Senators Ben Sasse (R-Neb) and Mike Lee (R-Utah) are urging the incoming administration to fire Consumer Financial Protection Bureau Director Richard Cordray "promptly" after President-elect Donald Trump’s inauguration. In a letter to Vice President-elect Mike Pence, the legislators said, "It's time to fire King Richard."

The legislators argued, "Given the CFPB's unconstitutional structure, removing Director Cordray would be consistent with President Trump's oath to 'preserve, protect, and defend the Constitution of the United States' and his duty to serve as an independent guardian of the U.S. Constitution." Removing the CFPB director would "also uphold the American idea of limited government, because Director Cordray has vigorously supported the unconstitutional independence of the CFPB and pursued a regulatory agenda that is harmful to the American people," the senators wrote.

Constitutional authority. Sasse and Lee argued that Trump has the constitutional authority to fire Cordray because the framers of the U.S. Constitution recognized that "unrestrained federal power posed a 'grave threat to individual liberty' and therefore divided power" between the federal government and the states and between the legislative, executive, and judicial branches of government. The Dodd-Frank Act gives the bureau "vague and sweeping authority to regulate large swaths of the economy, including the ill-defined authority to prohibit 'abusive acts or practices,' and the authority to impose substantial penalties on individuals and businesses," according to the lawmakers. They also took issue with the CFPB's funding, which comes from the Federal Reserve Board. Finally, the senators disagree with the bureau being run by one person removable by the president for cause only while other independent agencies vest authority in multiple-person panels. The lawmakers noted that these arguments were made by the D.C. Circuit court in PHH Corp. v. CFPB (see Banking and Finance Law Daily, Oct. 11, 2016).

Harmful regulatory agenda. Sasse and Lee wrote that Cordray’s regulatory agenda is harmful to the people "because he has because he has pursued costly regulatory policies that are radically opposed to the Trump Administration's pro-growth agenda." Under Cordray, they contended, the bureau has adopted "unnecessary regulations that kill jobs" and inflict "profound damage" on the economy. The senators specifically noted the CFPB’s proposed payday lending and arbitration rules as examples.

American constitutionalism. While removing Cordray would "substantially improve" the bureau’s regulatory policy, "working toward a more accountable CFPB is about much more than that. It’s about American constitutionalism and the rule of law," Sasse and Lee argued. They contended that the CFPB’s structure "is based on the idea that government is unlimited and rights are dependent on the special dispensation of the experts who know better than the American people," in direct contrast to the founding fathers' belief that "government power is limited and exists to protect the rights of the people."

Americans for Financial Reform. "No president has removed an appointee for cause," the Americans for Financial Reform stated on the subject of Trump’s removal of Cordray. The AFR further noted that "the three times a president has tried to remove an official with for-cause protections—on the ground that the for-cause protection were invalid (not that there was cause for removals)—the courts stopped the president from doing so."

The AFR noted further that under the Dodd-Frank Act, "the president may remove the CFPB’s Director only 'for inefficiency, neglect of duty, or malfeasance in office,' the same standard that the Supreme Court held to
be constitutional in *Humphrey's Executor v. United States* (1935). The AFR also referenced *PHH v. CFPB*, but added that the case currently is under review. The association went on to state that "in the handful of instances the courts declined to stop a removal, it was because the court held that the official did not enjoy protections against removal."

The AFR concluded by saying, "Trying to fire the squeaky-clean Richard Cordray, whose agency has returned more than $11 billion to wronged consumers in its first five years of existence, would be unprecedented."

Companies: Americans for Financial Reform

LegislativeActivity: CFPB DoddFrankAct