No. 19-7

IN THE

Supreme Court of the United States

SEILA LAW LLC,

Petitioner,

v.

CONSUMER FINANCIAL PROTECTION BUREAU,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether 12 U.S.C. § 5491(c)(3) violates the separation of powers by prohibiting the president from removing the director of the Consumer Financial Protection Bureau except for "inefficiency, neglect of duty, or malfeasance in office."

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INTEREST OF *AMICUS CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. Defending the separation of powers is a core part of WLF's mission, and WLF has appeared often before this Court, as an *amicus curiae*, to do so. See, e.g., *Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010); *Dep't of the Navy v. Egan*, 484 U.S. 518 (1988).

SUMMARY OF ARGUMENT

Everyone knows where to find the most powerful person in Washington. He lives and works in an old neoclassical mansion known as the White House. Every day, swarms of tourists, protestors, and performers gather at the fence beyond his front door, tacitly acknowledging his preeminence.

Where can one find Washington's *second* most powerful person? Is he at the main executive building? Is she in an office next to the Capitol? Perhaps it's someone on this Court? Plausible suggestions all. But no one in these places can get much done without the support of other—sometimes *many* other—equally mighty and ambitious people.

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[*] No party's counsel authored any part of this brief. No person or entity, other than WLF and its counsel, helped pay for the brief's preparation or submission. All parties have consented in writing to the brief's being filed.

There's a strong case to be made that the second most powerful person in the federal government sits a block from the West Wing, in a drab concrete structure the sightseers invariably pass without a glance. The building houses the Consumer Financial Protection Bureau, whose director implements more than a dozen major statutes—and answers to no one. Not to voters. Not to other government officers. Not even to the chief executive. Although a CFPB director can be fired for misconduct, she cannot be removed due to her policies. The protocols she imposes, the priorities she sets, and the tactics she uses are in her hands to make. Her choices are her own. The president is stuck with them.

What do the traditions of our nation and our law have to say about this regulatory fiefdom? The answer, we will show, is that they categorically condemn it.

Both before and after the American Revolution, the English (later British) monarch enjoyed an absolute right to remove high officials at will. The framers of our Constitution rejected many royal prerogatives, but, chastened by their experience with the defective Articles of Confederation, they retained a broad executive removal power. This decision can be seen in Article II's clauses vesting "the executive Power" in a single "President" who must "take Care that the Laws be faithfully executed." It can also be seen in the overall structure of the Constitution; in the practices of presidents Washington, Adams, and Jefferson; and in key decisions taken by the First Congress. Drawing on many of these sources, this Court confirmed, in *Myers v. United States*, 272 U.S.

52 (1926), what was at the time quite obvious: that the president may remove principal officers at will.

Everything abruptly changed when the Court decided *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). In a six-page opinion that all but ignored the pertinent constitutional text, structure, and history, the Court declared that Congress may grant for-cause removal protection to a principal officer on a panel of purportedly neutral "experts" who wield "quasi legislative" and "quasi judicial" power. *Humphrey's Executor* in effect granted Congress the power to create a fourth branch of government, a branch of independent boards and commissions. And this distortion of the separation of powers begat others, culminating in the statute at issue here, which gives both sweeping authority and for-cause removal protection to a single CFPB director.

Although the Court has struck the right tone in some recent decisions, declaring for instance that "a single President" is "responsible for the actions of the Executive Branch," *Free Enter. Fund*, 561 U.S. at 496-97 (2010), Congress's attempts to cut into the president's removal power have only become more brazen with time. At the very least, therefore, this Court should stop the bleeding by declaring the CFPB director's for-cause protection unconstitutional. What the Court should really do, though, is set things right by dumping the limit on the removal power that it created out of thin air in 1935.

ARGUMENT

I. THE PRESIDENT'S BROAD REMOVAL POWER IS REVEALED IN, AND CONFIRMED BY, ENGLISH HISTORY, THE TEXT AND STRUCTURE OF THE CONSTITUTION, AND OVER A CENTURY OF UNBROKEN PRACTICE AFTER THE FOUNDING.

A. English History.

"Will no one *rid* me of this turbulent priest?" Four knights immortalized this howl of protest, indignantly emitted by Henry II while his blood was up, by taking it seriously. They took their leave, rode to the Norman coast, and crossed the Channel. They found the Archbishop of Canterbury, Thomas Becket, in his cathedral, and they hacked him to pieces. 1 Winston S. Churchill, *A History of the English Speaking Peoples: The Birth of Britain* 210-11 (1956).

Becket had once been the king's friend and counsellor. When Henry had him appointed archbishop in 1162, however, he promptly went native. The Church of that day was a power apart—a body with its own lands and privileges, its own laws and courts—and Becket became its champion. He denied the Crown's authority, undermined royal policy at every turn, and excommunicated clerics loyal to the king. Henry could do little about any of it except shout and sputter. When at last, in 1170, the knights mistook one of Henry's many impotent tirades as a command and removed Becket by cutting him down, the scandal shook the kingdom to the core. Becket was hailed a martyr and a saint. Henry spent years atoning for the sacrilege he had

set on foot. 1 Peter Ackroyd, *Foundation: The History of England from its Earliest Beginnings to the Tudors* 132-34 (2011); 1 Churchill, supra, at 210-11.

Just as the King of England could not always remove a man, neither could he always retain one. Edward II's favorite, Piers Gaveston, gave the high and mighty of the realm nicknames such as "burst belly" and "the cuckold's bird." The barons took him to the woods and executed him in 1312. David Starkey, *Crown & Country: The Kings & Queens of England* 222-23 (2011); 1 Churchill, supra, at 312-13.

Parliament impeached Charles I's first minister, the Earl of Strafford, in 1640. When Strafford proceeded to defend himself a little too ably at his trial, the Puritans dropped the impeachment, attainted him, forced the king to sign a death warrant, and had him beheaded before a hundred-thousand spectators. Charles never forgave himself. When he in his turn stepped onto a scaffold in 1649, he declared that God was punishing him for the "unjust sentence" that he had "suffered to take effect." Leanda de Lisle, *The White King: Charles I, Traitor, Murderer, Martyr* 122-35, 274-75 (2017); 2 Winston S. Churchill, *A History of the English Speaking Peoples: The New World* 216-21 (1956).

But these dramatic episodes are aberrations. They are exceptional. For centuries England's high officials—its chancellors, its judges, and, once Henry VIII had his way, even its bishops—served at the king's pleasure. A minister's powers were the king's powers. F.W. Maitland, *The Constitutional History of*

England 389 (1919). They were, as Maitland explained, "royal prerogatives" that "the king might lawfully exercise himself were he capable of discharging personally the vast business of government." *Id.* An untrammeled power of appointment and removal was itself such a prerogative. *Id.*

Some of these prerogatives were stripped away just as the American colonies were becoming a going concern. After the Revolution of 1688, the Crown lost finally and for all time the power to suspend a law. *Id.* at 388. No sovereign has vetoed a bill from the throne since Queen Anne did so in 1708. *Id.* at 398. When Anne died in 1714, the monarchy's power to remove a judge "during good behavior" died with her. *Id.* at 312-13; see Act of Settlement, 1701, 12 & 13 William III c. 2, § 3. Royal authority withered further under George I and George II, Hanoverians who cared little about England or its affairs. Maitland, supra, at 395; 3 Peter Ackroyd, *Revolution: The History of England from the Battle of the Boyne to the Battle of Waterloo* 80-81, 93-94, 123-24 (2016). Although George III took some interest in governing, by his day the king no longer attended cabinet meetings. Maitland, supra, at 395.

Yet the king remained formidable, at least in theory. He retained his say in foreign affairs. He could still create new offices, albeit only with what money parliament might supply. 1 William Blackstone, *Commentaries on the Laws of England* 262 (1765). Above all, his power to appoint and remove officers stood untouched. Maitland, supra, at 388-89. The king, Blackstone wrote in 1765, was still "the fountain of honour, of office, and of privilege." Blackstone, supra, at 261. It was for him alone,

therefore, to decide "in what capacities, with what privileges, and under what distinctions his people [we]re best qualified to serve and to act under him." *Id.* at 263.

Writing in the early twentieth century, Maitland vividly described the abiding scope of—and justification for—the monarch's appointment and removal power:

> I think it well to notice separately that almost all those who have any governmental or judicial powers of any high order are appointed by the queen; if their powers are of a judicial kind, they generally hold office during good behaviour; if their powers are not judicial, they generally hold office merely during the queen's good pleasure and no reason need be assigned for dismissing them. I think it well to notice this separately, for it is these powers of appointment and dismissal which give to our scheme of government the requisite unity. The privy councillors hold their places during good pleasure, so do those high officers of state who form the ministry. It is not usual to remove [such officers]. . . . But the legal power is absolute; and it is just because the legal power is absolute that our system of party government is possible.
>
> I mention this power of appointing and dismissing the high officers of state by itself because it is so very important, but of course the king has a very general power of appointing not only those whom we speak of

> as collectively forming the ministry, but all or almost all of those who hold public offices of first-rate importance.

Maitland, supra, at 428-29.

B. The Constitution.

The Declaration of Independence accuses George III of committing "every act which may define a Tyrant." Declaration of Independence ¶ 30. At times the document seems to rail against a despot whose writ ran no farther than Thomas Jefferson's imagination. See *id.* ¶¶ 3-29. Accurate or no, however, Jefferson's view of the king played on the minds of the men who assembled for the Constitutional Convention in 1787. The charter they crafted prises many royal prerogatives from the grasp of our chief executive. In line with the British practice by that time, he may not remove judges. Const. art. III, § 1, cl. 2. But he also may not declare war or create offices; those powers belong to Congress. *Id.* at art. I, § 8, cls. 11, 18. And he may not make treaties or appoint senior officers by himself; he needs the Senate's approval. *Id.* at art. II, § 2, cl. 2.

But the British monarchy was not the Framers' only point of reference. The Articles of Confederation had created a meagre executive power and assigned it to Congress. Forget George III; the absence of a separate executive was, Jefferson exclaimed, "the source of more evil than we have ever experienced from any other cause." Letter from Thomas Jefferson to Edward Carrington (Aug. 4, 1787) (https://bit.ly/2NENlkW) (all links go to the National Archives,

Founders Online, https://founders.archives.gov/). "Nothing is so embarrassing nor so mischievous in a great assembly as the details of execution," he cried. *Id.* Hamilton agreed. The lack of a "proper executive" led, he wrote, to a "want of method and energy." Letter from Alexander Hamilton to James Duane (Sep. 3, 1780) (https://bit.ly/2pLp4lb). "Responsibility" was too "diffused." *Id.* The Framers wanted to fix this problem.

So the Framers only incrementally trimmed the executive bough. *First*, they invested a chief executive with his panoply: they roundly vested "the executive Power" in a single "President." Const. art. II, § 1, cl. 1. *Then*, when they wanted to revoke some prerogative or other, they did so openly and in plain words. The president may not "provide and maintain a Navy"; he may not grant anyone a "Title of Nobility"; and so on. *Id.* at art. I, § 8, cl. 13; art. I, § 9, cl. 8. The Framers wanted to reduce the president's authority to a point, *and no further*. See Steven G. Calabresi & Saikrishna B. Prakash, *The President's Power to Execute the Laws*, 104 Yale L.J. 541, 596 n.212 (1994). "All the powers properly belonging to the executive department of the government are given," as Fisher Ames put it to the First Congress, "and such only taken away as are expressly excepted." 1 Annals of Cong. 561.

The Constitution requires the president to rely on Congress to erect and fund offices, see *Myers*, 272 U.S. at 128-30, and on the Senate to approve principal officers, Const. art. II, § 2, cl. 2. Meanwhile, however, it commands the president, and the president alone, to "take Care that the Laws be faithfully executed." *Id.* at art. II, § 3, cl. 3. And

although it says that judges "shall hold their offices during good behavior," *id.* at art. III, § 1, cl. 2., it extends no like protection to executive officials. A balance has plainly been struck. The president answers to Congress, but the government answers to the president. An officer must, in Washington's words, "assist the supreme Magistrate in discharging the duties of his trust." 30 Writings of George Washington 334 (John C. Fitzpatrick ed., 1939).

C. Early American Practice.

When Jefferson became president, he circulated among his heads of departments a letter setting Washington's administration as his standard. Washington had required his officers to keep him "always in accurate possession of all facts and proceedings." Circular Letter from Thomas Jefferson (Nov. 6, 1801) (https://bit.ly/2JTL9Vz). He had "formed a central point for the different [executive] branches, preserved a unity of object and action among them," and "met himself the due responsibility for whatever was done." *Id.* Jefferson contrasted this approach with "Mr. Adams's administration," in which the president, during "his long and habitual absences," let the government be "parceled out" among "four independent heads, drawing sometimes in opposite directions." *Id.* "That the former is preferable to the latter course," declared Jefferson, "cannot be doubted." *Id.* Washington—and Jefferson—clearly believed that the president may guide, command, and, when necessary, remove government officials. Indeed, although no law granted the president a removal power, Washington, Adams, and Jefferson each

dismissed many officers. Saikrishna Prakash, *New Light on the Decision of 1789*, 91 Cornell L. Rev. 1021, 1066 (2006). Jefferson fired 124 of them. *Id.*

The early presidents' conduct was not challenged by the other branches. To the contrary, the First Congress endorsed the notion that the president enjoys an unfettered removal power. When Madison moved to establish a Department of Foreign Affairs, "the head of which" was to be an officer "removable by the President," a debate erupted about the removal power. A few representatives argued that removal required an impeachment trial in the Senate. Calabresi & Prakash, supra, 104 Yale L.J. at 642-43; Prakash, supra, 91 Cornell L. Rev. at 1035. Others argued that the Senate's approval, at least, was necessary. Calabresi & Prakash, supra, 104 Yale L.J. at 643; Prakash, supra, 91 Cornell L. Rev. at 1036-37. Still others believed that, although the president should be allowed to remove people at will, his power to do so came not from the Constitution but from Congress. Prakash, supra, 91 Cornell L. Rev. at 1038-39. Madison, for his part, contended that "the lowest officers, the middle grade, and the highest" all "depend, as they ought, on the president." 1 Annals of Cong. 499. And because he in turn depends on the "community," the "chain of dependence" terminates in "the people." *Id.* An unqualified removal power ensures, in other words, that voters may hold the president to account for his officers' actions.

In what is now known as the Decision of 1789, Congress passed several bills that contained no removal clause, but that discussed who would manage the papers of a removed officer. See

Prakash, supra, 91 Cornell L. Rev. at 1023 & nn. 7-9. The traditional view holds that Congress thereby affirmed that the Constitution empowers the president to remove officers at will. *Id.* at 1065-66. Legislators on both sides of the debate placed that gloss on the affair in their private letters. The votes turned, one senator wrote, on "whether the President had a constitutional right to remove; not on the expediency of it." *Id.* Madison told Jefferson that his colleagues had adopted the position "most consonant" to "the text of the Constitution" and "the requisite responsibility and harmony in the Executive Department." Letter from James Madison to Thomas Jefferson (June 30, 1789) (https://bit.ly/36BYhZd).

D. *Myers*.

Not until the twentieth century did this Court turned its gaze squarely on the removal power. When at last it did so, it threw its weight behind what had by then been the executive branch's custom and understanding for more than 130 years. Although the president holds all "executive power," the Court said in *Myers* (1926), he "alone and unaided could not execute the laws." 272 U.S. at 117. He must "execute them by the assistance of subordinates," and, to do so effectively, he must be able to remove "those for whom he cannot continue to be responsible." *Id.* The Framers could not have

> intended, without express provision, to give to Congress or the Senate, in case of political or other differences, the means of thwarting the executive in the exercise of his great powers and in the bearing of his great

> responsibility by fastening upon him, as subordinate executive officers, men who by their inefficient service under him, by their lack of loyalty to the service, or by their different views of policy might make his taking care that the laws be faithfully executed most difficult or impossible.

Id. at 131 (summarizing arguments Madison put to the First Congress). The president must, in other words, have the power "to secure that unitary and uniform execution of the laws which article 2 of the Constitution evidently contemplated in vesting general executive power in the President alone." *Id.* at 135. He must, in short, "have the power to remove[.]" *Id.*

II. THE COURT ERRED, IN MODERN TIMES, BY UNDERMINING THE PRESIDENT'S REMOVAL POWER.

A. *Humphrey's Executor.*

The story to this point has been about the federal government as it was designed and built. The government described in grade-school textbooks. The government in which one branch makes the law, another administers it, and a third applies it to cases and controversies. The plan never worked perfectly. That was never a possibility. The lines between the powers are at times too obscure, the humans tasked with finding them often too fallible or corrupt. But the model endured. Its imprint was real.

It is impossible to pinpoint exactly when that model began to unravel, but a key moment was when

an FTC commissioner named William Humphrey ignored a letter from FDR telling him he was fired. Humphrey just kept showing up for work. Before long, however, eternity's power of removal achieved what FDR's had not, and Humphrey's estate sued the government for unpaid wages.

According to the FTC Act, the president may remove a commissioner only "for inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. FDR's only qualm with Humphrey had been a want of enthusiasm for the New Deal. "I do not feel," he had told Humphrey, "that your mind and my mind go along together on either the policies or the administering of the Federal Trade Commission." Letter from Franklin D. Roosevelt to William E. Humphrey (Aug. 31, 1933).

This Court declared in *Humphrey's Executor* (1935) that the president must obey the FTC Act's cause condition. To justify this new limit on the president's removal power, the Court transformed the FTC's defects into virtues. The FTC's duties, the Court declared, "are neither political nor executive, but predominantly quasi judicial and quasi legislative." 295 U.S. at 624. Congress just wanted to create a "nonpartisan" "body of experts," and, thanks to these good intentions, the FTC was valid precisely *because* Congress made it "independent of executive authority." *Id.* at 624-25.

The Founders were no naïfs. They did not believe in fantasies like politically neutral "expert" government bodies. Ambition, they maintained, must be made to counteract ambition. The Federalist No. 51 (Madison). No surprise therefore that the

Constitution never blesses arming an agency with an amorphous blend of "quasi" powers. As Justice Jackson wrote, "the mere retreat to the qualifying 'quasi' is implicit with confession that all recognized classifications have broken down." *FTC v. Ruberoid Co.*, 343 U.S. 470, 487-88 (1952) (Jackson, J., dissenting).

Humphrey's Executor acceded to the founding of a new branch of government. In that branch—in the FTC, the SEC, the FCC, the CFTC, the NLRB, and on and on—unelected regulators wield the executive power (among others). They apply the law in accord with their own policies, their own maxims, their own vision. When their aims conflict with the (original) executive branch's, they need not yield. They are, like Becket's Church, a power apart.

B. Later Developments.

The removal power has come before this Court several times since it decided *Humphrey's Executor*. Most famously, *Morrison v. Olson*, 487 U.S. 654 (1988), held that the Ethics in Government Act, which placed good-cause restrictions on the Attorney General's power to remove an independent counsel, did not impermissibly infringe the president's removal power, *id.* at 685-93, 695-96.

The independent counsel was an inferior officer, *id.* at 691, whereas the director of the CFPB is a principal officer. Because "the Constitution gives the Congress much more power over the appointment and removal of an inferior officer than over the appointment and removal of a principal officer," this case and *Morrison* "are not on the same

jurisprudential planet." *PHH Corp. v. CFPB*, 881 F.3d 75, 151-52 (D.C. Cir. 2018) (Henderson, J., dissenting). Still, note the sharp incongruity between *Humphrey's Executor* and *Morrison*. *Humphrey's Executor* stood its curtailment of executive power largely on the fact that an FTC commissioner has some "quasi judicial" and "quasi legislative" powers. *Humphrey's Executor* distinguished *Myers* on the ground that that case involved "an executive officer restricted to the performance of executive functions." 295 U.S. at 627. Officers who wield purely executive power, *Humphrey's Executor* said, would remain "subject to the exclusive and illimitable power of removal by the Chief Executive." *Id.* Yet *Morrison* involved a prosecutor wielding purely executive power. How, then, could she enjoy good-cause protection?

Because *Morrison* simply swept the reasoning in *Humphrey's Executor* "into the dustbin." 487 U.S. at 725 (Scalia, J., dissenting). "Our present considered view," the Court said in *Morrison*, is that "rigid categories" do not matter, and that the removal power simply "ensure[s] that Congress does not interfere with the President's exercise of the 'executive power' and his constitutionally appointed ['take-care'] duty." *Id.* at 689-90. So *Morrison* would come out wrong under the rule in *Humphrey's Executor*. And, one could argue, *Humphrey's Executor*, which involved powerful commissioners, would come out wrong under the rule (standard, really) in *Morrison*. This muddle exists only because the Court drifted from the constitutional text, structure, and history that define the proper (broad) scope of the removal power.

Another decision of note is *Free Enterprise Fund* (2010), which held that Congress may not create multi-level good-cause protections. If a principal officer enjoys good-cause protection, in other words, the inferior officers who answer to her must be removable at will. Although it does not reexamine *Humphrey's Executor* or *Morrison*, 561 U.S. at 483, *Free Enterprise Fund* often breaks with those decisions. Consider these excerpts:

- "The President cannot 'take Care that the Laws be faithfully executed' if he cannot oversee the faithfulness of the officers who execute them." *Id.* at 484.

- "The President cannot delegate ultimate responsibility or the active obligation to supervise that goes with it, because Article II makes a single President responsible for the actions of the Executive Branch." *Id.* at 496-97 (quoting *Clinton v. Jones*, 520 U.S. 681, 712-13 (1997) (Breyer, J., concurring in judgment)).

- "The diffusion of power carries with it a diffusion of accountability." *Id.* at 497.

- "Without a clear and effective chain of command, the public cannot determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures ought really to fall." *Id.* at 498 (quoting The Federalist No. 70 (Hamilton)).

- "The Constitution requires that a President chosen by the entire Nation oversee the execution of the laws." *Id.* at 499.

- "In its pursuit of a 'workable government,' Congress cannot reduce the Chief Magistrate to a cajoler-in-chief." *Id.* at 502.

- "The Constitution that makes the President accountable to the people for executing the laws also gives him the power to do so." *Id.* at 513.

Each of these passages is in tension with *Humphrey's Executor*. Several of them flatly contradict it. *Free Enterprise Fund* offers no reason why the logic of these lines applies to double-layer for-cause removal, but not to single-layer for-cause removal.

C. The CFPB.

Humphrey's Executor blessed the creation of agencies governed by panels. Spreading control among a number of board members or commissioners, the Court reasoned, made these novel bodies' autonomy and clout not only tolerable, but desirable. 295 U.S. at 624 (the FTC's "members are called upon to exercise the trained judgment of a body of experts . . . informed by experience").

In recent years, however, in what seems almost like a deliberate effort to wreak constitutional havoc, Congress has taken to creating departments

governed by individual directors. The most powerful of these is the head of the Consumer Financial Protection Bureau. She is tasked with administering a raft of consumer-protection laws. See *PHH Corp.*, 881 F.3d at 165-66 (Kavanaugh, J., dissenting). She decides what rules her agency will issue, against whom they will be enforced, and what the penalties for breaking them will be. *Id.* She draws her budget—in 2017 it was more than $600 million—from another independent body, which shields her appropriations from the threat of presidential veto. CFPB, Financial Report of the CFPB for Fiscal Year 2017 at 54 (Nov. 15, 2017). She serves a five-year term, which means she often will proceed under a president who did not even choose her. 881 F.3d at 167 (Kavanaugh, J., dissenting). *And still*, she can be removed only for "inefficiency, neglect of duty, or malfeasance in office." 12 U.S.C. § 5491(c)(3).

Neither Queen Elizabeth I nor Queen Victoria would recognize this scheme. The executive-power vesting clause and the take-care clause directly contradict it. Washington, Jefferson, and Madison would reject it as unconstitutional. So would the First Congress and the *Myers* Court. There can be no doubt, in short, what the constitutional history, text, and structure tell us. They all tell us that the power vested in, and the protections built around, the CFPB director gravely distort our founding charter. For that matter, they all say that the president may remove a principal officer at will, which means that *Humphrey's Executor* is intolerably wrong.

This Court should say so in no uncertain terms.

CONCLUSION

The judgment should be reversed.

Respectfully submitted,

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