No. 24-156

IN THE

Supreme Court of the United States

LEACHCO, INC.,

Petitioner,

v.

CONSUMER PRODUCT SAFETY COMMISSION, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF *AMICI CURIAE* THE COMPETITIVE ENTERPRISE INSTITUTE AND MANHATTAN INSTITUTE IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Does the for-cause restriction on the President's authority to remove the CPSC's Commissioners violate the separation of powers?

2. Should *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), be overruled?

3. For purposes of preliminary-injunctive relief, can a separation-of-powers violation cause irreparable harm—as this Court and several circuits hold—or can separation-of-powers violations never cause irreparable harm—as the Tenth Circuit alone holds?

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INTEREST OF *AMICI CURIAE*[1]

The **Competitive Enterprise Institute** (CEI) is a nonprofit organization headquartered in Washington, D.C., dedicated to promoting the principles of free markets and limited government. Since its founding in 1984, it has done so through policy analysis, commentary, and litigation.

The **Manhattan Institute for Policy Research** (MI) is a nonpartisan public policy research foundation whose mission is to develop and disseminate ideas that foster greater economic choice and individual responsibility. To that end, MI's constitutional studies program aims to preserve the Constitution's original public meaning, including with regard to the separation of powers.

This case interests *amici* because it threatens to insulate administrative authority from democratic accountability.

SUMMARY OF ARGUMENT

This Court should grant certiorari to clear up lower-court confusion about which categories of public officials are protected from presidential removal under *Humphrey's Executor*. The lower court's view of this question in the case at hand cannot be reconciled with this Court's decision in *Seila Law, LLC v. CFPB*, 591 U.S. 203 (2020). This conflict needs resolution: any ambiguity in this area jeopardizes the proper operation of a broad spectrum of agencies throughout

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[1] Pursuant to Rule 37.6, *amici* affirm that the parties recieved timely notice; no counsel for a party authored this brief in any part; and no person other than *amici*, their members, or their counsel funded its preparation or submission.

the federal government. Indeed, such ambiguity jeopardizes the accountability to the public that is a vital feature of American self-government.

"Under the traditional default rule, removal is incident to the power of appointment." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 509 (2010). Perhaps this default rule was most clearly expressed in *Myers v. United States* (1926): "The power to remove inferior executive officers, like that to remove superior executive officers, is an incident of the power to appoint them, and is in its nature an executive power." 272 U.S. 52, 161. The rule rests on a central constitutional principle: "The executive Power shall be vested in a President of the United States of America." U.S. Const. Art. I § 1, cl. 1.

Humphrey's Executor, 295 U.S. 602 (1935), provides a limited exception to *Myers's* default rule. The exception applies, by its own terms, only to the officer who "exercises no part of the executive power vested by the Constitution in the President." *Id.* at 628. It therefore only operates for officers who "cannot in any proper sense be characterized as an arm or an eye of the executive." *Id.*

The source of lower-court confusion springs from the fact that *Humphrey's Executor* applied to the Federal Trade Commission and that lower courts have assumed that officers in agencies similar to the modern FTC are protected from removal. That assumption is wrong. Of course it is true that *Humphrey's Executor* applied to the FTC *as it was constituted in 1935,* but since then the nature of the FTC has changed: more precisely, its powers have expanded to include executive power. Nonetheless, some courts have mistakenly assumed that other

agencies that possess powers like those of the modern FTC are invulnerable to officer removal. Again, that is wrong: the FTC's powers are now inescapably executive, which means that the agency (and others that are like it) is now necessarily subject to some degree of Presidential control.

The lower court also misapplied *Collins v. Yellen*, 594 U.S. 2020 (2021). The *Collins* rule extended only to retrospective relief, but the lower court fabricated it into a rule for prospective relief. In doing so, the lower court required an impossible-to-meet standard of proving future conduct rather than the less-demanding standard of an imminent risk of likely harm.

These mistakes have consequences. They prevent the president from controlling agencies like the Consumer Product Safety Commission; therefore, they allow such agencies to operate outside of democratic control. This critical issue—the question of which removal protections are constitutional—deserves this Court's attention.

ARGUMENT

I. ONLY MINISTERIAL, LEGISLATIVE, AND JUDICIAL OFFICES CAN BE PROTECTED FROM REMOVAL BY THE PRESIDENT, BECAUSE THEY LACK ANY EXECUTIVE POWER

Under the *Humphrey's Executor* exception, Congress can limit the president's removal powers only for offices that lack any Executive Power—namely, legislative, judicial, or ministerial officers. But before considering *Humphrey's* precedents, we

should examine the historical evidence of original meaning that leads to *Humphrey's* rule.

A. THE ORIGINAL UNDERSTANDING SHOWS THAT ONLY EXECUTIVE-BRANCH OFFICES THAT ARE MINISTERIAL CAN BE PROTECTED FROM PRESIDENTIAL REMOVAL

During the Constitutional Convention, Edmund Randolph proposed that the executive be given "all the executive powers of the Congress under the Confederation." 1 Farrand, Records of the Federal Convention, 21 (1911). Under the Articles of Confederation, Congress exercised the executive power to remove executive officials, so Randolph's proposal empowered the President with this authority. The Constitutional Convention later transformed this provision into the Presidential Vesting Clause, which grants the president this executive power. U.S. Const. Art. II § 1, cl. 1.

During the debates that established the first federal agencies, Congress discussed the proper removal of the Secretary of the Department of Foreign Affairs. Rep. Egbert Benson's "objection to the clause 'to be removable by the President' arose from an idea that the power of removal by the President hereafter might appear to be exercised by virtue of a legislative grant only, and consequently be subjected to legislative instability, when he was well satisfied in his own mind that it was fixed by a fair legislative construction of the Constitution." 1 Annals of Congress 579. James Madison agreed that the language "construed to imply a legislative grant of the power. He wished everything like ambiguity expunged, and the sense of the House explicitly declared, and therefore seconded the

motion." *Id.* at 578-79. As reported by the Annals of Congress, there was, by "a considerable majority, in favor of declaring the power of removal to be in the President." 1 Annals of Congress 383.

This congressional decision demonstrates an unmistakable understanding by the First Congress that the Constitution had already vested the president with the power to remove officers exercising executive authority—and that the Congress was without the ability to remove that power from the president. However, Congress's affirmation of the president's removal powers did not extend to the comptroller of the treasury. In the course of discussion of the possible removal of the comptroller, Madison proposed that, rather than removal at the pleasure of the president, the comptroller would have a term of office and be removable only for cause. *Id.* at 636. According to Madison:

> It will be necessary [] to consider the nature of this office, to enable us to come to a right decision on the subject; in analyzing its properties, we shall easily discover that they are not purely of an executive nature. . . . The principal duty [of this office] seems to be deciding upon the lawfulness and justice of the claims and accounts subsisting between the United States and particular citizens: this partakes strongly of the judicial character, and there may be strong reasons why an officer of this kind should not hold his office at the pleasure of the executive branch of the Government. I am inclined to think that we ought to

> consider him something in the light of an arbitrator between the public and individuals and that he ought to hold his office by such a tenure as will make him responsible to the public generally.

Id. at 635-36.

Although some Members claimed "that the Executive Magistrate had constitutionally a right to remove subordinate officers at pleasure" and "that these officers were merely to assist him in the performance of his duties, which, from the nature of man, he could not execute without them, although he had an unquestionable right to do them if he were able," *id.* at 638, Madison responded:

> I question very much whether [the President] can or ought to have any interference in the settling and adjusting of the legal claims of individuals against the United States. . . .I do not say that the office is either executive or judicial; I think it rather distinct from both, though it partakes of each, and therefore some modification, accommodated to those circumstances, ought to take place.

Id. 635-36.

Madison explained the operation of his distinction between these categories of officers in the Federalist Papers No. 39: "The tenure of the ministerial offices generally, will be a subject of legal regulation." His statement illuminates why the Secretary of Foreign Affairs, and not the Comptroller of the Congress, is subject to Presidential removal.

A ministerial office involves no policymaking and no real executive discretion. The comptroller of the treasury's job was the "settling and adjusting of the legal claims of individuals against the United States." *Id.* at 638. Neither policymaking nor genuine discretion were thought to be involved in the execution of the duties of that office.

This Court, in *Marbury v. Madison* (1803), described the delivery of the commission to an officer as "a ministerial act":

> This is not a proceeding which may be varied if the judgment of the Executive shall suggest one more eligible, but is a precise course accurately marked out by law, and is to be strictly pursued. It is the duty of the Secretary of State to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts, in this respect, as has been very properly stated at the bar, under the authority of law, and not by the instructions of the President. It is a *ministerial act* which the law enjoins on a particular officer for a particular purpose.

5 U.S. 137 (1803) (emphasis added). Likewise, this Court described "ministerial officers [as] discharging a duty without the least latitude of judgment or discretion." *Kerr v. Watts*, 19 U.S. 550 (1821). When a ministerial officer acts in a way that harms others, a Court can command that officer via mandamus to follow the law without the exercise of any discretion and without any deference to the officer's policy judgment. Thus, an officer with only authority to

perform ministerial acts lacks the Executive Power, including any policymaking authority. It follows that Congress can limit such an officer's tenure to something other than termination at the will of the president.

In short, the best understanding of the original meaning of the law is that only ministerial offices in the executive branch which are without any executive power or policymaking authority are subject to congressional limitation of the president's removal of such officers.

B. THE CASELAW SHOWS THAT CONGRESS CAN CONSTRAIN THE PRESIDENT'S REMOVAL POWER ONLY REGARDING OFFICES THAT DO NOT EXERCISE SUBSTANTIAL EXECUTIVE POWER

The caselaw demonstrates that the President can control all officers who exercise executive power as "[u]nder our Constitution, the 'executive Power'—*all of it*—is 'vested in a President,' who must 'take Care that the Laws be faithfully executed.' *Seila Law LLC v. CFPB*, 591 U.S. 197, 203 (2020) (emphasis added) (citing U.S. Cost. Art. II, § 1, cl. 1).

As this Court held in *Myers v. United States* (1926),

> [The President] is charged specifically to take care that [the laws] be faithfully executed, the reasonable implication, even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express

> limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible.

272 U.S. 52, 117 (1926).

Myers seems clear, but its holding must be harmonized with the decision in *Humphrey's Executor v. United States* (1935). *Humphrey's Executor* did not overrule *Myers;* it distinguished it. 295 U.S. 602, 627 (1935) ("The office of a postmaster is so essentially unlike the office now involved that the decision in the *Myers* Case cannot be accepted as controlling our decision here."). According to *Humphrey's Executor*, the postmaster of *Myers* was a "subordinate and aid" of the President and thus "inherently subject to the exclusive and illimitable power of removal by the Chief Executive." *Id. Myers* does not "include an officer who occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President." *Id.* at 628. This clarification of *Myers* implies that *Humphrey's Executor* saw the FTC as an agency that "occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President." *See id.*

Humphrey's Executor described the postmaster in *Myers* as an executive branch official exercising executive power. In contrast, the Court said that the FTC had "specified duties as a legislative or as a judicial aid." *Id.* It further described the FTC as "a body [that] cannot in any proper sense be characterized as an arm or an eye of the executive." *Id.*

In particular, *Humphrey's Executor* described two powers of the FTC, contained in two separate sections of the FTC Act, as follows: "In making investigations and reports thereon for the information of Congress under section 6, in aid of the legislative power, it acts as a legislative agency." *Id.* "Under section 7, which authorizes the commission to act as a master in chancery under rules prescribed by the court, it acts as an agency of the judiciary." *Id.* This Court therefore rejected the notion that the FTC exercises any "executive power in the constitutional sense." *Id.*

Humphrey's Executor correctly identified these powers of the FTC of 1935 as operating similarly to either (1) a Congressional body like the Congressional Budget Office or the Government Accountability Office which has the authority to issue reports to Congress (as in Section 6) or (2) a federal magistrate presenting recommendations to a court of law on proper remedies (as in Section 7). These powers held by the FTC of 1935 fell entirely outside of the realm of the powers of the Executive. If they were the FTC's only powers, it would in effect be entirely outside the executive branch and it would not need to be controlled by the president.

Importantly, a Section 7 case must begin in an Article III court, and only upon a judicial finding that a violation of the antitrust laws has occurred can the case be brought to the FTC to provide a recommended remedy to the harms, "but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require." An Act to Create a Federal Trade Commission, to Define Its Powers and Duties, and for Other Purposes, Sec. 7, Pub. L. 63-203.

Humphrey's Executor, as limited to offices without any executive authority, follows from the nation's first case discussing presidential removal of officers, *Marbury v. Madison* (1803). There, this Court recognized that "[Marbury's] appointment was not revocable" because "when the officer is not removable at the will of the Executive, the appointment is not revocable, and cannot be annulled." 5 U.S. (1 Cranch) 137, 162 (1803). Of course, Marbury's office was not that of an Article III judge, but nonetheless his office did not exercise executive power, which allowed it to fit within the *Humphrey's Executor* exception.

This Court recently confirmed in *Seila Law* that *Humphrey's Executor* is limited "to officers of the kind here under consideration," and thus the exception was limited to officers "exercising 'no part of the executive power.' " 591 U.S. at 215 (citing *Humphrey's Executor*, 295 U.S. at 632).

Seila Law noted that the claim that the FTC didn't exercise executive power "has not withstood the test of time." *Id.* at 216 n.2. This is true: under Section 5 of the FTC Act, the FTC's powers appear to be unambiguously executive. Section 5 gives the FTC an array of tools: it can initiate new enforcement actions, to issue equitable orders, and to seek their enforcement in federal court. *Seila Law* described this array as "a quintessentially executive power not considered in *Humphrey's Executor*." *Id.* at 199. However, *Seila Law* recognized that "what matters is the set of powers the Court considered as the basis for its decision, not any latent powers that the agency may have had not alluded to by the Court." *Id.* at 219 n.4.

Indeed, even the FTC of 1935 wouldn't meet the limited exception in *Humphrey's Executor* after the

arrival of *Seila Law*. This is because it is now clear that the FTC of 1935 was actually executing executive power, as *Humphrey's Executor* was limited to those agencies "that cannot in any proper sense be characterized as an arm or an eye of the executive." But whether or not the FTC of 1935 fell within the *Humphrey's Executor* exception, today's FTC exercises far more substantial and obvious executive power than the FTC of 1935 ever did.

The ability of the modern FTC to issue binding rules under the Magnuson Moss Warranty-Federal Trade Commission Improvements Act, P.L. 93-637, demonstrates that today's FTC exercises substantial executive power. Congress would be prohibited by the Presentment Clause from enacting such rules itself under *INS v. Chadha*, 462 U.S. 919 (1983). Congress cannot give itself a legislative veto over the FTC's authority. Therefore, the enactment of such rules must be exercises of substantial executive power that Congress itself cannot possess.

The comptroller general—who James Madison asserted could be protected from removal by the President—occupied the kind of office that would properly fall within the rule of *Humphrey's Executor*, because the office exercised no part of the executive power. In general, offices that are ministerial—and therefore are subject to the compulsion of mandamus should their occupants fail to do their duty under law—can be protected from removal as described in the Federalist Papers No. 39: "The tenure of the ministerial offices generally, will be a subject of legal regulation."

Furthermore, other offices that exercise power that is wholly inside the legislative or judicial realm could

properly be protected from removal by the president. That includes offices that exercise Congress's subpoena power, submit reports to Congress, or act as a judicial aid making recommendations to a court at that court's request.

The Congressional Budget Office and the U.S. Government Accountability Office are examples of agencies with officers who act as legislative aids. Even if the president were given a role in selecting the leadership of these offices, Congress could prevent him or her from removing them. Similarly, the officers of the Administrative Office of the U.S. Courts and the U.S. Sentencing Commission act as judicial aids.

Consider the Sentencing Commission: The president appoints, with the advice and consent of the Senate, members of the commission; they have six-year terms; and they can properly be prevented from removal by the president. *Mistretta v. United States* (1989) recognized that "[i]n order to safeguard the independence of the Commission from executive control, Congress specified in the Act that the President may remove the Commission members only for good cause." 488 U.S. 361, 410 (1989). *Mistretta* noted that "This removal provision is precisely the kind that was at issue in *Humphrey's Executor v. United States*." 488 U.S. at 410 n.33.

This Court's precedents make clear that the president's removal power can only be limited regarding offices that do not exercise substantial executive power—such as ministerial, judicial, or legislative offices.

II. THIS COURT SHOULD CORRECT THE LOWER COURT'S MISUNDERSTANDING OF *SEILA LAW*

Because the lower court misapplied *Seila Law,* this Court should grant cert. Specifically, the part of *Seila Law* that described the *Humphrey's Executor* exception as applying to "multimember expert agencies that *do not wield substantial executive power,*" *Seila Law*, 591 U.S. at 218 (emphasis added), was erroneously applied by the lower court.

Rather than apply the holding of *Seila Law*, the lower court held "that the exercise of some arguably 'executive' functions does not undermine the constitutionality of tenure protections for officers of an expert, non-partisan agency." Pet.App. 28a. The lower court noted that "part of the Court's reasoning focused on the executive nature of powers given to the CFPB director" but then ignored this part of the opinion because "the Court also emphasized that the CFPB's single-director structure was unique and perhaps suggested that the constitutional issue might be resolved if the CFPB was instead headed by multiple commissioners" and that this Court did not overturn *Humprey's Executor*. Pet.App. 29a.

The lower court misinterpreted *Seila Law* when it applied the *Humphrey's Executor* exception even to those agencies that wield substantial executive power, so long as they are multimember expert agencies. That application contradicts this Court's precedent in *Seila Law* and deserves correction by this Court.

As recognized in *Seila Law*, *Humphrey's Executor*'s claim that the FTC "exercises no part of the executive power" is no longer good law because it "has not

withstood the test of time." *Seila L. LLC v. CFPB*, 591 U.S. 197, 216 n.2 (2020).

But the lower court failed to recognize that *Seila Law* limited *Humphrey's Executor* only to "the set of powers the Court considered as the basis for its decision, not any latent powers that the agency may have had not alluded to by the Court." *Id.* at 219 n.4. If the lower court had fully appreciated *Seila Law*'s framework, that would have resolved any confusion about the modern operation of *Humphrey's Executor*. The lower court overlooked this important clarification in footnote 4 of *Seila Law* that harmonizes *Seila Law* with *Humphrey's Executor* without allowing executive power to be exercised outside of the president's control.

The lower court recognized that the exception in *Humphrey's Executor* only applied when "the FTC did not wield 'substantial executive power'—its functions were 'quasi-legislative' (submitting reports to Congress) and 'quasi-judicial' (serving as a master in equity for antitrust suits)." Pet.App. 27a. But then the lower court failed to apply that rule to this case. Instead, the lower court claimed that the "The CPSC is structured similarly to the FTC in *Humphrey's Executor*." Pet.App. 28a. This line of argument appears to confuse the powers of the FTC of 1935 with that of the FTC of today. Because the CPSC exercises no more executive power than the modern FTC, the lower court declined to apply the limitations to the exception in *Humphrey's Executor* and *Seila Law*.

Although *Seila Law* clearly rejected the theory that the CFPB was not a "traditional independent agency headed by a multimember board or commission," the lower court failed to apply the second part of *Seila Law's* test—the one that requires that agencies "do not

wield substantial executive power." 591 U.S. at 218. And because this Court has had no occasion to apply the reasoning of *Humphrey's Executor* and *Seila Law* to other agencies, the lower court rejected any challenge to the CPSC.

Of course, lower courts do not have the power to overturn *Humphrey's Executor*. But that is no barrier to applying the logic of *Humphrey's Executor* and *Seila Law* to other agencies that this Court has not yet personally examined. The lower court's failure to apply *Humphrey's Executor* and *Seila Law* correctly has, in effect, overruled the decisions of this Court.

In short, *Seila Law* noted that, for the *Humphrey's Executor* exception to apply, the officer must "not wield substantial executive power." 591 U.S. at 218. Applying that standard to the executive power to bring enforcement actions that the CPSC wields would lead to the unmistakable conclusion that this agency is unconstitutionally structured.

The Court should accept this case so that it can provide lower courts guidance as to how *Seila Law* clarified *Humphrey's Executor*—namely, it only applies to offices that do not exercise executive power, such as ministerial, judicial, and legislative offices.

III. THE LOWER COURT MISCONSTRUED *COLLINS* TO REQUIRE PROOF OF PROSPECTIVE HARM

The lower court improperly rejected the motion for preliminary injunction on the grounds that the plaintiffs lacked irreparable harm under *Collins v. Yellen*, 594 U.S. 220 (2021). That misapplied *Collins,* because that case only applied to retrospective harm.

In *Collins*, this Court recognized that a plaintiff who successfully challenges a removal provision over a previously taken action is not automatically entitled to relief; rather, the plaintiff must prove injury. But this recognition occurred in the Court's discussion of "retrospective relief." *Collins*, 594 U.S. at 227. As Justice Thomas noted, in *Collins* "the only question before us concerns retrospective relief." *Collins*, 594 U.S. at 271 (Thomas, J., concurring).

Unlike the scenarios of retrospective relief that *Collins* covers, prospective relief does not require the kind of proof that the lower court demands here. Prospective relief is fundamentally different, because it only requires a showing of an "imminent risk of likely irreparable harm." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 162 (2010). It's relatively easy to show a *risk* of future harm and that such risk is *likely*; that is a lesser burden as compared to a *Collins*-style scenario of purely retrospective relief. The lower court's misapplication of *Collins* thus created an unjustifiably high standard of proof—one that cannot be found in the law.

The lower court's error led it to some illogical conclusions, such as its determination that "Leachco cannot establish irreparable harm—even if it is unable to recover money damages." Pet.App. 15a. Relatedly, the lower court wrongly found that only individual rights can cause irreparable harm, not violations of the separation of powers. *Id.* These are findings that are untethered to the law.

Irreparable harm requires two things: (1) harm that is (2) irreparable. In *Axon,* the Court already has found such harm in separation-of-powers cases: it found that being subjected to a proceeding before an official who

is unlawfully protected from removal causes a "here-and-now harm." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 195 (2023). Furthermore, this Court has defined "irreparable" damages as those that cannot be "adequately remedied by money damages and is often permanent or at least of long duration." *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 545 (1987).

These mistakes of law by the lower court make it impossible to prove future conduct to get preliminary relief for important constitutional violations.

IV. THE FAILURE OF LOWER COURTS TO PROPERLY APPLY *SEILA LAW* AND *HUMPHREY'S EXECUTOR* IMPAIRS SELF-GOVERNMENT AND DEMOCRATIC ACCOUNTABILITY

Lower court opinions like the one at issue here impair the public accountability of administrative agencies. That impairment magnifies the possibility of abusive agency behavior.

For example, in *Collins*, this Court ruled that the restrictions on removing the FHFA Director in 12 U. S. C. §4512(b)(2) were unconstitutional. 594 U.S. 220 (2021). The day this Court decided *Collins*, the President removed the director of the FHFA. Katy O'Donnell, *Biden removes FHFA director after Supreme Court ruling* (June 23, 2021), https://www.politico.com/news/2021/06/23/supreme-court-biden-fannie-mae-freddie-mac-housing-495673. It's reasonable to believe that the President had not previously removed the Director because of the statutory prohibition on removal without cause. Even if that removal provision were unconstitutional, a

president may reasonably be guided by statute when the law is uncertain.

When a president who is constrained by an unconstitutional removal provision decides not to fire a misbehaving agency official who is abusing executive power, it hobbles both the ability of the executive to exercise control over executive functions and the ability of the people to exercise their powers of self-government through the mechanisms of democratic accountability. Abusive legislative officials can be controlled by Congress in much the same way that lower courts can be controlled by higher ones, similarly to the courts controlling judicial officials, and any abuse by ministerial officials can be corrected through mandamus. But when executive power is being exercised in a way that is beyond presidential control, there is no effective means for the public (or, indeed, those who represent them) to stop such abuse.

It's fair to describe this case as being like *Collins*—but on steroids. Its scope isn't confined to just one agency, but extends across the federal government and prevents any future injunctive relief. That means that the correct resolution of this case is critically important to the appropriate exercise of authority in the Nation's governance. The Court should accept this case because of the extraordinary impact that a flawed theory of federal powers will have on agencies throughout the government as well as the public's ability to exercise control over such agencies through the president they choose.

CONCLUSION

For the foregoing reasons, this Court should grant the petition and consider the important issue of presidential removal.

Respectfully submitted,

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