

## A Litany Of Anti-CFPB Groups Defend Townstone Financial Against CFPB Efforts To Hold The Mortgage Lender Accountable For Making Disparaging Comments Against Communities of Color

**Summary:** This week, the Seventh Circuit Court of Appeals will [hear](#) arguments from the Consumer Financial Protection Bureau (CFPB) to reverse the Northern District of Illinois ruling the Bureau's [2020 complaint](#) against Townstone Financial overstepped its authority on enforcing the Equal Credit Opportunity Act (ECOA).

In 2020, the CFPB's complaint against Townstone [alleged](#) the non-bank mortgage lender engaged in discriminatory practices through disparaging comments made on its radio and podcast shows, which the CFPB identified were responsible for generating [90 percent](#) of its mortgage applications. Prominent personnel, including Townstone's vice president, made statements including he got a "[rush](#)" from walking down South Side Chicago at 3AM and its CEO calling Chicago a "[real war zone](#)."

However, in February 2023, US District Court Judge Franklin Valderrama "[dismissed with prejudice](#)" the CFPB's complaint siding with Townstone on the grounds the ECOA is "[limited in scope](#)," disregarding nearly five decades of precedent. If upheld, [critics](#) rightfully worry the ruling could allow mortgage lenders to purposefully not market to marginalized groups or make the process of getting a loan more difficult.

A review of the case by Accountable.US found Townstone is receiving direct and indirect support from several conservative organizations and industry groups that have long-criticized the Consumer Financial Protection Bureau and its mandate from Congress to protect consumers from predatory practices by lenders. Among them are:

- The **Pacific Legal Foundation (PLF)**—[considered](#) to be a member of Leonard Leo's conservative legal network—currently [represents](#) Townstone in its legal fight against the CFPB. The conservative legal foundation has frequently criticized the CFPB, including serving as a witness before a House Financial Services subcommittee hearing where PLF lawyer Jessica Thompson discussed why the CFPB—which the group described as a "[uniquely unconstitutional agency](#)"—was "so problematic for the constitutional separation of powers." Pacific Legal is also funded in-part by "Donors Trust," a conservative group which [itself received over \\$71 million](#) from the 85 Fund in 2021, which Leonard Leo has said "[he plans to use to fund conservative causes nationwide](#)."
- In August 2023, the **Mortgage Bankers Association and Housing Policy Institute** [filed an amicus brief](#) supporting Townstone's interpretation of the ECOA. The industry groups "rebut" the CFPB's position that it held authority to cover "[prospective applicants](#)," also arguing the CFPB didn't hold the same powers delegated to the U.S. departments of Justice, Housing and other regulators under the "Fair Housing Act."
- In August 2023, the **Hamilton Lincoln Law Institute** filed an amicus brief supporting Townstone's position. The [self-branded](#) "free marke[t]," "free speech," and "limited government" nonprofit made the argument that Townstone merely "[offended](#)" the CFPB and its "[bureaucratic sensibilities](#)," claiming the agency isn't the "Tasteful Joke Police," and does not have the authority to "punish silly banter on a radio show."
- In August 2023, a coalition of groups—led by the [conservative grassroots](#) organization **America's**

**Future**—[filed an amicus brief](#) in support of Townstone. The groups argued that the CFPB had become an agency willing to punish groups that engage in "[wrong speak](#)," claiming the agency was one of the several agencies Congress had created that "[often act\[s\] in a lawless fashion](#)," calling it "[brazen and abusive](#)."

In addition, a review of Townstone's legal defense team shows a lack of reckoning surrounding the disparaging statements made by company executives. Garris Horn LLP, a member of Townstone's legal team, claimed that the CFPB under then-director Kathy Kraninger was essentially accepting the left's "[cancel culture](#)." Lawyers from Garris Horn also made the argument that Townstone Financial's comments calling a grocery store the "[jungle jewel](#)" were acceptable as a blog post by a Black woman also used the term. However, the cited blog post includes [anti-Chinese American stereotypes](#).

Townstone's legal defense team also defended Townstone CEO Barry Sturner's "hoodlum weekend" comments claiming "hoodlum" is not an "[inherently racial term](#)." Garris Horn also claimed that rhetoric likening South Side Chicago to a war-zone was [no different](#) than former President Trump's [comments](#) that likened Chicago to Afghanistan.

Finally, Garris Horn expressed confusion on how the CFPB could view the comment of feeling a "[rush](#)" while walking through South Side Chicago as racist, claiming they were statements about its crime rate and were "[factual](#)." Townstone's legal team made similar arguments defending comments that its former president made regarding Markham, Illinois—[a city which is predominantly Black](#)—claiming you drive through fast and "don't look at anybody."

## **The Seventh Circuit Court Of Appeals Is Set To Hear A Countersuit Against The CFPB From Townstone Financial, A Non-Bank Mortgage Lender Previously Sued By The Bureau In July 2020 For Allegedly Engaging In Discriminatory Redlining By Discouraging Black Applicants From Applying For Its Services By Making Disparaging Statements On Its Radio Shows And Podcasts.**

### **In July 2020, The Consumer Financial Protection Bureau (CFPB) Filed A Lawsuit Against Townstone Financial Inc. For Allegedly Engaging In Discriminatory Redlining By Discouraging Black Applicants From Applying For Its Services After Making Disparaging Statements On Its Radio Shows And Podcasts.**

**July 2020: The Consumer Financial Protection Bureau (CFPB) Sued Townstone Financial, A "Nonbank Retail-Mortgage Creditor Based In Chicago," For Violating Both The Equal Credit Opportunity Act (ECOA) And The Consumer Financial Protection Act (CFPA).** "The Consumer Financial Protection Bureau (Bureau) today filed a lawsuit against Townstone Financial, Inc., a nonbank retail-mortgage creditor based in Chicago, for violations of the Equal Credit Opportunity Act (ECOA); its implementing regulation, Regulation B; and the Consumer Financial Protection Act (CFPA). ECOA and Regulation B prohibit mortgage lenders from discriminating against applicants in credit transactions on the basis of race, color, national origin, or other prohibited bases." [Consumer Financial Protection Bureau, [07/15/20](#)]

**The CFPB's Complaint Found That From 2014 Through 2017, Townstone Drew Almost No Mortgage Applications From African-Americans In Chicago.** "As alleged in the complaint, from 2014 through 2017, Townstone drew almost no applications for properties in African-American neighborhoods located in the Chicago-Naperville-Elgin Metropolitan Statistical Area (Chicago MSA) and few applications from African-Americans throughout the Chicago MSA." [Consumer Financial Protection Bureau, [07/15/20](#)]

**The CFPB Alleged Townstone Engaged In Redlining By Discouraging Black Applicants From Applying For Its Services Through Marketing On Its Radio Shows And Podcasts.** "Townstone engaged in illegal redlining by engaging in acts or practices that discouraged prospective applicants living in other areas from applying to Townstone for mortgage loans for properties located in African-American neighborhoods in the Chicago MSA, including by making discouraging statements during its weekly radio shows and podcasts through which it marketed its services." [Consumer Financial Protection Bureau, [07/15/20](#)]

**On Its Weekly Podcast, "The Townstone Financial Show,"—Which Generated As Much As 90 Percent Of Its Mortgage Applications—Townstone Loan Officers Called Black Chicago Neighborhoods "Scary Places To Visit" And "Havens For Hoodlum[s]."**

**On Its Weekly Podcast/Infomercial, "The Townstone Financial Show," Townstone Loan Officers Called African-American Areas Of Chicago "Scary Places To Visit" And "Havens For Hoodlum[s]."** "A Chicago-based non-bank mortgage lender named Townstone has for several years run a radio program/podcast called 'The Townstone Financial Show,' which served as an infomercial for the business and which, according to the lawsuit, generated 90 percent of its applications. Going back to 2014, the show has included repeated comments by its hosts, who are senior loan officers with Townstone, that African American communities in the Chicago area are scary places to visit ('a real war zone') and havens for 'hoodlum[s].'" [The American Prospect, [08/23/23](#)]

**According To The CFPB's Lawsuit, As Much As 90 Percent Of Townstone's Mortgage Applications Were Generated Through Its Weekly Podcast.** "Throughout the relevant period, Townstone marketed through "The Townstone Financial Show," its own radio show and podcast. Since at least 2014, the Townstone Financial Show has been directly affiliated with Townstone's lending business. In 2014, the show was hosted by Townstone's co-owner and president. Beginning in about January 2015, the Townstone Financial Show was co-hosted by Townstone's CEO and now sole owner, its vice-president, who was also a loan officer, and another senior loan officer. Townstone generated up to 90% of its mortgage-loan applications from radio advertising, including through this show." [Consumer Financial Protection Bureau, [07/15/20](#)]

**On The Townstone Financial Show, A Vice President Also Suggested The Rush From Skydiving Was Similar To The Rush Of Walking Through South Side Chicago At 3 AM, A Remark The CFPB Argued Discourages Prospective Mortgage Applicants From Applying To Live In An Area Perceived As Dangerous By The Lender Or Black Mortgage Applicants Generally.**

**In A November 2017 Episode Of The Townstone Financial Show, A Townstone Vice President Suggested The Rush From Skydiving Was Similar To The Rush Of Walking Through The Predominantly Black South Side Of Chicago At 3 AM.** "In a November 11, 2017 episode of the Townstone Financial Show, during which Townstone marketed its services, Townstone's senior loan officer discussed a recent skydiving experience and the ensuing 'rush' from the jump; Townstone's vice-president responded that he thought skydiving was crazy and suggested that 'walking through the South Side at 3AM [would] get the same rush.'" [Consumer Financial Protection Bureau, [07/15/20](#)]

- **According To The CFPB's Lawsuit, Chicago's South Side Is Majority-Black, "With About 489,000 African Americans Currently Living There."** "Chicago's South Side refers to the southern neighborhoods in the City of Chicago and is majority-African-American, with about 489,000 African Americans currently living there." [Consumer Financial Protection Bureau, [07/15/20](#)]

**The CFPB Argued Townstone's Statements On The "Rush" From Walking Through South Side Chicago Would Discourage Prospective Mortgage Applicants From Applying To Live In An Area Perceived As Dangerous By The Lender And Would Also Discourage Black Applicants From Generally Applying For Mortgages From Townstone.** "Referring to a majority-African-American neighborhood—Chicago's South Side—as a place where simply walking through it would provide a 'rush' would discourage, on the basis of race, a prospective applicant living in or applying for a mortgage loan in that area from applying to Townstone because self-described real-estate experts are portraying the area as defined by its danger. And because the statement is disparaging toward a majority-African-American area, African-American prospective applicants would also be discouraged from applying for mortgage loans from Townstone." [Consumer Financial Protection Bureau, [07/15/20](#)]

**In February 2023, US District Court Judge Franklin Valderrama "Dismissed With Prejudice" The Consumers Financial Protection Bureau's Complaint Against Townstone, Siding With The Lender's Argument That The Agency Lacks Authority To Enforce The ECOA And Apply It To "Prospective Applicants," Breaking Away From Precedent The Courts Have Recognized For Nearly Five Decades.**

**February 2023: US District Court Judge Franklin Valderrama "Dismissed With Prejudice" The Consumer Financial Protection Bureau's Complaint Against Townstone.** "On Feb. 3, Judge Franklin Valderrama of the US District Court for the Northern District of Illinois dismissed with prejudice the Consumer Financial Protection Bureau's (CFPB) complaint alleging that a Chicago mortgage lender and broker discriminated against prospective applicants. In 2020, the CFPB filed a redlining case against Townstone Financial, Inc. alleging that (1) analysis of Home Mortgage Disclosure Act Data revealed that the lender made significantly fewer loans in majority Black areas as compared to its peers and (2) comments made on a radio show by the owner of the company discouraged minority applicants from applying for credit through Townstone Financial. By siding with Townstone Financial and dismissing the CFPB's complaint, the court has provided discriminatory lenders with an easy path to evade federal fair lending laws." [National Community Reinvestment Coalition, [02/16/23](#)]

**Townstone Financial Argued The Equal Credit Opportunity Act (ECOA) "Is Limited In Scope" And Did Not Apply To "Prospective Applicants," Despite Courts Recognizing For Nearly Five Decades That The ECOA Covered Applicants And "Prospective Applicants."** "In its motion to dismiss, Townstone Financial asserted that the Equal Credit Opportunity Act (ECOA), the fair lending legislation that granted the CFPB oversight and enforcement powers to combat lending discrimination, is limited in scope and only applies to applicants and does not apply to prospective applicants. However, Regulation B, the implementing regulation of ECOA, which was published in 1975 and has been followed by courts around the country for almost five decades, explicitly states that ECOA applies to both applicants and prospective applicants. The section of Regulation B entitled 'Discouragement' provides that a 'creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.'" [National Community Reinvestment Coalition, [02/16/23](#)]

**Judge Valderrama Dismissed The Case, Siding With Townstone's Claims That The ECOA Did Not Defend Borrowers From "Pre-Application Conduct."** "Judge Valderrama dismissed the case on the basis that ECOA cannot regulate pre-application conduct. He cited the language of the law, which states: 'It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex or marital status, or age.'" [The American Prospect, [08/23/23](#)]

## **The Consumer Financial Protection Bureau Appealed The Ruling In June 2023 And Is Now Awaiting A Decision From The Seventh Circuit Court Of Appeals, Which If Upheld, Could Allow Lenders To Purposefully Not Market To Marginalized Groups Or Otherwise Make The Process More Difficult For Them.**

**The Consumer Financial Protection Bureau Appealed The Ruling And It Sits In The Seventh Circuit Court Of Appeals With A Decision In Fall 2023.** "CFPB has appealed the ruling, which was issued in June, and a hearing at the Seventh Circuit Court of Appeals is expected this fall." [The American Prospect, [08/23/23](#)]

**This Ruling, If Upheld, Could Allow Lenders To Purposefully Not Market To Marginalized Groups Or Make The Process Of Getting A Loan Prohibitively Difficult For Them.** "If the ruling is upheld, a host of practices would be out of reach of ECOA enforcement, including ones well below the radar of a Whites Only sign. In particular, lenders could exclude women, African American or Hispanic people, and other protected groups from targeted online marketing efforts, a sophisticated form of digital redlining that has recently come into fashion." [The American Prospect, [08/23/23](#)]

**The Pacific Legal Foundation—Considered A Member Of Leonard Leo's Conservative Legal Network—Is Representing Townstone In Its Lawsuit After Frequently Criticizing The CFPB As A "Uniquely Unconstitutional Agency."**

## **The Pacific Legal Foundation, Alongside Three Law Firms, Is Representing Townstone In Its Case Against The CFPB.**

**The Pacific Legal Foundation—Alongside Attorneys At Mattingly Burke Cohen And Biederman LLP, Sterbcow Law Group LLC, And Garris Horn LLP—Is Representing Townstone Financial In Its Case Against The CFPB.** "At PLF, we believe that, while America certainly has its problems with race, it is not fundamentally a racist society. The irony of this case is that, if the CFPB gets its way, ultimately racism will become baked into American law. Joining PLF on this case are Sean Burke of Mattingly Burke Cohen and Biederman LLP, Marx Sterbcow of the Sterbcow Law Group LLC, and Rich Horn of Garris Horn LLP." [Pacific Legal Foundation, accessed [12/05/23](#)]

## **The Pacific Legal Foundation Has Frequently Criticized The CFPB As A "Uniquely Unconstitutional Agency," Including Providing Testimony On Why The CFPB Was "So Problematic For The Constitutional Separation Of Powers" And Filing An Amicus Brief In Support Of A Successful Industry Lawsuit Against The Bureau's Leadership Structure.**

**March 2023: The Pacific Legal Foundation Served As A Witness To A House Financial Services Subcommittee Hearing On The CFPB, Where PLF Attorney Jessica Thompson Discussed Why The CFPB—Which PLF Described As A "Uniquely Unconstitutional Agency"—Was "So Problematic For The Constitutional Separation Of Powers."** "When Congress asked Pacific Legal Foundation for advice on how to reform one of our recent government adversaries, we were more than happy to oblige. The House Financial Services Committee's Subcommittee on Financial Institutions and Monetary Policy held a hearing Thursday on the Consumer Financial Protection Bureau (CFPB), a uniquely unconstitutional agency that lost to PLF client Townstone Financial in federal court late last month. Jessica Thompson, a PLF litigator on that case, joined a five-person panel to discuss why CFPB, and the power it wields, is so problematic for the constitutional separation of powers." [Pacific Legal Foundation, [03/09/23](#)]

**In July 2019, The Pacific Legal Foundation Filed An Amicus Brief In Support Of Seila Law's Lawsuit Challenging The Constitutionality Of The CFPB's Leadership Structure Before The Supreme Court, With PLF Stating It Hoped "The Court's Ultimate Decision Will Rein In The Unchecked Power Of The CFPB And Ensure Our Separation Of Powers Remains Strong."** "As Pacific Legal Foundation explains in a friend-of-the-court brief, this concentration of powers is unconstitutional. If allowed to stand, the CFPB will be allowed to write wide-ranging rules affecting tens of thousands of businesses, ranging from major corporations to small family-owned businesses. And if the CFPB targets a business, for any reason, it may charge that business with violation, try the business in front of a CFPB-employed arbiter, and level major fines and penalties—all without the due process protections that would be afforded in a court of law. [...] The Supreme Court will hear oral arguments in *Seila Law v. CFPB* on March 3 and is expected to issue a ruling in June. Hopefully, the Court's ultimate decision will rein in the unchecked power of the CFPB and ensure our separation of powers remains strong." [Pacific Legal Foundation, [02/27/20](#)]

**The Pacific Legal Foundation Has Been Considered A Part Of Leonard Leo's Conservative Network Attempting To Influence The Judicial System, Receiving \$152,000 From Donors Trust In 2021 Which Itself Received Over \$71 Million From Leo's Primary Dark Money Vehicle, The 85 Fund.**

**According To An October 2020 Washington Monthly Report, The Pacific Legal Foundation Is Part Of "One Scheme Pulling The Strings Behind The Scene" In Leonard Leo's Efforts To Influence The Judicial System.** "The first is the Federalist Society, which famously promotes or, as Whitehouse says, selects conservative candidates for Republican court nominations. The second is the Judicial Crisis Network, which mounts a public relations effort on behalf of the nominees. Finally, a group of 'legal' organizations—like the Pacific Legal Foundation—bring cases and orchestrate a chorus of amicus briefs to tell the courts what to do. These aren't three separate groups, but one scheme pulling the strings behind the scene, which was demonstrated when Leonard Leo gave up leadership of the Federalist Society and Carrie Sevarino, who had previously been in charge of the Judicial Crisis Network, easily took his place." [Washington Monthly, [10/14/20](#)]

**In 2021, The Pacific Legal Foundation Received \$152,000 In Grants From Donors Trust:**

|  |            |           |          |    |     |     |   |
|--|------------|-----------|----------|----|-----|-----|---|
| Pacific Legal Foundation<br>930 G Street<br>Sacramento, CA 95814 | 94-2197343 | 501(c)(3) | 152,000. | 0. | N/A | N/A | \$151,750 for general operations/ \$250 in support of the Coalition for <i>TJ v. Fairfax County</i> |
|--|------------|-----------|----------|----|-----|-----|---|

[Donors Trust 990, [2021](#)]

**From 2020 To 2021, Donors Trust Was The Biggest Beneficiary Of Leo's Primary Dark Money Vehicle, The 85 Fund, Which Leo Has Said "He Plans To Use To Fund Conservative Causes Nationwide."** "The society remains highly dependent on Leo's network. It received \$5.6 million in grants in 2020 and \$3.5 million in 2021 from The 85 Fund, a rebranded dark money group that Leo has said he plans to use to fund conservative causes nationwide, according to federal disclosures. This makes the Federalist Society the second biggest beneficiary of Leo's primary dark money vehicle, aside from Donors Trust, another conservative nonprofit." [Politico, [05/02/23](#)]

**In 2021, The 85 Fund Donated Over \$71 Million to Donors Trust:**

| (a) Name and address of organization or government                      | (b) EIN    | (c) IRC section (if applicable) | (d) Amount of cash grant | (e) Amount of non-cash assistance | (f) Method of valuation (book, FMV, appraisal, other) | (g) Description of noncash assistance | (h) Purpose of grant or assistance |
|---|------------|---------------------------------|--------------------------|-----------------------------------|---|---------------------------------------|------------------------------------|
| (1) Donors Trust<br>1800 Diagonal Rd<br>Ste 280<br>Alexandria, VA 22314 | 52-2166327 | 501 c 3                         | 71,145,000               |                                   |   |                                       | General Support                    |

[The 85 Fund 990, [2021](#)]

**In August 2023, Industry And Conservative Groups Filed Several Amicus Briefs Attacking The CFPB's Complaint Against Townstone, Claiming The Agency Overstepped Its Authority, Calling The Consumer Watchdog The "Tasteful Joke Police," Claiming It "Punish[ed]" Companies That "Wrong Speak" In An Effort To "Strong Arm" "Inclusive Policy."**

**In August 2023, The Mortgage Bankers Association And Housing Policy Institute Submitted An Amicus Brief Supporting Townstone's Interpretation Of The Equal Credit Opportunity Act (ECOA), Claiming The CFPB Does Not Have The Same Enforcement Authorities As Other Federal Regulators And The ECOA Does Not Cover "Prospective Applicants."**

**August 21, 2023: The Mortgage Bankers Association And Housing Policy Institute Filed An Amicus Brief In Support Of Townstone Financial Interpretation Of The Equal Credit Opportunity Act.** "The Mortgage Bankers Association and Housing Policy Council (the 'Associations') recently filed an Amici Curiae brief supporting the position of Townstone Financial regarding the scope of the Equal Credit Opportunity Act (ECOA) in the case CFPB v. Townstone Financial which is now before the U.S. Court of Appeals for the Seventh Circuit." [Ballard Spahr LLP, [08/25/23](#)]

**The Trade Groups "Rebut The Position Of The CFPB And Amici Supporting The CFPB That A Ruling That Upholds The District Court's Opinion Would Eliminate Any Prohibition On Pre-Application Activity."** "The Associations first rebut the position of the CFPB and amici supporting the CFPB that a ruling that upholds the district court's opinion would eliminate any prohibition on pre-application activity." [Ballard Spahr LLP, [08/25/23](#)]

**The Trade Groups Also Add Congress Enacted The ECOA After The Fair Housing Act (FHA), Adding The CFPB Does Not Have The Same Authority That The U.S. Departments Of Housing, Justice And Other Banking Regulators Do To Enforce The FHA.** "The Associations add that while Congress could have chosen to pattern the ECOA after the FHA, it did not do so, nor did Congress grant the CFPB the authority to enforce the FHA. The FHA may be enforced by the U.S. Department of Housing and Urban Development, the U.S. Department of Justice and the federal banking regulators. We view this as a very important point. When Congress wanted to prohibit redlining, it knew how to craft language to do so in the FHA, and it did not include such language, or similar language, in the ECOA." [Ballard Spahr LLP, [08/25/23](#)]

**The Mortgage Bankers Association And Housing Policy Institute Also Made The Claim That The ECOA Only Extends To "Applicants" And Does Not Cover "Prospective Applicants," Adding "Courts Have Interpreted" Applicants As Only Those Who "Request Credit."** "The Associations assert that 'Congress has unambiguously spoken—ECOA extends only to 'applicants,' and not 'prospective applicants.' Regulation B's attempt to expand ECOA to reach prospective applicants is thus impermissible.' The Associations note that the ECOA defines 'applicant' as 'any person who applies to a creditor directly for an extension, renewal or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit' and that courts have interpreted this to mean that a person is an applicant only if they request credit." [Ballard Spahr LLP, [08/25/23](#)]

**In August 2023, The Hamilton Lincoln Law Institute—A Conservative Group That "Stands For Free Markets, Free Speech," And "Limited Government"—Filed An Amicus Brief Supporting Townstone Financial Claiming The CFPB Was "Offended" By Podcasts That Went Against Its "Bureaucratic Sensibilities," Adding The CFPB Is Not The "Tasteful Joke Police" And Should Not Have The Authority To "Punish Silly Banter On A Radio Show."**

**August 21, 2023: The Hamilton Lincoln Law Institute Filed An Amicus Brief In Support Of Townstone Financial Against The CFPB.** "Hamilton Lincoln Law Institute ('HLLI') is a public interest organization dedicated to protecting free markets, free speech, limited government, and separation of powers against regulatory abuse and rent-seeking. HLLI, which is independent of the parties, litigates subjects particularly relevant here, including First Amendment issues and challenges to government overreach and regulatory abuse. See, e.g., *Couris v. Lawson*, No. 23-55069 (9th Cir., argued July 17, 2023) (challenging state law restricting free speech of physicians); *Competitive Enter. Inst. v. FCC*, 970 F.3d 372 (D.C. Cir. 2020). HLLI files this amicus brief in support of affirmance of the district court's decision." [Hamilton Lincoln Law Institute, [08/21/23](#)]

- **According To Its Website, "The Hamilton Lincoln Law Institute Stands For Free Markets, Free Speech, Limited Government, And Separation Of Powers, And Against Regulatory Abuse And Rent-Seeking."** "The Hamilton Lincoln Law Institute stands for free markets, free speech, limited government, and separation of powers, and against regulatory abuse and rent-seeking." [Hamilton Lincoln Law Institute, accessed [12/05/23](#)]

**The Hamilton Institute Argued The Case Is Being Brought Because "Townstone's Radio And Podcast Content Offended [The] CFPB's Bureaucratic Sensibilities."** "At its core, this case is about offense—not the offense of any actual credit applicants, or prospective credit applicants, or even the three dozen or so individuals who subscribe to Townstone's YouTube channel. Rather, Townstone's radio and podcast content offended CFPB's bureaucratic sensibilities." [Hamilton Lincoln Law Institute, [08/21/23](#)]

**The Institute Further Argued Congress Didn't "Deputiz[e]" The CFPB As The "Tasteful Joke Police," Adding The CFPB Has Extended Its Powers To "Punish Silly Banter On A Radio Show."** "Congress has not deputized CFPB as the 'Tasteful Joke Police,' nor would the First Amendment permit that delegation. No, CFPB's charge is effecting the ECOA's prohibition on lenders discriminating against applicants. 15 U.S.C. § 1691(a). Regulation B itself deviates from that charge because discouragement is simply not discrimination. Most troubling, though, is how CFPB has expanded the malleable 'discouragement' standard to punish silly banter on a radio show." [Hamilton Lincoln Law Institute, [08/21/23](#)]

**The Hamilton Institute Also Argued That The Supreme Court Should Recognize The CFPB Is Viewed As "Controversial And Politically Polarizing," Claiming It Views "American Society [As] Systematically Racist."** "This action implicates a heated public debate about race and racism in America. It should not escape the Court's attention that CFPB has recently committed itself to 'dismantling systems of oppression, racial bias, and discrimination in legal, sociopolitical, workplace, and cultural contexts.' Diversity, Equity, Inclusion, and Accessibility (DEIA) Strategic Plan, CFPB (May 2022). Nor should it escape the Court's attention that CFPB's stated commitments, while lauded in some corners, are controversial and politically polarizing in others,<sup>4</sup> as is the premise that American society is systemically racist." [Hamilton Lincoln Law Institute, [08/21/23](#)]

**In Its Accompanying Press Release, The Hamilton Lincoln Institute Claimed The CFPB's Complaint Against Townstone Was Its Effort "To Strong Arm 'Inclusive' Social Policy Rather Than Root Out Invidious Discrimination."** "HLLI's amicus brief asserts that CFPB's application of Regulation B and ECOA violates the First Amendment because it stifles free expression and facilitates viewpoint discrimination. HLLI's brief also argues that CFPB's complaint fails the Supreme Court's plausibility standard and amounts to regulatory overreach. The complaint represents an effort by CFPB to strong-arm 'inclusive' social policy rather



than root out invidious discrimination, which was Congress's intent when it passed ECOA. Accordingly, the district court correctly dismissed the complaint and HLLI's brief encourages the appellate court to affirm that decision." [Hamilton Lincoln Law Institute, [08/22/23](#)]

**In August 2023, Several Conservative Groups—Led By America's Future—Filed An Amicus Brief Supporting Townstone Financial Claiming The CFPB Has Become An Agency Willing To "Punish" Those Who "Wrong Speak," Did Not Have Authority Under The ECOA, And Had Become A "Lawless," "Brazen," And "Abusive" Agency.**

**On August 21, 2023, A Joint Amicus Brief Was Filed By Conservative Groups Including America's Future, Free Speech Coalition, Free Speech Defense And Education Fund, U.S. Constitutional Rights Legal Defense Fund, And The Conservative Legal Defense And Education Fund.** "America's Future, Free Speech Coalition, Free Speech Defense and Education Fund, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are exempt from federal income taxation under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Each is dedicated, inter alia, to the correct construction, interpretation, and application of the law." [U.S. Supreme Court, [08/21/23](#)]

- **According To Its Website, America's Future Was Founded In 1995, Has Chapters Across The Country, And Is "'The Place' For Rising Young Leaders In Washington, D.C."** "Founded in 1995 by a group of aspiring young advocates, America's Future Foundation quickly grew to be "the place" for rising young leaders in Washington, DC. In 2011, we took the show on the road, launching chapters in cities across the country. In 2020, Talent Market, the freedom movement's premier talent agency, joined the team. Now in its 25th year, we got a fresh new name, America's Future, and launched two new ways to engage: Regional Hubs and Membership." [America's Future, accessed [12/05/23](#)]

**These Groups Argued The Consumer Financial Protection Bureau Is "An Agency So Committed To The 'Politically Correct' Goal" And Is Willing To "Punish Those Engaged In 'Wrong Speak' Where It Has No Statutory Authority Whatsoever."** "This case reveals the Consumer Finance Protection Board to be an agency so committed to the 'politically correct' goal of ending 'racially discriminatory practices' that it has perceived them where they did not exist so it could punish those engaged in 'wrong speak' where it has no statutory authority whatsoever." [America's Future, accessed [12/05/23](#)]

**The Groups Applauded The District Court's Ruling, Supporting Townstone's Argument That The CFPB Does Not Have Authority Under The ECOA.** "The narrow issue presented by the district court's ruling was one of interpretation, on which it reached the obvious and correct result. Congress enacted the Equal Credit Opportunity Act to prohibit conduct by mortgage lenders that 'discriminate[s] against any applicant.' 15 U.S.C. § 1691(a) (emphasis added). CFPB never had authority under this statute to promulgate 'Regulation B' which provides that '[a] creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.' 12 C.F.R. § 1002.4(b) (emphasis added). Thus, its suit against Townstone Financial was properly dismissed." [America's Future, [08/25/23](#)]

**The Groups Further Claimed That "Agencies Created By Congress Often Act In A Lawless Fashion," Adding The Agency Was "Brazen And Abusive."** "At one level, this case is significant because, yet again, it shows that agencies created by Congress often act in a lawless fashion by exercising raw regulatory power over Americans that they do not have. In this case, CFPB's clear usurpation of authority to regulate beyond authority given by Congress over 'applicants' for credit demonstrates how brazen and abusive some agencies have become." [America's Future, [08/25/23](#)]

**America's Future Executive Director Mary O'Neill Said, "We Must Not Allow Our Federal Government To Exert More Power Than Authorized, Or This Nation Is On A Slippery Slope Toward Tyranny," Urging**

**The Seventh District To Affirm The District Decision.** "'We must not allow our federal government to exert more power than authorized, or this nation is on a slippery slope toward tyranny,' said Mary O'Neill, Executive Director of America's Future. 'We urge the Seventh Circuit to affirm the district court's dismissal and termination of this case to ensure that the executive branch does not usurp the constitutional powers of Congress.'" [America's Future, [08/25/23](#)]

**Townstone's Legal Defense Accused The CFPB Of Canceling The Company While Providing Odd Justifications For Employees' Racist And Sexist Remarks, Including Using Trump's Racist Tirades Against Chicago As Evidence To Back Up Their Claims.**

**Townstone's Legal Defense Team Argued That The CFPB Under Trump Appointee Kathleen Kraninger Was Trying To "Cancel" Them.**

**In Townstone's Response To The Lawsuit, Lawyers Argued That Director Kraninger's CFPB Was Trying To "Cancel" Them And Were "Now Using The Enforcement Powers Of The Federal Government To Attack Free Speech, Speech They Do Not Want You To Hear."** "Essentially, Director Kraninger is saying in this lawsuit that financial institutions are engaging in unlawful discrimination if they advertise too much on conservative media, or if their owners, executives, or staff express conservative political viewpoints, such as statements in support of the police. This is the next step in the left's 'cancel culture.' They are now using the enforcement powers of the federal government to attack free speech, speech they do not want you to hear." [Garris Horn, [07/17/20](#)]

**Townstone's Legal Team Defended The Company From CFPB Allegations It Referred To A Jewel-Osco Grocery Store In A Diverse South Side Chicago Neighborhood As The "Jungle Jewel," By Arguing That Black Residents Also Called It That.**

**January 2017: The Hosts Of "The Townstone Financial" Podcast Referred To A Grocery Store In A Predominantly Black Area As The "Jungle Jewel" Saying People From All Over The World Went There And It Was "A Scary Place."** "For example, in a January 2017 episode of the Townstone Financial Show, during which Townstone marketed its services, the hosts discussed a now-replaced grocery store in downtown Chicago that was part of the Jewel-Osco grocery store chain. Townstone's CEO described '[having] to go to the Jewel on Division. . . . We used to call it Jungle Jewel. There were people from all over the world going into that Jewel. It was packed. It was a scary place.'" [Consumer Financial Protection Bureau, [07/15/20](#)]

**Townstone Defended Calling A Grocery Store In A Predominantly Black Neighborhood The "Jungle Jewel" By Referencing A December 2012 "Gina Spot" Blog Post Written By A Black Woman That Used The Term.** "Jungle Jewel. It is well-known that people in Chicago called the grocery store referenced in the complaint 'Jungle Jewel.' See <http://theginaspot.com/?m=20121201> for a blog post from an African American blogger about the store." [Garris Horn, [07/17/20](#)]

- **This Blog Post Features Its Own Racist Sentiments, Including Referring To A Chinese-American Employee Of The Store As Being Greasy, Having OCD, And Only Knowing A Single English Phrase.** "The entertaining aspect of Jewel is the greasy-haired special Chinese stock guy who is clearly OCD, wears coke bottle glasses, steamrolls customers, and emphatically repeats what must be the only English phrase he knows: 'I'm so berry sorry.'" [The Gina Spot, [12/01/12](#)]

## **Townstone’s Legal Team Defended CEO Barry Sturner Calling Weekends In The South Side Of Chicago “Hoodlum Weekend[s],” Arguing That Hoodlum Is Not A Racialized Term Because It Does Not Say So In The Dictionary And That The Claims Of Sturner Could Not Be Racist Because Trump Also Made Them.**

**June 2016: Townstone’s CEO Stated That The South Side Of Chicago From Friday To Monday Is “Hoodlum Weekend.”** “In a June 2016 episode of the Townstone Financial Show, before discussing the mortgage-lending services that Townstone could provide to police officers and others, Townstone’s CEO stated that the South Side of Chicago between Friday and Monday is ‘hoodlum weekend’ and that the police are “the only ones between that turning into a real war zone and keeping it where it’s kind of at.” [Consumer Financial Protection Bureau, [07/15/20](#)]

- **“Chicago’s South Side Refers To The Southern Neighborhoods In The City Of Chicago And Is Majority-African-American, With About 489,000 African Americans Currently Living There.”** [Consumer Financial Protection Bureau, [07/15/20](#)]

**In Response To The CFPB Complaint, Townstone’s Defense Argued The Word Hoodlum Is “Not An Inherently Racial Term,” Using The Cambridge Dictionary Definition To Back Up That Claim.** “Regarding the ‘hoodlum weekend’ comment, it was simply referring to a term that Chicago police officers had used. In addition, the word ‘hoodlum’ is not an inherently racial term, as the CFPB alleges. The word ‘hoodlum’ is defined as ‘a violent person, especially one who is [a] member of a group of criminals.’ See <https://dictionary.cambridge.org/dictionary/english/hoodlum>. The word ‘hoodlum’ is often used in normal discourse and not as a proxy for an African American.” [Garris Horn, [07/17/20](#)]

- **They Additionally Defended Townstone Executives Calling South Side Chicago A War-Zone Using Former President Trump’s Comments In Which He Compared It To Afghanistan.** “In addition, our President Trump has repeatedly described Chicago’s violence as worse than Afghanistan, an actual war zone.” [Garris Horn, [07/17/20](#)]

## **Townstone’s Legal Team Waved Away The CFPB’s Concern That Townstone’s Former Vice President Compared Walking In Predominantly Black Neighborhoods To The Danger And Adrenaline Rush That Comes From Skydiving.**

**November 2017, Townstone’s Former Vice-President Said That Walking At Night In Southside Would Give The Same Adrenaline Rush As Skydiving.** “In a November 11, 2017 episode of the Townstone Financial Show, during which Townstone marketed its services, Townstone’s senior loan officer discussed a recent skydiving experience and the ensuing ‘rush’ from the jump; Townstone’s vice-president responded that he thought skydiving was crazy and suggested that ‘walking through the South Side at 3AM [would] get the same rush.’” [Consumer Financial Protection Bureau, [07/15/20](#)]

**Townstone’s Legal Team Expressed Confusion That Comparing The Rush And Danger Of Skydiving To Being In Black Neighborhoods Would Be Considered Offensive As Statements About South Side’s High Crime Rates Are “Factual.”** “Regarding the ‘skydiving’ comment, we simply do not see how this statement is at all offensive. The South Side of Chicago has a high crime rate, a factual statement that cannot be refuted. Walking at night in a high-crime area is dangerous. Skydiving similarly is dangerous. In fact, Townstone believes anyone who has lived in any urban area, not only the South Side of Chicago, would understand the concern with, or warn friends and relatives from walking around in the middle of the night, regardless of the racial demographics of the area.” [Garris Horn, [07/17/20](#)]

**Townstone's Former President And Co-Owner, David Hochberg, Referred To An 80.3% Black City As A Place You Should "Drive Very Fast Through" While Ridiculing Women For Having Low Credit Scores And Telling A Caller To Stop Spending Money On His Wife.**

Townstone's Former President Referred To Markham, Illinois—A City That Is 80.3% Black—As A Place You Drive Fast Through, Where You "Don't Look At Anybody," Adding That Women Have "Low Credit Scores Because They Are Women" And If A Caller Didn't Want To Have A Low Credit Score, He Should Stop Spending Money On His Wife And "Tell Her To Get A Better Job." "During another radio broadcast in January 2014, during which Townstone marketed its services, a caller from Markham, Illinois, asked how he and his wife could improve their credit scores. Markham is a city in Cook County, Illinois, and its population is 80.3% Black or African-American, according to the U.S. Census Bureau. Townstone's president responded that the caller's wife is 'a woman and she probably doesn't have good credit because she's a woman,' and that '[you've] got to keep those women in line over there in Markham.' After further discussing the couple's credit concerns, he noted that 'it's crazy in Markham on weekends' and that 'I know, I've been to Markham.' 'You drive very fast through Markham,' he continued, 'and you don't look at anybody or lock on anybody's eyes in Markham . . . . You look at your dashboard, you don't lock on anybody.' Townstone's president closed the segment by telling the caller to 'stop spending freaking money [on his wife] and tell her to get a better job.'" [Consumer Financial Protection Bureau, [07/15/20](#)]

**Townstone Defended Comments About The Predominantly Black City Markham By Former Co-Owner David Hochberg, Saying It Was "A Fact" That The Area Has A High Crime Rate.** "Markham. This was also a statement by Townstone's former co-owner, who left the company in June 2015. Regarding the Markham comment, as noted above, if an area has a high crime rate, that is a fact. Discussing facts and how one should stay safe in an area of high crime cannot be the basis of a fair lending violation." [Garris Horn, [07/17/20](#)]

**The Defense Team Also Argued That Hochberg Was Not Ridiculing Women For Having Low Credit Scores But Rather Calling Attention To A Serious Societal Problem.** "Regarding the comment about women having lower credit scores, that societal problem has been found by studies by reputable organizations, including a Credit Sesame study in 2016. The discussion of a societal problem cannot be the basis of a fair lending violation. These issues are discussed in this blog post. Reputable news organizations have also reported on this study and this societal problem." [Garris Horn, [07/17/20](#)]