No. 23-755

IN THE

Supreme Court of the United States

ANDREW S. CLYDE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, ET AL., PETITIONERS,

v.

WILLIAM MCFARLAND, IN HIS OFFICIAL CAPACITY, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

MATTHEW BERRY
General Counsel
Counsel of Record
TODD B. TATELMAN
Deputy General Counsel
BRADLEY CRAIGMYLE
Associate General Counsel
ANDY T. WANG
Assistant General Counsel
Office of General Counsel
U.S. House of Representatives
5140 O'Neill House Office Building
Washington, D.C. 20515
(202) 225-9700
Matthew.Berry@mail.house.gov

QUESTIONS PRESENTED

House Resolution 73, when it was in effect, regulated the conduct of Members of the U.S. House of Representatives as they accessed the Hall of the House (also called the House Chamber). To keep firearms and other dangerous weapons out of the House Chamber, the Resolution required Members to undergo security screening before entering the Chamber. It also directed the imposition of fines against those who failed to comply with that requirement. The questions presented are:

1. Whether the Speech or Debate Clause bars a suit challenging House Resolution 73 filed against House employees in their official capacities.

2. Whether House Resolution 73 violates the Twenty-Seventh Amendment to the U.S. Constitution.

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The opinion of the court of appeals (Pet. App. 1a-7a) is available on Westlaw at 2023 WL 6939987. The opinion of the district court (Pet. App. 8a-22a) is reported at 619 F. Supp. 3d 193.

JURISDICTION

The judgment of the court of appeals was entered on October 20, 2023. The petition for a writ of certiorari was filed on January 10, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

Petitioners are asking this Court to grant certiorari in a case nearly identical to one the Court declined to take up just last month.[1] In that case, petitioners unsuccessfully asked this Court to review a House of Representatives (House) rule no longer in effect that required Members to wear a mask in the House Chamber. Here, Petitioners seek review of a House rule no longer in effect that required Members to undergo security screening before entering the House Chamber. Both rules were controversial, and all Members of the current House Leadership voted against them. But this case, like the prior case, is not about the wisdom of the rule at issue. Rather, this case, like the prior case, is about whether Petitioners' claims are subject to judicial review. The district court held here that the Constitution's Speech or Debate Clause bars the action and dismissed the complaint. The court of appeals, noting that the case was "indistinguishable

[1] *See Massie v. Johnson*, No. 23-566, 2024 WL 674742 (U.S. Feb. 20, 2024).

from" the mask case (Pet. App. 6a), unanimously affirmed in an unpublished, per curiam decision.

I. The House's Constitutional Authority Over Its Rules

Article I vests all federal "legislative Powers … in a Congress of the United States, which shall consist of a Senate and House of Representatives." U.S. Const. art. I, § 1. The Constitution delegates to the House and Senate each broad discretion to effectuate these legislative powers and to govern themselves. The Rulemaking Clause empowers each body to "determine the Rules of its Proceedings," and the Discipline Clause authorizes each chamber to enforce those rules by "punish[ing] its Members for disorderly Behaviour." *Id.* § 5, cl. 2. Absent a conflict with an express constitutional requirement or a violation of "fundamental rights," the rulemaking power of each body is plenary and beyond judicial review. *United States v. Ballin*, 144 U.S. 1, 5 (1892).

II. The Events of January 6 and House Resolution 73

During the 117th Congress, the House adopted House Resolution 73 (Resolution), which required Members to complete security screening measures before entering the House Chamber and directed fines be imposed on those who did not. The House implemented this mandate after the events of January 6, 2021. It generated significant controversy within the House and was approved by a narrow vote of 216 to 210. *See* 167 Cong. Rec. H274-75 (daily ed. Feb. 2, 2021). Along with Petitioners (who are current or former House Members), all the Members who comprise the current House Leadership opposed the Resolution. *Id.* at H274. House Resolution 73 expired at the end of the 117th Congress, and the security

screening measures it imposed have not been readopted in the 118th Congress.

A. On January 6, 2021, a Joint Session of the House and Senate convened in the Capitol to count the Electoral College votes in the 2020 presidential election. The events that followed are well known: in the early afternoon, a large group of rioters unlawfully entered the Capitol, including by breaking windows and assaulting police officers. *See* Staff of S. Comm. on Homeland Sec. & Governmental Affs. & Staff of S. Comm. on Rules & Admin., 117th Cong., *Examining the U.S. Capitol Attack, A Review of Security Planning, and Response Failures on January 6*, at 21, 23-25 (2021).[2] Members of the House and Senate were evacuated from their respective Chambers. *Id.* at 25-26. The rioters vandalized the Capitol, stole property, and ransacked offices. *See id.* at 1. Seven hours after the breach, the Capitol was finally declared secure. *See id.* at 21.

B. Following these events, magnetometers were installed at the entrance of the House Chamber, and Members were informed that failing to complete the security screening, or carrying firearms or other dangerous weapons, could result in denial of access to the Chamber.[3]

In support of its mission to protect Congress, the U.S. Capitol Police manned the magnetometers, as it does in numerous locations within buildings on the Capitol Grounds. All persons entering the House Chamber were instructed to walk through the

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[2] *Available at* https://perma.cc/Q4MN-N9C2.

[3] *See* Hunter Walker, *In wake of Capitol riot, House members subject to security screenings*, Yahoo News (Jan. 12, 2021), *available at* https://perma.cc/GFM9-BN9L.

magnetometers, and those who attempted to enter the House Chamber without first going through the magnetometers were reminded to do so. Any incident of a person entering the House Chamber while deliberately bypassing the magnetometer, or refusing to submit to a secondary screening if he or she set off the magnetometer, was memorialized by the U.S. Capitol Police and transmitted to the Office of the Sergeant at Arms.

C. House Resolution 73 was introduced on February 1, 2021, and adopted by the full House the next day. *See* H. Res. 73, 117th Cong. (2021); 167 Cong. Rec. H274-75 (daily ed. Feb. 2, 2021). The Resolution provided that the "Sergeant-at-Arms [wa]s authorized and directed to impose a fine against a Member, Delegate, or the Resident Commissioner for failure to complete security screening for entrance to the House Chamber." H. Res. 73, § 1(a)(1). The Resolution specified a "$5,000 [fine] for a first offense and a $10,000 [fine] for any subsequent offense." *Id.* § 1(a)(2).

The fined individual could appeal to the House Committee on Ethics, which by majority vote could overturn the fine. *Id.* § 1(b)(1)-(2). The Resolution further provided that "[i]f a Member, Delegate, or Resident Commissioner against whom a fine [wa]s imposed . . . ha[d] not paid the fine prior to the expiration of the 90-calendar day period" following the resolution of an appeal or the expiration of the time to appeal, "the Chief Administrative Officer shall deduct the amount of the fine from the net salary otherwise due the Member, Delegate, or Resident Commissioner." *Id.* § 1(c)(1).

D. Each Petitioner was fined for failing to complete the mandated security screening before entering the House Chamber during the 117th Congress and appealed

his violation to the House Committee on Ethics. *See* Pet. App. 10a-11a. A majority of the House Committee on Ethics did not vote in favor of their appeals, and the appeals were thus denied. *See id.* "[T]he Sergeant at Arms levied fines against each [Petitioner], which were deducted from their net salaries by the Chief Administrative Officer." *Id.* at 3a.

E. Because "the House [of Representatives] is not a continuing body," *Comm. on Judiciary, U.S. House of Reps. v. Miers*, 558 F. Supp. 2d 53, 97 (D.D.C. 2008), the requirements of House Resolution 73 expired at the end of the 117th Congress. *See* U.S. Const. amend. XX, § 2. When the 118th Congress convened and adopted its governing rules package, the provisions of House Resolution 73 were not readopted. *See* H. Res. 5, 118th Cong. (2023). Thus, the magnetometers have been removed from outside the House Chamber, and Members are no longer required to complete security screening before entering the House Chamber. The decision not to readopt the provisions of House Resolution 73 did not affect fines previously assessed to any Members during the 117th Congress.

III. Member Compensation

The Constitution provides that "Compensation" for Members of Congress must be "ascertained by Law, and paid out of the Treasury of the United States." U.S. Const. art. I, § 6, cl. 1. Before the early 1990s, Congress periodically enacted legislation to alter its compensation. *See* Ida A. Brudnick, Cong. Rsch. Serv., 97-1011, *Salaries of Members of Congress: Recent Actions and Historical Tables* 2 (2023) (CRS Report 97-1011).[4]

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[4] *Available at* https://perma.cc/VW7Z-MMMP.

More recently, compensation has been determined under a statutory formula for automatic adjustments. *See id.* "The Ethics Reform Act of 1989 established the current . . . annual adjustment formula, which is based on changes in private sector wages" as determined by a specified index, "although the percentage may not exceed the percentage base pay increase" for certain other federal employees. *Id.*; 2 U.S.C. § 4501. The annual adjustment is automatic unless it is denied by legislation. *See* CRS Report 97-1011 at 2. Beginning with an adjustment in 1991, annual adjustments have been accepted by Congress thirteen times, with the most recent adjustment occurring in 2009. *See id.* Since 2009, pay adjustments have been denied by legislation every year. *See id.*

Since Fiscal Year 1983, Member salaries have not been funded through the annual appropriations process but rather by a permanent appropriation. *See id.* at 1. House Members are paid on a monthly basis. *See* 2 U.S.C. § 5301. Their paychecks reflect numerous voluntary and required deductions from their salary, including deductions for federal retirement benefits, Thrift Savings Plan contributions, health and life insurance contributions, federal and state taxes, and Social Security.

IV. Procedural History

A. Petitioners filed their complaint against then-House Sergeant-at-Arms William Walker and Chief Administrative Officer Catherine Szpindor.[5] Pet. App. 11a-12a. The complaint alleges (as relevant here) that House Resolution 73's enforcement mechanism (a fine)

[5] William McFarland is the current Sergeant-at-Arms and is automatically substituted as a party. *See* Sup. Ct. R. 35.3.

violates the Twenty-Seventh Amendment to the Constitution. *Id.* at 12a. Petitioners seek both declaratory and injunctive relief, including an order requiring the Chief Administrative Officer to return any fines that have been deducted from their paychecks. *See id.*

B. The district court granted Respondents' motion to dismiss, holding that the Speech or Debate Clause precluded Petitioners' suit. *Id.* at 13a. The district court determined that "each challenged act of the [Respondents] qualifies as a legislative act" and thus is protected by the Speech or Debate Clause. *See id.* at 15a (citing *Gravel v. United States*, 408 U.S. 606, 625 (1972)).

To begin with, the district court concluded that the security screening itself qualified as a legislative act, reasoning that not only was the screening "being performed at the entrances to the House Chamber, [where it] regulate[d] 'the very atmosphere in which lawmaking deliberations occur,'" *id.* (citation omitted), but it was also "done in 'execution of internal rules' of the House[,] . . . [a]nd the 'execution of internal rules' like this one 'is legislative,'" *id.* at 16a (citations omitted).

Moving beyond the security screening itself, the district court found that imposing and deducting fines for violations of House Resolution 73 "qualify as legislative acts" because they were taken "in 'execution of internal rules' of the House and to discipline Members for violating those internal rules" and were "an integral 'part of the scheme' that the House has adopted to regulate 'Members' behavior' in the lawmaking 'atmosphere'—they are the mechanisms that the House has chosen to enforce the security-screening requirement." *See id.* at 16a-17a (citations omitted).

Finally, the district court rejected Petitioners' counterarguments. *First*, it found unpersuasive the claim that the actions at issue ("security screening" and "administering payroll," as Petitioners called them) were merely "administrative functions" unprotected by the Speech or Debate Clause. *See id.* at 18a. Such a characterization, the district court explained, "ignore[s] their context" as "part of an overall scheme regulating[] Members' behavior in the lawmaking atmosphere on the House floor." *Id.* *Second*, the district court rejected the distinction Petitioners attempted to draw between "legislative acts and execution thereon," *id.*, explaining that "the 'salient distinction under the Speech or Debate Clause is not between enacting legislation and executing it' but between 'legislative acts and non-legislative acts.'" *Id.* at 19a (quoting *McCarthy v. Pelosi*, 5 F.4th 34, 41 (D.C. Cir. 2021)); *see also id.* (explaining "that the Clause encompasses the 'execution' of congressional directives so long as the 'executing actions themselves constitute legislative acts'" (citation omitted)). *Third*, the district court disagreed with Petitioners' unqualified claim that House Rules are subject to judicial review under *United States v. Ballin*, 144 U.S. 1 (1892). *See* Pet. App. 20a-21a. The district noted that while House Rules may be reviewable "at times," they are not "when the Speech or Debate Clause bars the challenge." *Id.* at 21a.

Because the acts at issue were protected by Speech or Debate Clause immunity, the district court refused to consider the merits of Petitioners' constitutional claim and dismissed the case. *See id.* at 21a-22a.

C. The court of appeals affirmed, holding that "issuing a fine and deducting it from paychecks" are legislative acts under this Court's decision in *Gravel v. United States*, 408 U.S. 606 (1972). *See id.* at 5a, 7a.

Pursuant to *Gravel*, an act is a legislative act "if it is 'an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to' either: (1) 'the consideration and passage or rejection of proposed legislation' or (2) 'other matters which the Constitution places within the jurisdiction of either House.'" *Id.* at 5a (citation omitted). The court of appeals held that the challenged acts fall within "*Gravel*'s second prong because they involve matters the Constitution places within the jurisdiction of the House," that is, "authority to 'determine the Rules of its Proceedings' and 'punish its Members for disorderly Behaviour.'" *Id.* (quoting U.S. Const. art. I, § 5, cl. 2). The court of appeals explained that it had "recently held that the adoption and execution of a House Resolution are legislative acts implicating the House's power pursuant to the Rules and Discipline Clauses." *Id.*; *see also id.* at 5a-6a (discussing *McCarthy*, 5 F.4th 34, *cert. denied*, 142 S. Ct. 897 (2022), and *Massie v. Pelosi*, 72 F.4th 319 (D.C. Cir. 2023), *cert. denied sub nom. Massie v. Johnson*, 2024 WL 674742). And the court of appeals specifically noted that the lawsuit here was "indistinguishable" from the prior case involving the mask rule, where it held that "[t]he [Sergeant at Arms] engaged in a legislative act when he fined the Representatives for violating the [mask] Resolution, and the Chief Administrative Officer engaged in a legislative act when she deducted those fines from the Representatives' salaries." *Id.* at 6a (second alteration in original) (citation omitted).

The court of appeals rejected Petitioners' two counter-arguments. *First*, it disagreed with Petitioners' argument "that Speech or Debate Clause immunity operates as an affirmative defense rather than as a jurisdictional bar." *Id.* at 3a. The court explained that Speech or

Debate Clause immunity "prohibits the judiciary from 'question[ing]' speech, debate, or legislative acts that fall within the Clause's coverage." *Id.* at 4a (alteration in original) (citation omitted). In that way, the Clause promotes legislative independence by "prevent[ing] . . . accountability before a possibly hostile judiciary." *See id.* (first alteration in original) (quoting *Gravel*, 408 U.S. at 617). *Second*, it explained why Petitioners' claim that "House Rules are reviewable whenever 'a plausible constitutional violation is alleged'" is wrong: Speech or Debate Clause immunity is "absolute," the court explained, regardless of the challenged rule's "alleged unconstitutionality." *Id.* at 6a-7a (citation omitted).

Because Speech or Debate Clause immunity applied, the court of appeals did not consider the merits of Petitioners' constitutional claim. *See id.* at 7a.

ARGUMENT

Just as this Court last month refused to review the decision in the case involving the House's mask rule that the court of appeals called "indistinguishable from" this case, so too should it deny certiorari here.

The court of appeals correctly applied this Court's longstanding precedent on Speech or Debate Clause immunity in determining that the adoption and enforcement of House Resolution 73 were covered by the Clause. And it then correctly refused to consider the merits of Petitioners' constitutional claims after finding that Speech or Debate Clause immunity applied. That is exactly how this Court treats the Clause's absolute immunity; whether the immunity is labelled jurisdictional (a point that Petitioners latch onto as they try to contrive a conflict with this Court's precedent) is beside the point.

Looking beyond these problems, Petitioners have picked a poor vehicle for their attempt to manufacture a conflict based on linguistics. As a matter of interbranch comity, this Court should not review an internal House rule that is no longer in effect and that regulated the security of Members while they were in the House Chamber. In any event, Petitioners' underlying constitutional claim is meritless.

I. The Decision of the Court of Appeals Is Correct and Does Not Conflict with Any Decision of This Court

A. The Speech or Debate Clause states that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." U.S. Const. art. I, § 6, cl. 1. The Clause plays a critical role in "protecti[ng] . . . the independence and integrity of the legislature." *United States v. Johnson*, 383 U.S. 169, 178 (1966). Indeed, the Clause is designed to "prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary." *Gravel*, 408 U.S. at 617. The Clause also prevents litigation distractions that may "disrupt the legislative function." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975). This Court has "[w]ithout exception . . . read the Speech or Debate Clause broadly to effectuate its purposes," which "is to [e]nsure that the legislative function the Constitution allocates to Congress may be performed independently." *Id.* at 501-02.

This Court's precedent shows that Speech or Debate Clause immunity extends beyond literal speech or debate. The privilege covers all "legislative acts," which this Court has said are those that are "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings" either (1) "with respect to the consideration

and passage or rejection of proposed legislation" or (2) "with respect to other matters which the Constitution places within the jurisdiction of either House." *Gravel*, 408 U.S. at 625.

Where it applies, the privilege is an "absolute bar" to suit; courts do not examine the merits or wisdom of the legislative act, even when it is alleged that the act is unconstitutional. *Eastland*, 421 U.S. at 503, 509-10. Simply put, "[t]he wisdom of congressional approach or methodology is not open to judicial veto." *Id.* at 509 (citation omitted).

Additionally, under this Court's precedent, the privilege extends beyond just "Senators and Representatives" themselves and covers aides and other Congressional staff. "[F]or the purpose of construing the privilege[,] a Member and his aide are to be 'treated as one[.]' . . . [Staff] must be treated as [Members'] alter egos; and that if they are not so recognized, the central role of the Speech or Debate Clause . . . will inevitably be diminished and frustrated." *Gravel*, 408 U.S. at 616-17 (citations omitted).

B. The court of appeals correctly held that both the adoption and execution of House Resolution 73 are legislative acts "within the meaning of *Gravel*'s second prong because they involve matters the Constitution places within the jurisdiction of the House." *See* Pet. App. 5a.

The court of appeals properly noted that "[t]he Constitution vests '[e]ach House' with the authority to 'determine the Rules of its Proceedings' and 'punish its Members for disorderly Behaviour.'" *Id.* (second alteration in original) (quoting U.S. Const. art. I, § 5, cl. 2). And as the court of appeals correctly concluded, "[t]he House enacted Resolution 73 pursuant to the

Rules Clause, and the Resolution 'regulates the conduct of Members on the House floor.'" *Id.* at 6a (quoting *Massie*, 72 F.4th at 321). Thus, adopting the rule and executing it (by fining those who don't comply) fall squarely within *Gravel*'s definition of a legislative act. *See Gravel*, 408 U.S. at 625.

To be sure, the court of appeals also relied on its own decisions in *Massie*, 72 F.4th 319, and *McCarthy*, 5 F.4th 34. *See, e.g.*, Pet. App. 6a (concluding that "[t]he suit here is indistinguishable from *Massie* and *McCarthy*"). But each of those decisions relied on this Court's definition of legislative act in holding that the challenged actions were protected by the Speech or Debate Clause. As reviewed above, *Massie* dealt with a House rule that required Members to wear a mask in the House Chamber. 72 F.4th at 320. Members who violated the rule, like Members who violated the security screening rule at issue here, were fined. *See id.* The D.C. Circuit held that adopting the rule and executing it with a fine fell within *Gravel*'s definition of legislative act. *Id.* at 323 n.3 ("We decide this case solely under *Gravel*'s second category, concluding the challenged acts are committed by the Constitution to the House.").

The same goes for *McCarthy*, where the D.C. Circuit held that the resolution that allowed Members to vote by proxy fell with *Gravel*'s definition of legislative act. *See* 5 F.4th at 39 ("The challenged Resolution enables Members to cast votes by proxy, and the 'act of voting' is necessarily a legislative act—i.e., something 'done in a session of the House by one of its members in relation to the business before it.'" (quoting *Gravel*, 408 U.S. at 617)); *id.* at 40 ("[T]he challenged actions here [also] fall within *Gravel*'s second category, i.e., matters that the Constitution places within the

House's jurisdiction: the House adopted its rules for proxy voting under its power to 'determine the Rules of its Proceedings . . . .'" (citation omitted)).

Petitioners are thus forced to argue (Pet. 21) that *Massie*, which also involved a Twenty-Seventh-Amendment challenge to a House rule that was enforced by fining those who violated it, was wrongly decided. But this Court recently denied certiorari in that case, *see Massie*, 2024 WL 674742, a case that the D.C. Circuit called "indistinguishable" from this one, Pet. App. 6a. Just as this Court's review was not warranted in *Massie*, it is also not warranted here.[6]

C. Petitioners' contrary arguments misread this Court's precedent and misunderstand how absolute immunity works. They use semantics to try and drum up a conflict with this Court's precedent that does not exist. Their arguments fail.

1. The decision below is consistent with this Court's decision in *Powell v. McCormack*, 395 U.S 486 (1969), a case that, unlike this one, did not involve a challenge to a legislative act. *See* Pet. 11 (arguing that the decision below "is directly contrary" to *Powell*).

Powell involved a House resolution that prevented a duly elected House Member from taking his seat. 395 U.S. at 490, 493. The Member-elect sued, naming not only Members in their official capacity but also other House employees, including the Sergeant-at-Arms who allegedly refused to pay the Member-elect's salary and the Doorkeeper who allegedly threatened to deny

[6] While the court of appeals did not need to expressly reach the issue, the adoption and enforcement of House Resolution 73 also qualify as legislative acts under *Gravel*'s first prong because the Resolution regulates Members' conduct in the place where they debate and vote on bills. *See* Pet. App. 15a-16a.

him admission into the House Chamber. *Id.* at 493. This Court ultimately held that while the "action may be dismissed against the Congressmen[,] petitioners [there were] entitled to maintain their action against House employees." *Id.* at 506.

Powell does not, as Petitioners suggest, stand for the proposition that House employees may be held liable for an unconstitutional act *even if* that act falls within *Gravel*'s definition of legislative act. Rather, *Powell* stands for the unremarkable proposition that an act is protected only if it is a legislative act, and the act at issue there (the wholesale exclusion of a Member) was not. Admittedly, this Court in *Powell* recognized that Speech or Debate Clause immunity may not protect every act a House employee takes. *See id.* at 503-05 (describing examples). But that simply reflects the way that Speech or Debate Clause immunity has always worked. An act will fall outside the Speech or Debate Clause's protection if it is not "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings" either (1) "with respect to the consideration and passage or rejection of proposed legislation" or (2) "with respect to other matters which the Constitution places within the jurisdiction of either House." *See Gravel*, 408 U.S. at 625. By contrast, an act that does fall within *Gravel*'s definition of legislative act is covered by Speech or Debate Clause immunity.

Petitioners' suggestion that "*Powell* rejected that logic"—meaning, as Petitioners tell it, Speech or Debate Clause immunity does not protect an allegedly unconstitutional act even if it meets *Gravel*'s definition of legislative act—misunderstands *Powell* itself and ignores this Court's decisions that have elaborated on *Powell*. In *Gravel*, for example, this Court explained

that *Powell* "do[es] not hold that persons other than Members of Congress are beyond the protection of the Clause *when they perform or aid in the performance of legislative acts*." 408 U.S. at 618 (emphasis added).

The petitioners in *Massie* made a nearly identical argument in their petition for a writ of certiorari. The D.C. Circuit in *Massie*, like the court of appeals here, held that the adoption of a rule that regulated Members' conduct in the House Chamber, and the enforcement of that rule by fining Members who violated it, were legislative acts and thus protected by the Speech or Debate Clause. 72 F.4th at 322. Petitioners there, like Petitioners here, argued that the D.C. Circuit's decision was inconsistent with this Court's decision in *Powell*. *See* Petition for Writ of Certiorari at 7, *Massie v. Johnson*, 2024 WL 674742 (U.S. Feb. 20, 2024) (No. 23-566), 2023 WL 8259192, at *7. The Court denied that petition, *Massie*, 2024 WL 674742, and it should also deny this one, which recycles a similar *Powell*-based argument.

2. Petitioners take issue (Pet. 13-15, 16-17) with the terminology used in the decision below, which referred to Speech or Debate Clause immunity as a jurisdictional issue. *See* Pet. App. 7a. But the court of appeals properly treated the immunity question as a threshold issue, and, after finding that the threshold issue disposed of the case, correctly refused to consider the merits. That's how this Court's precedent treats Speech or Debate Clause immunity.

This Court has said that Speech or Debate Clause immunity is a "threshold question." *See Doe v. McMillan*, 412 U.S. 306, 325 (1973). "[I]n evaluating a claim of immunity under the Speech [or] Debate Clause, a court must analyze the plaintiff's complaint to determine whether the plaintiff seeks to hold a

[Congressional employee, as relevant here,] liable for protected legislative actions." *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985).

If the court concludes that the complaint is attempting to predicate liability on a protected legislative act, the court must dismiss the case without considering the merits because Speech or Debate Clause immunity is dispositive. *See, e.g.*, *Hutchinson v. Proxmire*, 443 U.S. 111, 123 (1979) ("If the respondents have immunity under the [Speech or Debate] Clause, no other questions need be considered for they may 'not be questioned in any other Place.'"); *Eastland*, 421 U.S. at 509-10 ("Their theory seems to be that once it is alleged that First Amendment rights may be infringed by congressional action the Judiciary may intervene to protect those rights . . . . That approach, however, ignores the absolute nature of the [S]peech or [D]ebate protection . . . ." (footnote omitted)); *Doe*, 412 U.S. at 312-13. As this Court has noted, "[t]he privilege of absolute immunity 'would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader.'" *Bogan v. Scott-Harris*, 523 U.S. 44, 54-55 (1998) (alteration in original) (citation omitted). In short, the court of appeals did just what this Court's precedent instructs: it considered the immunity issue at the outset, and, after holding that immunity applies, refused to entertain the merits. *See* Pet. App. 7a.

Petitioners seem to suggest (Pet. 14, 23) that, by treating the immunity issue as jurisdictional, the court of appeals failed to conduct the proper analysis to determine whether the Clause applies. For example, they concede that this Court's "ultimate holding [in *Eastland*, 421 U.S. 491] was that the Clause provided 'complete immunity' for the Members and committee

chief counsel at whom the suit was directed." Pet. 14 (citation omitted). Attempting to contrast *Eastland* with the decision below, Petitioners then note that "[n]o justice [in *Eastland*] remotely suggested the Court lacked subject matter jurisdiction to consider the case." *Id.*; *see also id.* (trying to contrast this Court's decision in *Gravel*, 408 U.S. 606, in the same way by noting that the Court concluded the immunity issue was properly before it and never suggested that it lacked subject matter jurisdiction).

While the Court in *Eastland* did not refer to Speech or Debate Clause immunity as jurisdictional, that distinction makes no analytical difference.[7] After finding that immunity applied, this Court in *Eastland* declined to consider the merits of the plaintiffs' First Amendment claim. *See* 421 U.S. at 509-10.[8] Here, the court of appeals assessed whether the acts at issue are legislative acts, *see* Pet. 5a-7a, and it never suggested that it lacked jurisdiction to conduct the relevant analysis.

Petitioners' discussion of other D.C. Circuit cases exposes that their argument is nothing more than wordplay. They note (Pet. 19-20) that the D.C. Circuit in *Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1 (D.C. Cir. 2006) (en banc), and *Howard v. Office of Chief Administrative Officer of U.S. House of Representatives*, 720 F.3d 939 (D.C. Cir. 2013), described Speech or

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[7] In fact, this Court has treated other types of immunity as jurisdictional. For example, "[s]overeign immunity is jurisdictional," *FDIC v. Meyer*, 510 U.S. 471, 475 (1994), as is its foreign state counterpart, *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993).

[8] In *Gravel*, the Court held that certain acts were protected by the Speech or Debate Clause and that others were not. *See generally* 408 U.S. at 613-27. The Court did not proceed to consider whether the claims that were premised on protected acts were meritorious. *See id.* at 616-22.

Debate Clause immunity as jurisdictional but correctly concluded that the Clause did not apply in those cases because legislative acts were not at issue. But this only shows that the D.C. Circuit's precedent is consistent with this Court's: in the D.C. Circuit, Speech or Debate Clause immunity turns on whether a legislative act is at issue. And treating the Clause as a (dispositive) jurisdictional issue when it applies does not change that.

Petitioners argue (Pet. 15-17, 18) that, if the decision below is correct, this Court could not have considered the merits of a host of constitutional claims that it has, in fact, considered. But those cases either did not involve a legislative act, *see Powell*, 395 U.S. 486 (refusing to seat duly elected Member), *Dombrowski v. Eastland*, 387 U.S. 82 (1967) (per curiam) (seizure of property and records from private organization's office), *Kilbourn v. Thompson*, 103 U.S. 168 (1880) (arrest of private citizen in his home by the Sergeant at Arms), *Hutchison*, 443 U.S. 111 (statements in press releases and newsletters), or did not involve a Congressional defendant, meaning Speech or Debate Clause immunity was not at issue, *see NLRB v. Noel Canning*, 573 U.S. 513 (2014), *United States v. Munoz-Flores*, 495 U.S. 385 (1990), *INS v. Chadha*, 462 U.S. 919 (1983), *Ballin*, 144 U.S. 1. Consequently, the decision below in no way conflicts with those decisions. Petitioners' claim (Pet. 17) that no challenge to an unlawful action by a Congressional employee will ever be justiciable fares no better. Speech or Debate Clause immunity applies only to legislative acts, such as those at issue here, and nothing about the decision below categorically immunizes every such action.

3. Petitioners next claim (Pet. 23-28) that there's a bright-line test, where legislative acts themselves (like

adopting House Resolution 73) are protected but executing legislative acts (like by requiring Members to complete security screening and fining those who refuse) are not. This Court's precedent lacks any such distinction.

The proper distinction for the purposes of Speech or Debate Clause immunity is between legislative acts, which are protected, and non-legislative acts, which are not. *See Gravel*, 408 U.S. at 624-25. If an act fits within *Gravel*'s definition of legislative act, it's protected by the Clause, even if the act executes a separate legislative act. The court of appeals explained why enforcing House Resolution 73 falls within *Gravel*'s definition: it "involve[s] matters [enforcing an internal House rule related to security] the Constitution places within the jurisdiction of the House," and it "regulates the conduct of Members on the House floor." *See* Pet. 5a, 6a (citation omitted). The fines were an integral part of a rule designed to provide security in the House Chamber, the very place where legislation is deliberated and voted upon.

Petitioners correctly point out (Pet. 25) that not "every administrative function performed by the House falls within the Speech or Debate Clause," but the case they rely on, *Walker v. Jones*, 733 F.2d 923 (D.C. Cir. 1984), reinforces that the acts at issue here are not administrative actions divorced from the legislative process. In *Walker*, a woman who managed the House's restaurants sued a House subcommittee chair, alleging that he violated her constitutional rights by firing her. 733 F.3d at 925. The D.C. Circuit held that "[p]ersonnel actions in the course of superintending congressional food service facilities" are not covered by the Speech or Debate Clause. *Id.* at 930. The court explained that personnel who tend to

services that make legislators' lives more comfortable and convenient, unlike staff who prepare for hearings or work on other legislative matters, are not integral to the legislative process. *See id.* at 931 ("Personnel who attend to food service, medical care, physical fitness needs, parking, and haircutting for members of Congress no doubt contribute importantly to our legislators' well-being and promote their comfort and convenience in carrying out Article I business. But these staff members, unlike those who help prepare for hearings or assist in the composition of legislative measures, cater to human needs that are not 'intimately cognate' . . . to the legislative process." (citation omitted)).

The implementation of a security rule for the House Chamber is unlike the "[a]uxiliary services attending to human needs" that the D.C. Circuit discussed in *Walker*. *See id.* Securing the House Chamber by regulating the way Members access it, and punishing Members who refuse to comply with that rule, is "an integral part of the deliberative and communicative processes by which Members participate in . . . House proceedings." *See Gravel*, 408 U.S. at 625.

Finally, Petitioners ignore the context of when and why fines were imposed under House Resolution 73. They recast the enforcement mechanism as "[p]ayroll operations" and argue (*see* Pet. 26) that payroll operations are not an integral part of the legislative process. The decision they rely on, *In re Grand Jury Proceedings*, 563 F.2d 577 (3d Cir. 1977), again demonstrates the flaw in their argument. In *Grand Jury Proceedings*, the Third Circuit held that the district court did not err in ordering a state senator and state legislative employee "to produce payroll and tax evidence" as required by a subpoena because they were not covered by the Speech or Debate Clause. *Id.* at 585

("This material, while tangentially related to the legislative function, is so peripheral as not to be covered by the privilege."). The court emphasized that "[t]he legislative function is separate and distinct from that of compensation of the office and the ministerial work to prepare payrolls, vouchers, and the various tax forms." *Id.*

Run-of-the-mill payroll and tax records, unlike the fine and salary deduction at issue here, "must be performed regardless" and are not conditioned on a separate act that's integral to the legislative process. *See id.* House Resolution 73 is the opposite: a Member was fined only if he or she refused to comply with a rule that regulated access to the House Chamber, and that fine was deducted from his or her paycheck only if he or she failed to pay that fine within a specific period of time. Both *Walker* and *Grand Jury Proceedings* involved acts or materials that were separate from the legislative process. And neither involved the House's constitutional authority to adopt its own rules and to punish those who violate them.

* * *

In sum, the court of appeals correctly applied this Court's precedent in (1) holding that both adopting and enforcing House Resolution 73 are legislative acts protected by the Speech or Debate Clause and (2) then refusing to consider the merits of Petitioners' claims.

II. This Case Is Not a Good Vehicle for Addressing Petitioners' Claims

As a matter of interbranch comity, this Court should not choose to involve itself in the internal operations of the House absent extraordinary circumstances. No such circumstances are present here. Indeed, there are compelling reasons that counsel against this Court

wading into this internal House dispute. The Resolution that is being challenged is a paradigmatic example of an internal House rule—it involved the security of Members when they were in the House Chamber—and is no longer in effect. Plus, although Petitioners ask this Court to decide the merits of their constitutional claim, the court below did reach that issue.

A. This Court's review of a coordinate branch's internal rule necessarily implicates the separation of powers. *See, e.g.*, *Johnson*, 383 U.S. at 178 (Judiciary should not "possess[,] directly or indirectly, an overruling influence over the [Congress] in the administration of [its] respective powers"). And the Court should not risk encroaching on the House's constitutional authority, *cf. Davis v. Passman*, 442 U.S. 228, 251 (1979) (Powell, J., dissenting) (arguing that the Court "intru[ded] upon the legitimate powers of Members of Congress"), to review a House rule that has not been in effect since January 2023.

At its core, this case is about an internal security rule for the House Chamber, the venue that is central to the House's legislative and deliberative functions. The House adopted Resolution 73 under its express constitutional authority to make its own rules and to discipline its Members. Out of interbranch comity, the Court should approach any request to review such a rule with substantial caution. *Cf. id.* at 252 (Powell, J., dissenting) (arguing that "principles of comity and separation of powers should require a federal court to stay its hand"). Just as Congress should be extremely reluctant to intervene in this Court's internal rules governing security in its courtroom, so too should this

Court be very hesitant to involve itself in the House's security rules that govern access to the House Chamber.[9]

Here, principles of comity and respect for the separation of powers are especially weighty: House Resolution 73 has not been in effect for more than fourteen months. Nor is there any reason to think the House will adopt a similar rule during the remainder of the 118th Congress. As noted, all the current House Leadership opposed House Resolution 73. *See supra* at 2. Thus, "the respect due to a co-ordinate branch of the government," *Marshall Field & Co. v. Clark*, 143 U.S. 649, 673 (1892), strongly counsels against reviewing an internal House rule that, due to the operation of the political process, is no longer on the books.

B. As the court of appeals correctly concluded, when Speech or Debate Clause immunity is at issue, a court may review the merits of a claim only if it concludes that immunity does not apply. The court of appeals therefore did not consider Petitioners' substantive constitutional claims. *See* Pet. App. 7a (holding that the court could not "consider the merits of . . .

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[9] Relatedly, Chief Justice Roberts recently declined to testify at a Senate Judiciary Committee "hearing regarding the ethical rules that govern the Justices of the Supreme Court and potential reforms to those rules." *See* Press Release, Senate Judiciary Comm., *Durbin Invites Chief Justice Roberts to Testify Before the Judiciary Committee Regarding Supreme Court Ethics* (Apr. 20, 2023), *available at* https://perma.cc/GK3Z-6YXJ**.** In his letter declining the invitation to testify about the Court's internal approach to ethics issues, Chief Justice Roberts flagged "separation of powers concerns and the importance of preserving judicial independence." *See* Letter from John Roberts, Chief Just., U.S. Sup. Ct., to Richard J. Durbin, Senator, Chair of the Senate Comm. on the Judiciary, at 1 (Apr. 25, 2023), *available at* https://perma.cc/GU6U-RFNJ**.** For the separation of powers to be preserved, both judicial and legislative independence must be respected.

[Petitioners'] claims" because Respondents were entitled to Speech or Debate Clause immunity). As a result, Petitioners' request that this Court review the merits of their Twenty-Seventh Amendment argument is contrary to this Court's frequent admonition that it is "a court of review, not of first view." *See Brownback v. King*, 141 S. Ct. 740, 747 n.4 (2021) (citation omitted). This case is thus not an appropriate vehicle for this Court to decide an issue of first impression. *See* Pet. 4 ("[T]his Court has never addressed the Twenty-Seventh Amendment's protections.").

III. House Resolution 73, Although Objectionable to Current House Leadership, Does Not Violate the Twenty-Seventh Amendment

Vehicle issues aside, the Resolution is constitutional. House Resolution 73 does not change Members' salary, which is set by federal statute; it only imposes a penalty in the form of a fine on those Members who violate a House rule. It does not, in other words, reduce the compensation Members receive for serving in the House. Consequently, House Resolution 73 does not violate the Twenty-Seventh Amendment, which sets certain requirements that apply only to laws related to compensation.

A. Petitioners claim that the enforcement of House Resolution 73 violates the Twenty-Seventh Amendment, which provides that "[n]o law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." U.S. Const. amend. XXVII. This Amendment was intended to augment the Ascertainment Clause, which states that "Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States." *Id.* art. I, § 6, cl.

1; *see* Richard B. Bernstein, *The Sleeper Wakes: The History and Legacy of the Twenty-Seventh Amendment*, 61 Fordham L. Rev. 497, 502 (1992). While introduced in Congress by James Madison in 1789, the Amendment wasn't ratified by the requisite three-fourths of the states until 1992. *See* Bernstein, *supra*, at 539. From the First Congress through the Amendment's ratification, proponents were animated by concerns about the actual or seeming impropriety of having the sitting Congress adjust its own pay. *See id.* at 522-42.

B. By its plain text, the Amendment does not apply to House Resolution 73 for two reasons: (1) the fines at issue do not vary Member "compensation" for their services and (2) House Resolution 73 is not a "law" within the meaning of that Amendment.

1. *First*, a fine imposed under House Resolution 73 does not "vary the compensation for the services" of Members within the meaning of the Twenty-Seventh Amendment. A fine is a "pecuniary criminal punishment or civil penalty payable to the public treasury." *Fine*, Black's Law Dictionary (11th ed. 2019). Here, the fine was a penalty for failing to comply with a requirement to complete security screening before entering the House Chamber. By contrast, "compensation" has long been understood to mean payment for services rendered. *See, e.g.*, *Compensation*, Black's Law Dictionary (11th ed. 2019) ("Remuneration and other benefits received in return for services rendered; esp., salary or wages."); *Compensation*, Oxford English Dictionary (2d ed. 1989) ("salary or wages . . . payment for services rendered"); 2 The Records of the Federal Convention of 1787, at

44-45 (Max Farrand ed., 1911) (using "salaries" and "compensation" interchangeably).[10]

A fine imposed under House Resolution 73 against a Member for violating a House security rule did not change the "compensation" that Member received for his or her "services" within the meaning of the Twenty-Seventh Amendment. House Resolution 73 affected a Member's finances only conditionally: a Member was fined, and the fine could be deducted from the Member's salary, only for failing to complete the required security screening in violation of the applicable House rule. *See* H. Res. 73; *see also* 2 U.S.C. § 4523 (providing specific authorization for such salary deductions since 1934). It did not change a Member's salary.

This reading of compensation and service is consistent with how these terms are used in everyday life. If a professional athlete who earns $10 million per year is fined $50,000 for violating a team or league rule, we do not say that his or her "compensation" for services rendered has been reduced to $9,950,000. His or her compensation for services performed remains the same; the punishment for a rule infraction, which is wholly separate from the services for which he or she was compensated, is another matter entirely.

The method by which the House chooses to collect the fine does not change the equation. Under House Resolution 73, a fine is only deducted from a Member's paycheck when he or she fails to pay it in a certain time period. And when a Member's fine is deducted from his or her paycheck, the House is simply

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[10] Relatedly, "service" is "[t]he official work or duty that one is required to perform." *Service*, Black's Law Dictionary (11th ed. 2019); *See also Service*, Samuel Johnson, A Dictionary of the English Language (1785) (defining "service" as "[e]mployment; business").

collecting a debt that the Member owes the House; it is not reducing his or her salary. Petitioners' claim (Pet. 32, 33) that House Resolution 73 "target[s] [Members'] salary" and "explicitly forecloses other ways Members might have paid the fines in question" holds no water. It ignores the basic facts that (1) fines were deducted from salary payments only if Members refused to pay by a certain date and (2) Members could use personal funds to pay their fines.

Moreover, when a fine is deducted directly from a Member's paycheck, that affects only the "net" amount received, not the "gross" amount of his or her compensation. Thus, pursuant to Petitioners' logic, any change in the deductions from a Member's paycheck for a variety of reasons would implicate the Twenty-Seventh Amendment.

Implicitly recognizing the indefensibility of that position, Petitioners leave open the possibility that changes in salary deductions for other purposes could be permissible, *see* Pet. 34 n.12 ("tak[ing] no position here on salary deductions for absences, restitutional fines, or individual court-ordered garnishments"). But if those deductions would not alter a Member's compensation for services, it's difficult to see why a fine imposed on those who violate a House rule would, and Petitioners provide no explanation for such a distinction. In sum, the Twenty-Seventh Amendment was not designed to micromanage the House's payroll administration and in fact does not do so. The method by which a fine is enforced does not change its character and is of no constitutional significance; it is still a penalty that does not alter the Member's gross salary.

This Court's decision in *United States v. Hatter*, 532 U.S. 557 (2001), which dealt with a tax that applied to federal judges, does not support Petitioners' claim.

There, this Court held a federal law that increased tax burdens for a group consisting almost exclusively of then-sitting federal judges violated the Judicial Compensation Clause, U.S. Const. art. III, § 1. *See Hatter*, 532 U.S. at 572-78. Were it otherwise, the Court concluded, Congress could conduct an end-run around the Judicial Compensation Clause under the guise of taxation. *See id.* At most, *Hatter*'s logic suggests that Congress could not, consistent with the Twenty-Seventh Amendment, impose or create an exemption from a tax that applied only to Members of Congress as a class. This could, in essence, "vary[]" Members' "compensation for their services" and thus implicate the Amendment.

But a fine is entirely distinct from a tax. A fine under House Resolution 73 was assessed against an individual, not against Members of Congress as a class. And the fines imposed here did not target Members of Congress "for their services" but rather for violating a House security rule. A Member who wished to avoid the fine could have done so simply by completing the security screening before entering the House Chamber—as nearly every Member in fact did. Beyond that, the Judicial Compensation Clause has a different purpose than the Twenty-Seventh Amendment: to protect "judicial independence" from Congress. *See id.* at 571. The same purpose does not underlie the Twenty-Seventh Amendment: it would be illogical to speak of Congress preserving its independence from itself.

Additionally, Petitioners' novel reading—which taken to its logical conclusion requires holding that any new deduction or change in a deduction from Members' gross pay triggers the Twenty-Seventh Amendment—would conflict with other provisions of the Constitution. The Court should not embrace such a radical reading.

The word "compensation" also appears in the Ascertainment Clause, which provides that "[t]he Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States." U.S. Const. art. I, § 6, cl. 1. The phrase "ascertained by Law" refers to laws enacted through the process of bicameralism and presentment. *See Humphrey v. Baker*, 848 F.2d 211, 215 (D.C. Cir. 1988).

Under Petitioners' theory that a fine reduces "compensation," as that term is used in the Constitution, the Ascertainment Clause would prevent the assessment of any fine upon a Member without a statute approved by both the House and the Senate, followed by presentment to the President. But this argument runs headlong into the Discipline Clause, which provides that "*[e]ach House* may . . . punish its Members for disorderly Behaviour." *See* U.S. Const. art. I, § 5, cl. 2 (emphasis added).

Thus, because the Discipline Clause allows fines to be imposed by each house acting alone, whereas the Ascertainment Clause requires "compensation" to be determined by both houses, such fines cannot be considered to affect Members' "compensation" without rendering irreconcilable the Discipline Clause and the Ascertainment Clause. The most logical way to give effect to both clauses is to read "compensation" as unaffected by disciplinary fines. *See Kilbourn*, 103 U.S. at 189-90 (mentioning, in dicta, "the power of punishment in either House by fine").

2. *Second*, a House security rule, like House Resolution 73, is not a "law" within the meaning of the Twenty-Seventh Amendment. Petitioners do not argue otherwise. *See generally* Pet. 32-34 (arguing only that House Resolution 73 varies a Member's compensation).

The word "law" in the Twenty-Seventh Amendment means "the product of the legislative process"—that is, it must be passed by both chambers of Congress and is either signed by the President or takes effect when Congress overrides the President's veto. *See Boehner v. Anderson*, 30 F.3d 156, 161 (D.C. Cir. 1994). Thus, House Resolution 73—which was adopted by the House alone—is not a "law" within the meaning of the Twenty-Seventh Amendment.

As explained above, the Ascertainment Clause, which the Twenty-Seventh Amendment was intended to modify, *see* Bernstein, *supra*, at 502, refers to laws enacted through the process of bicameralism and presentment when it says that Congressional compensation shall be "ascertained by law," *see Humphrey*, 848 F.2d at 215; *see also* GianCarlo Canaparo & Paul J. Larkin, Jr., *The Twenty-Seventh Amendment: Meaning and Application*, Harv. J.L. & Pub. Pol'y, Sept. 2, 2021, at 9-11.[11] It therefore follows that the word "law" in the Twenty-Seventh Amendment—which was introduced by James Madison in the First Congress as a supplement to the Ascertainment Clause—has the same meaning that it has in the Ascertainment Clause.

Moreover, the Twenty-Seventh Amendment creates an additional procedural requirement for laws varying Member compensation (when such a law can take effect); thus, the word "law" logically takes on the procedural meaning contemplated in Article I. *See* Canaparo & Larkin, *supra*, at 9-11.

C. Moving beyond the plain language, the Twenty-Seventh Amendment's history and purpose confirm that House Resolution 73 does not violate the Amendment.

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[11] *Available at* https://perma.cc/L8KA-77SA.

"According to Madison, and to all the ratifying states that stated their understanding, the purpose of the amendment is to ensure that a congressional pay increase 'cannot be for the particular benefit of those who are concerned with determining the value of the service.'" *Boehner*, 30 F.3d at 159 (citation omitted). In other words, the Twenty-Seventh Amendment was enacted to address seeming and actual impropriety that may exist when a group of individuals sets its own pay, not to regulate individual fines imposed on Members who violate House rules.

Petitioners argue (Pet. 28-32) that the Amendment may also have been motivated by concerns about reductions (and not simply increases) in salary. Even assuming Petitioners are correct, that concern is irrelevant here. House Resolution 73 did not reduce Members' salaries; it imposed disciplinary fines on Members who did not follow a security rule, adopted by the entire House, that governed Member conduct when entering the House Chamber.

Petitioners offer no reason to conclude that the ratification of the Twenty-Seventh Amendment acted as a back-door restriction on the Discipline Clause, by depriving Congress of the ability to impose fines upon Members and have those fines go into effect in a timely fashion. If the Twenty-Seventh Amendment were to limit the Discipline Clause, which had long been understood to allow each chamber to impose fines,[12]

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[12] *See, e.g.*, *Powell*, 395 U.S. at 494-95 (explaining that the House fined Congressman Powell $25,000 as a form of discipline); 4 Asher C. Hinds, *Hinds' Precedents of the House of Representatives* Ch. 85, § 3013, at 118-19 (1903) (noting that the House of the Forty-Seventh Congress adopted a resolution that would fine Members who were absent without leave or a valid excuse).

one would expect to find some evidence of that intent. Petitioners provide none.

CONCLUSION

For these reasons, the Court should deny the petition for a writ of certiorari.

Respectfully submitted,

MATTHEW BERRY
General Counsel
Counsel of Record
TODD B. TATELMAN
Deputy General Counsel
BRADLEY CRAIGMYLE
Associate General Counsel
ANDY T. WANG
Assistant General Counsel
Office of General Counsel
U.S. House of Representatives
5140 O'Neill House Office Building
Washington, D.C. 20515
(202) 225-9700
Matthew.Berry@mail.house.gov

March 13, 2024