: Is the CFPB financially accountable to Congress in the way the Appropriations Clause demands? History tells us it is not. As we said in *Seila Law*, "'[p]erhaps the most telling indication of [a] severe constitutional problem' with an executive entity 'is [a] lack of historical precedent' to support it.". And the Government agrees with this principle. In its briefing and at argument, the Government admitted that an utterly unprecedented funding scheme would raise a serious constitutional problem. The Government therefore attempts to show that there is ample precedent for the CFPB scheme, but that effort fails.

The CFPB's funding scheme contains the following features: (1) it applies in perpetuity; (2) the CFPB has discretion to select the amount of funding that it receives, up to a statutory cap; (3) the funds taken by the CFPB come from other entities; (4) those entities are self-funded corporations that obtain their funding from fees on private parties, "not departments of the Government"; (5) the CFPB is not required to return unspent funds or transfer them to the Treasury; and (6) those funds may be placed in a separate fund that earns interest and may be used to pay the CFPB's expenses in the future. At argument, the Government was unable to cite any other agency with a funding scheme like this, and thus no other agency—old or new—has enjoyed so many layers of insulation from accountability to Congress.

The Government points to the Post Office and the Customs Service as founding-era precedents for the CFPB, but the analogy is flawed. As noted, funding Government agencies with fees charged to the beneficiaries of their services has long been viewed as consistent with the appropriations requirement. And both the Post Office and the Customs Service fell comfortably into that category.

A quick look at the laws that set up the Post Office and the Customs Service shows that they were nothing like the CFPB. In the Act establishing the Post Office, Congress gave that agency a narrow and specific mission: to "provide for carrying the mail of the United States." The Postmaster's discretionary authority was modest. . . . Under this arrangement, Congress controlled the amount that the Post Office took in (*i.e.*, the sum total of the fees specified by law) and how those fees were to be spent (*i.e.*, to provide for carrying the mail).

Much the same is true with respect to the Customs Service, which the Government claims "best" resembles the CFPB. Like the Post Office, the Customs Service had a carefully delineated mission—basically, to control imports and exports, and to collect duties and other payments from those engaged in those activities. To maintain accountability, the early tariff Acts spelled out in excruciating detail the various fees, fines, and forfeitures that officers were to collect, as well as the salaries and commissions that were to be paid out of those receipts. . . .
The CFPB, by contrast, is an entirely different creature. Its powers are broad and vast. It enjoys substantial discretionary authority. It does not collect fees from persons and entities to which it provides services or persons and entities that are subject to its authority. And it is permitted to keep and invest surplus funds. In short, the Government's "best" argument fails.

The Government's next-best analogs fare no better. Moving to modern agencies, the Government claims that the CFPB's funding scheme is not materially different from the funding schemes of a list of other

currently existing agencies. See Brief for Petitioners (comparing the CFPB to the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Farm Credit Administration (FCA), the Federal Housing Finance Agency (FHFA), and others).

But unlike the CFPB, the agencies cited by the Government are funded in whole or in part by fees charged those who make use of their services or are subject to their regulation. [3]
For these reasons, it is undeniable that the combination of features in the CFPB funding scheme is unprecedented. And it is likewise clear that this assemblage was no accident. Rather, it was carefully designed to give the Bureau maximum unaccountability. Our decision in *Seila Law* addressed part of the problem posed by this arrangement. It made the CFPB accountable to the President, but that decision did nothing to protect Congress's power of the purse. Indeed, standing alone, *Seila Law* worsens the appropriations problem. The appropriations requirement developed to ensure that the Executive (in England, the monarch) would be accountable to the people's elected representatives. *Seila Law,* however, increased the power of the *Executive* over appropriations. By brandishing or wielding the threat of removal, a President may push the CFPB director to requisition the amount of money that the President thinks is appropriate and to spend that money as the President wishes. I joined the decision in *Seila Law* and continue to believe that it was correctly decided, but it solved only half the accountability problem that inheres in the CFPB's structure.

B

Left with no analog in history, the Government employs a divide-and-conquer strategy to defend the CFPB's funding scheme. It argues that even if no prior agency had a funding scheme with all the features of the CFPB's, the funding schemes of other presumptively constitutional agencies contain one or more of the features found in the CFPB's scheme. It then reasons that the combination of these features in the CFPB's scheme must be constitutional as well.

This argument founders for two reasons. First, the CFPB's scheme includes an important feature never before seen. As explained, the CFPB's money does not come from Congress, from private recipients of its services, or from private entities that it regulates. It does not even originate with another Government agency. Instead, the CFPB gets its money via a three-step process: The Federal Reserve Banks earn money from the purchase and sale of securities, as well as from the fees they charge for providing services to depository institutions. The Federal Reserve Banks then deliver these earnings to the Federal Reserve System. Finally, the CFPB requests an amount from the Federal Reserve Board. That feature of the CFPB scheme is entirely new.

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[3] FN 16: The Government also suggested that the Federal Reserve Board is a close historical analog for the CFPB. Brief for Petitioners 23; Tr. of Oral Arg. 41. But that setup should not be seen as a model for other Government bodies. The Board, which is funded by the earnings of the Federal Reserve Banks, 12 U. S. C. §§ 243, 244, is a unique institution with a unique historical background. It includes the creation and demise of the First and Second Banks of the United States, as well as the string of financial panics (in 1873, 1893, and 1907) that were widely attributed to the country's lack of a national bank. See generally O. Sprague, History of Crises Under the National Banking System, S. Doc. No. 538, 61st Cong., 2d Sess. (1910). The structure adopted in the Federal Reserve Act of 1913 represented an intensely-bargained compromise between two insistent and influential camps: those who wanted a largely private system, and those who favored a Government-controlled national bank. See, *e.g.*, R. Lowenstein, America's Bank 5–8, 113–116, 265 (2015). For Appropriations Clause purposes, the funding of the Federal Reserve Board should be regarded as a special arrangement sanctioned by history.

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Second, the Government's argument fails "to engage with the Dodd-Frank Act as a whole." *Seila Law*. By addressing the individual elements of the CFPB's setup one-by-one, the Government seeks to divert attention from the combined layers that insulate the CFPB from accountability to Congress. Elements that are safe or tolerable in isolation may be unsafe when combined. In the case of the CFPB, the combination is deadly. The whole point of the appropriations requirement is to protect "the right of the people," through their elected representatives in Congress, to "be actually consulted" about the expenditure of public money. St. George Tucker, View of the Constitution of the United States (1803). The CFPB's design strips the people of this power. . . .

In sum, the CFPB's unprecedented combination of funding features affords it the very kind of financial independence that the Appropriations Clause was designed to prevent. It is not an exaggeration to say that the CFPB enjoys a degree of financial autonomy that a Stuart king would envy.

C

This autonomy has real-world consequences. The CFPB is a powerful agency with the authority to impose "substantive rules [on] a wide swath of industries" and "lev[y] knee-buckling penalties against private citizens." *Seila Law*,. . . These may or may not be wise policies, but Congress did not specifically authorize any of them, and if the CFPB's financing scheme is sustained, Congress cannot control or monitor the CFPB's use of funds to implement such changes. That is precisely what the Appropriations Clause was meant to prevent.

* * *

The Court holds that the Appropriations Clause is satisfied by any law that authorizes the Executive to take any amount of money from any source for any period of time for any lawful purpose. That holding has the virtue of clarity, but such clarity comes at too high a price. There are times when it is our duty to say simply that a law that blatantly attempts to circumvent the Constitution goes too far. This is such a case. Today's decision is not faithful to the original understanding of the Appropriations Clause and the centuries of history that gave birth to the appropriations requirement,[4] and I therefore respectfully dissent.

[4] FN20: At the end of its opinion, the Court suggests that broad separation of powers principles may provide more protection for Congress's power of the purse than does the Appropriations Clause. But we do not generally resort to broad principles when a provision of the Constitution specifically addresses the question at hand. See *County of Sacramento* v. *Lewis* (1998). At any rate, since the decision below relied on both the Appropriations Clause and broad separation of powers principles, it is not clear why the Court does not proceed to apply those principles.