No. 25A

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

v.

MARY BOYLE, ET AL.

APPLICATION TO STAY THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND AND REQUEST FOR ADMINISTRATIVE STAY

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

TABLE OF CONTENTS

PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Donald J. Trump, President of the United States; Scott Bessent, Secretary of the Treasury; Russell Vought, Director, Office of Management and Budget; and Peter Feldman, Acting Chairman, Consumer Product Safety Commission.

Respondents (plaintiffs-appellees below) are Mary Boyle, Alexander Hoehn-Saric, and Richard Trumka Jr.

RELATED PROCEEDINGS

United States District Court (D. Md.):

Boyle v. *Trump*, No. 25-cv-1628 (June 23, 2025)

United States Court of Appeals (4th Cir.):

Boyle v. *Trump*, No. 25-1687 (July 1, 2025)

In the Supreme Court of the United States

No. 25A

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

MARY BOYLE, ET AL.

APPLICATION TO STAY THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND AND REQUEST FOR ADMINISTRATIVE STAY

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Donald J. Trump, President of the United States, et al.—respectfully requests that this Court stay the judgment issued by the U.S. District Court for the District of Maryland (App., *infra*, 32a-33a) pending appeal to the U.S. Court of Appeals for the Fourth Circuit and any further proceedings in this Court. The Solicitor General also respectfully requests an immediate administrative stay of the judgment to prevent ongoing irreparable injury.

On May 22, 2025, in *Trump* v. *Wilcox*, 145 S. Ct. 1415, this Court stayed injunctions ordering the reinstatement of members of the National Labor Relations Board (NLRB) and Merit Systems Protection Board (MSPB), citing the government's likelihood of success on the merits and "the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation." *Ibid.* The district court below chose a different path—one that has sown chaos and dysfunction at the Consumer Product Safety Commission (CPSC) and that warrants this Court's

immediate intervention. In May 2025, President Trump removed three members of the CPSC. Relying on a statute that purports to insulate CPSC members from at-will removal, the district court countermanded the President's decision and ordered respondents reinstated to their posts. The district court relegated *Wilcox* to a footnote, distinguishing it on the erroneous ground that it involved "a stay of preliminary injunctive relief," App., *infra*, 29a n.11, even though *Wilcox*, like this case, involved the stay of *permanent* injunctive relief.

The reinstated Commissioners, who now make up a majority of the five-member agency, immediately moved to undo actions that the Commission had taken since their removal. Two business days after the district court's decision, respondents held a meeting over the objection of the Acting Chairman, in whom Congress has vested the agency's "executive and administrative functions." 15 U.S.C. 2053(f). At that meeting, respondents purported to annul nearly all votes taken by the CPSC since respondents' removal, to reinstate a notice of proposed rulemaking that had been withdrawn from the Federal Register, and to fire staff who had been hired for the "purpose of facilitating compliance with President Trump's January 20, 2025, Executive Order, *Establishing and Implementing the President's Department of Government Efficiency*." D. Ct. Doc. 31-4, at 5 (June 17, 2025). Respondents have since purported to take further actions in the agency's name, such as adopting a new policy requiring a majority vote of the Commission before implementing a reduction in force. The Acting Chairman views respondents' actions as procedurally improper and thus invalid, but one of the respondents has threatened agency staff: "If you chose to ignore the directive of the Commission, I suggest you read the [district court's] order and decide whether you want to personally violate it." D. Ct. Doc. 31-3, at 2 (June 17, 2025). Respondents' actions have thus thrown the agency into chaos and have

put agency staff in the untenable position of deciding which Commissioners' directives to follow.

None of this should be possible after *Wilcox*, which squarely controls this case. Like the NLRB and MSPB in *Wilcox*, the CPSC exercises "considerable executive power," 145 S. Ct. at 1415—for instance, by issuing rules, adjudicating administrative proceedings, issuing subpoenas, bringing enforcement suits seeking civil penalties, and (with the concurrence of the Attorney General) even prosecuting criminal cases. As in *Wilcox*, "the Government faces greater risk of harm allowing * * * removed officer[s] to continue exercising the executive power" than "wrongfully removed officer[s] fac[e] from being unable to perform [their] statutory dut[ies]." *Ibid.* And as in *Wilcox*, a stay also is "appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers." *Ibid.*

If anything, this is an even stronger case for a stay. President Trump decided to remove three Commissioners who would otherwise make up a majority of the CPSC, and whose actions since their putative reinstatement only underscore their hostility to the President's agenda. The district court's order effectively transfers control of the CPSC from President Trump to three Commissioners who had been appointed by President Biden—even though President Trump now holds "the mandate of the people to exercise [the] executive power." *Myers* v. *United States*, 272 U.S. 52, 123 (1926). That plain-as-day affront to the President's fundamental Article II powers warrants intervention now just as much as in *Wilcox*.

Indeed, the district court's decision in this case adds a new twist by challenging this Court's authority under Article III as well. *Wilcox* did not definitively resolve the merits, but it is a binding precedent on the application of the stay factors. Vertical *stare decisis* required the district court and court of appeals, at a minimum, to stay

the district court's decision in light of *Wilcox*. Yet the district court and court of appeals refused to do so. In other cases since *Wilcox*, district courts have similarly refused to stay orders reinstating removed principal executive officers at the Federal Labor Relations Authority (FLRA) and the United States Institute of Peace. The D.C. Circuit has granted stays or administrative stays in those cases, but the Fourth Circuit refused to grant relief here. This Court should step in to stop lower courts from treating *Wilcox* like the proverbial excursion ticket—good for one day and trip only.

Given the disruption at the CPSC ensuing from on-and-off reinstatement and termination of Commissioners comprising a majority of the agency, the government on June 17 sought a stay from the Fourth Circuit. Though the government requested at least an administrative stay by June 20—and though the Chief Justice granted an immediate administrative stay in *Wilcox*—the Fourth Circuit took two weeks to act on the government's application, eventually denying a stay in a one-sentence order on July 1. In light of the untenable chaos caused by respondents' court-ordered takeover of the CPSC, by respondents' aggressive efforts to wield executive power while stay proceedings remain ongoing, and by one of the reinstated Commissioner's threats to take action against staff members who do not carry out his directives, this Court's prompt intervention is needed. The government respectfully requests that the Court immediately grant an administrative stay and grant a stay pending appellate review.

STATEMENT

1. Congress established the Consumer Product Safety Commission in the Consumer Product Safety Act, Pub. L. No. 92-573, 86 Stat. 1207 (1972). The CPSC consists of five members appointed by the President with the advice and consent of the Senate. See 15 U.S.C. 2053(a). Members serve staggered seven-year terms, and

no more than three members may be affiliated with the same political party. See 15 U.S.C. 2053(b)(1). Under the Act, a member "may be removed by the President for neglect of duty or malfeasance in office but for no other cause." 15 U.S.C. 2053(a).

The CPSC has broad power to execute the Act. For example, it possesses:

- Rulemaking authority, including the power to issue "consumer product safety standards," 15 U.S.C. 2056(a); to "ba[n]" "hazardous" consumer products, 15 U.S.C. 2057; and to regulate "labels" on consumer products, 15 U.S.C. 2063(c).
- Adjudicatory authority, including the power to order manufacturers to recall products. See 15 U.S.C. 2064(c) and (d).
- Investigative authority, including the power to conduct inspections, see 15 U.S.C. 2065(a), and to issue subpoenas, see 15 U.S.C. 2076(b)(3).
- Enforcement authority, including the power to bring civil suits seeking injunctions and civil penalties, see 15 U.S.C. 2069, 2071, and the power, with the concurrence of the Attorney General, to prosecute criminal cases, see 15 U.S.C. 2076(b)(7)(B).

2. President Biden appointed respondents Mary Boyle, Alexander Hoehn-Saric, and Richard Trumka Jr. to the CPSC for terms ending in October 2025, October 2027, and October 2028, respectively. See App., *infra*, 3a-4a. On May 8, 2025, the Deputy Director of the White House Office of Presidential Personnel sent emails to Commissioners Boyle and Trumka stating: "On behalf of President Donald J. Trump, I am writing to inform you that your position on the Consumer Product Safety Commission is terminated effective immediately. Thank you for your service." *Id.* at 4a (citation omitted). The following day, the Acting Chairman informed Commissioner Hoehn-Saric that the President had removed Hoehn-Saric as well. See *ibid.*

Respondent sued the President, the Acting Chairman, and other government officials in district court in Maryland (where the CPSC is headquartered). See App., *infra*, 4a n.2, 5a. They sought declaratory and injunctive relief restoring them to office. See *id.* at 1a-2a.

On June 13, the district court granted summary judgment to respondents, rejecting the government's argument that the CPSC's tenure protection violates Article II. App., *infra*, 1a-31a. The court read *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), as establishing the constitutionality of removal protections for "traditional multimember independent agencies." App., *infra*, 23a. The court determined that the CPSC qualifies for the *Humphrey's Executor* exception to the removal power because it is a "traditional multimember body with quasi-judicial or quasi-legislative functions." *Ibid.* (brackets, citation, and quotation marks omitted). Specifically, the court viewed the CPSC's adjudicatory and rulemaking powers as "quasi-judicial" and "quasi-legislative." *Id.* at 17a-18a.

The district court issued a declaratory judgment that the President's removal of respondents was "ultra vires, contrary to law, and without legal effect." App., *infra*, 32a. It also enjoined the defendants other than the President from "taking any action to effectuate" respondents' removal. *Ibid.* The court rejected the government's argument that courts lack the power to issue equitable relief restoring removed executive officials to office. See *id.* at 24a-30a.

The district court dismissed this Court's recent decision in *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025), in a footnote. See App., *infra*, 29a n.11. Even though *Wilcox* involved a stay of a final judgment, the district court erroneously distinguished it on the ground that it involved "a stay of preliminary injunctive relief." *Ibid.*

3. The district court's reinstatement of respondents resulted in immediate,

significant disruption of the CPSC's activities. Under the agency's procedures, an agenda planning committee, consisting of members of each Commissioner's staff, may meet each week to set the agency's agenda. See D. Ct. Doc. 31-1, at 2-3 (June 17, 2025). On Monday, June 16, one business day after the district court's decision, reinstated Commissioner Trumka sent the committee an email proposing that the committee convene at 10:00 a.m. on Tuesday, June 17, its "regularly scheduled weekly meeting time," to discuss various "time critical" matters. D. Ct. Doc. 31-3, at 3. The Acting Chairman, exercising his "executive and administrative" authority as the CPSC's "principal executive officer," 15 U.S.C. 2053(f), determined that the meeting should not occur "in light of the breadth of this proposed [agenda] and its potential for extensive disruption of agency operations." D. Ct. Doc. 31-3, at 3.

Respondents, however, purported to overrule the Acting Chairman's decision. Reinstated Commissioner Boyle sent an email to staff members stating: "On behalf of a majority of the Commission (Commissioners Boyle, Trumka, and Hoehn-Saric) we direct you to attend the previously scheduled agenda planning meeting." D. Ct. Doc. 31-3, at 2. Trumka sent a follow-up email stating: "To the staff of the agenda planning committee, let me be clear: you are instructed to attend the meeting as usual. If you chose to ignore the directive of the Commission, I suggest you read the Court order and decide whether you want to personally violate it." *Ibid.*

The three reinstated Commissioners and members of their staffs then held a meeting that purported to be a session of the agenda planning committee—a meeting that the Acting Chairman and the remaining Commissioner regard as unauthorized and invalid. See D. Ct. Doc. 31-1, at 3-4. At the meeting, respondents purportedly:

- Declared that "any decisions" taken by the CPSC since respondents' removal (subject to exceptions for certain actions that respondents approved)

"are null, void, and of no effect." D. Ct. Doc. 31-4, at 4 (June 17, 2025).

- Reinstated a notice of proposed rulemaking that the CPSC had recently withdrawn from the Federal Register. See *id.* at 5.
- Directed CPSC staff to submit a budget request by June 18, with a vote on that request planned for June 25. See *id.* at 4.
- Scheduled a CPSC meeting for June 25 and a public hearing for July 16. See *ibid.*
- Barred the detailing of staff members to the CPSC, and fired staff members who had already been detailed to the agency, for the purpose of "facilitating compliance with President Trump's January 20, 2025, Executive Order, *Establishing and Implementing the President's Department of Government Efficiency*." *Id.* at 5.
- Directed that "[a]ny actions to implement or initiate Reductions in Force that are underway must be withdrawn immediately unless approved by a majority vote of the Commission." *Ibid.*

4. On June 16, the government appealed to the Fourth Circuit and moved in district court for a stay pending appeal. See D. Ct. Doc. 27 (June 16, 2025). A week later, the district court denied the government's motion. See App., *infra*, 34a-41a. The court found "the public's interest in protection from hazardous and unsafe consumer products to exceed the public interests presented" in *Wilcox*. *Id.* at 40a.

On June 17, the government moved in the Fourth Circuit for a stay pending appeal. See C.A. Doc. 13. Citing the actions respondents had taken since their reinstatement, the government requested at least an administrative stay by June 20. See *id.* at 2-3. Two weeks later, on July 1, the Fourth Circuit denied the government's motion in a one-sentence order. See App., *infra*, 42a. Judge Wynn issued a concur-

rence in which he stated that *Wilcox* did not require issuing a stay because it was "not a ruling on the merits." *Id.* at 45a (citation omitted); see *id.* at 43a-48a.

Respondents purported to take further actions on behalf of the CPSC while the government's stay application was pending before the Fourth Circuit. See, *e.g.*, CPSC, *Reiterating and Strengthening the Commission Policy Regarding Reductions in Force* (June 26, 2025) (*RIF Policy*), https://tinyurl.com/bdfjb47b; CPSC, *Ballot Vote: Fiscal Year 2025 Proposed Operating Plan Alignment and Midyear Review* (June 26, 2025) (*Midyear Review*), https://tinyurl.com/2e5cvune. For example, though Congress has vested "the executive and administrative functions of the Commission," including "the appointment and supervision of personnel," in the Chairman alone, 15 U.S.C. 2053(f)(1)(A), respondents have purported to prohibit the implementation of any reduction in force without the approval of a majority of the Commission, see *RIF Policy* 1. Though Congress has empowered the Chairman to control "the distribution of business among personnel," 15 U.S.C. 2053(f)(1)(B), respondents have purported to instruct agency staff to complete specified projects, see *Midyear Review* 2-3. Though Congress has empowered the Chairman to manage "the use and expenditure of funds," 15 U.S.C. 2053(f)(1)(C), respondents have purported to direct how agency staff members expend appropriated funds, see *Midyear Review* 2-3. And respondents have instructed staff members to prepare multiple draft final rules, see *id.* at 2, despite a regulatory freeze instituted by the President, see *Regulatory Freeze Pending Review*, 90 Fed. Reg. 8249 (Jan. 28, 2025).

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay a district court's judgment pending review in the court of appeals and in this Court. See, *e.g.*, *McHenry* v. *Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025).

To obtain such relief, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.*

In *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025), this Court determined that those factors justified staying a district court's final judgments countermanding the President's removal of members of the NLRB and MSPB. Although that order does not control this Court's ultimate resolution of the merits, it does constitute a precedent on the application of the stay factors. See *Trump* v. *CASA, Inc.*, No. 24A884 (June 27, 2025) (Kavanaugh, J., concurring), slip op. 6-7; C.A. Order at 4, *United States Institute of Peace* v. *Jackson*, No. 25-5185 (D.C. Cir. June 27, 2025). As a result, "the issue now is not whether [*Wilcox*] was correct. The question is whether that case is distinguishable from this one. And it is not." See *Collins* v. *Yellen*, 591 U.S. 220, 272 (2021) (Kagan, J., concurring in part and concurring in the judgment).

A. The Government Is Likely To Succeed On The Merits

The most critical stay factor is usually the applicant's likelihood of success on the merits. See *Ohio* v. *EPA*, 603 U.S. 279, 292 (2024). The same reasons that underlay the government's likelihood of success in *Wilcox* make the government likely to succeed here. See Appl. at 12-31, *Wilcox*, *supra* (No. 24A966). Under this Court's precedents, the President must be able to remove, at will, members of multimember commissions that wield substantial executive power, such as the CPSC. And under the Court's precedents, district courts lack power to issue injunctions or declaratory judgments countermanding the President's removal of executive officers.

1. Article II empowers the President to remove CPSC members at will

a. Article II vests the "executive Power" in the President and directs him to "take Care that the Laws be faithfully executed." U.S. Const. Art. II, § 1, Cl. 1; *id.* § 3. The executive power "includes the ability to supervise and remove the agents who wield executive power in [the President's] stead." *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 238 (2020). The President's power to remove executive officers whom he has appointed "follows from the text of Article II," "was settled by the First Congress," and has been "confirmed" by this Court many times. *Ibid.*; see *Wilcox*, 145 S. Ct. at 1415; *Trump* v. *United States*, 603 U.S. 593, 621 (2024); *Collins* v. *Yellen*, 594 U.S. 220, 250-256 (2021); *Seila Law*, 591 U.S. at 213-232; *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 577, 492-508 (2010); *Myers* v. *United States*, 272 U.S. 52, 108-176 (1926).

Humphrey's Executor v. *United States*, 295 U.S. 602 (1935), nonetheless upheld a statute that protected members of the New Deal-era Federal Trade Commission (FTC) from removal except for "inefficiency, neglect of duty, or malfeasance in office." *Id.* at 620 (quoting 15 U.S.C. 41). "Because the Court limited its holding to 'officers of the kind here under consideration,'" the applicability of that decision "depend[s] upon the characteristics of the agency before the Court." *Seila Law*, 591 U.S. at 215 (quoting *Humphrey's Executor*, 295 U.S. at 632). "Rightly or wrongly, the Court viewed the FTC (as it existed in 1935) as exercising 'no part of the executive power.'" *Ibid.* (quoting *Humphrey's Executor*, 295 U.S. at 628). The Court instead viewed the 1935 FTC as a "legislative" or "judicial" aid—an entity that acted "as a legislative agency" by "making investigations and reports thereon for the information of Congress" and "as an agency of the judiciary" by making recommendations to courts "as a master in chancery." *Humphrey's Executor*, 295 U.S. at 628.

This Court has since described *Humphrey's Executor* as a narrow "exceptio[n]" to the "general rule" of "unrestricted removal"—one that represents "'the outermost limi[t] of permissible congressional restrictions'" on the President's power to remove principal executive officers. *Seila Law*, 591 U.S. at 215, 218 (citation omitted). The exception, the Court has explained, extends at most to "multimember expert agencies *that do not wield substantial executive power*." *Id.* at 218 (emphasis added); see *id.* at 239 (Thomas, J., concurring in part and dissenting in part) ("[T]he Court takes a step in the right direction by limiting *Humphrey's Executor* to 'multimember expert agencies that *do not wield substantial executive power*.'") (emphasis in original; citation omitted). Applying that test, this Court concluded in *Wilcox* that the government was likely to succeed on the merits because it was "likely to show that both the NLRB and MSPB exercise considerable executive power." 145 S. Ct. at 1415.

Seila Law and *Wilcox* thus establish that the President has the power to remove, at will, principal officers who exercise "substantial" or "considerable" executive power. *Wilcox* further establishes that the government is likely to show that agencies such as the NLRB and MSPB exercise "considerable" executive power—and that their members accordingly fall outside the *Humphrey's Executor* exception. See *Aviel* v. *Gor*, No. 25-5105, 2025 WL 1600446, at *2 n.2 (D.C. Cir. June 5, 2025) (Katsas, J., concurring) (*Wilcox* "rested on the proposition that the removals at issue * * * were likely lawful").

b. Like the agencies at issue in *Wilcox*, the CPSC exercises "substantial" or "considerable" executive power. Then-Judge Kavanaugh accordingly included the CPSC (along with the NLRB and MSPB) in a list of "agencies exercising substantial executive authority." *PHH Corp.* v. *CFPB*, 881 F.3d 75, 173 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting).

First, the CPSC wields significant rulemaking authority. See *Seila Law*, 591 U.S. at 218, 220 (agency exercised "significant executive power" because it could "promulgate binding rules" implementing federal statutes). For example, it may issue "consumer product safety standards" to prevent "an unreasonable risk of injury associated with" a consumer product. 15 U.S.C. 2056(a). If it determines that such standards will not adequately protect consumers from a product, it may "promulgate a rule declaring such a product a banned hazardous product." 15 U.S.C. 2057. It also may promulgate rules requiring "warnings or instructions" on products, 15 U.S.C. 2056(a)(2), and regulating "the form and content of labels," 15 U.S.C. 2063(c). Its rules likewise may require manufacturers and distributors to maintain "records" and to file "reports." 15 U.S.C. 2065(b).

Second, the CPSC wields significant adjudicative authority. See *Seila Law*, 591 U.S. at 219-220 (agency wielded "significant executive power" by awarding relief in "administrative adjudications"). For example, it may, after an adjudication, order a manufacturer, distributor, or retailer to "cease distribution" of a product and to "give public notice" of a defect. 15 U.S.C. 2064(c)(1)(A) and (D). The agency also may require a manufacturer, distributor, or retailer to "repair," "replace," or "refund the purchase price" of certain defective products. 15 U.S.C. 2064(d)(1).

Third, the CPSC exercises significant investigative powers. See *Seila Law*, 591 U.S. at 206 (describing an agency's authority to "conduct investigations" and "issue subpoenas" as "potent enforcement powers"). The agency may, for instance, "enter" and "inspect" factories, warehouses, and establishments where consumer products are manufactured or held. 15 U.S.C. 2065(a). It also may issue subpoenas requiring the production of testimony or documents. See 15 U.S.C. 2076(b)(3).

Finally, the CPSC exercises vast authority to initiate judicial proceedings

against private parties. See *Seila Law*, 591 U.S. at 219 (describing the power to seek remedies "against private parties on behalf of the United States in federal court" as a "quintessentially executive power not considered in *Humphrey's Executor*"). The agency may bring civil suits seeking injunctive relief and civil penalties. See 15 U.S.C. 2069, 2071. With "the concurrence of the Attorney General," the agency may even "initiate, prosecute, or appeal, through its own legal representative, * * * any criminal action * * * for the purpose of enforcing the laws subject to its jurisdiction." 15 U.S.C. 2076(b)(7)(B).

The CPSC thus exercises far more substantial powers than the 1935 FTC, which (as understood in *Humphrey's Executor*) could only submit reports to Congress, submit recommendations to courts, and issue cease-and-desist orders that could be enforced by courts. See 295 U.S. at 620, 628. The CPSC's powers instead resemble the NLRB's; both agencies may make rules, adjudicate cases, conduct investigations, and bring civil enforcement suits. See Appl. at 15-17, *Wilcox*, *supra* (No. 24A966). In fact, the CPSC's powers are even more considerable than the NLRB's (or MSPB's), for the CPSC may prosecute criminal cases. "[P]rosecutorial decisionmaking is 'the special province of the Executive Branch'" and "implicates 'conclusive and preclusive' Presidential authority." *Trump*, 603 U.S. at 620-621. The government is therefore highly likely to show that the CPSC, like the NLRB and MSPB, falls outside the *Humphrey's Executor* exception and within the "general rule" of at-will removal. *Seila Law*, 591 U.S. at 215.

c. The district court did not suggest that the CPSC's executive power is somehow less "considerable" than the executive power of the NLRB or MSPB. See *Wilcox*, 145 S. Ct. at 1415. The court instead read *Humphrey's Executor* to allow Congress to grant tenure protection to "traditional multimember independent agen-

cies," regardless of whether the agencies' authority amounts to substantial executive power. App., *infra*, 23a; see *id.* at 14a-23a. Judge Wynn's concurrence adopted the same reading. See *id.* at 44a-45a. *Seila Law*, however, clearly confined *Humphrey's Executor* to "multimember expert agencies *that do not wield substantial executive power*." *Seila Law*, 591 U.S. at 218 (emphasis added). And *Wilcox* determined that the government was likely to show that two traditional multimember agencies, the NLRB and MSPB, fall outside the *Humphrey's Executor* exception because they wield "considerable executive power." *Wilcox*, 145 S. Ct. at 1415. The district court's refusal to consider the character of the CPSC's power conflicts with those precedents.

On the district court's broad reading of *Humphrey's Executor*, Congress could deprive the President of control of the entire Executive Branch by converting every executive department or agency into an independent multimember commission. Congress could replace the Department of State with a Foreign Affairs Commission, the Department of Justice with a Federal Litigation Commission, the Department of Agriculture with a National Food Board, and so on. The district court's theory "provides no real limiting principle" and "heightens the concern that [the Executive Branch] may slip from the Executive's control, and thus from that of the people." *Seila Law*, 591 U.S. at 229 n.11 (citation and emphasis omitted).

2. A court lacks the power to issue equitable relief restoring a removed executive officer

The government also is likely to succeed on the independent ground that the district court's reinstatement of respondents exceeded its remedial authority. The appropriate remedy for the unlawful removal of an executive officer is back pay, not an injunction or declaratory judgment granting reinstatement. See *Bessent* v. *Dellinger*, 145 S. Ct. 515, 516-518 (2025) (Gorsuch, J., dissenting); Appl. at 20-31,

Wilcox, *supra* (No. 24A966).

Article II precludes a court from ordering the reinstatement of an executive officer removed by the President. The President's removal power is "'conclusive and preclusive,'" which means that it "may not be regulated by Congress *or reviewed by the courts*." *Trump*, 603 U.S. at 620-621 (emphasis added). Although *Humphrey's Executor* held that *Congress* may sometimes restrict the removal power by statute, this Court has never held that *courts* may restrain the removal of executive officers through injunctions or declarations. Permitting judicial reinstatement orders would substantially extend *Humphrey's Executor*, which involved only back pay. Unlike a back-pay order, a reinstatement order compels the President to entrust his executive power to someone he has removed—a far greater intrusion on executive authority.

The district court's remedies also lacked clear statutory authorization. This Court has required "an express statement by Congress" to authorize judicial remedies that could burden the President's Article II powers. *Franklin* v. *Massachusetts*, 505 U.S. 788, 801 (1992). Relatedly, the Court has required "clear and explicit language" before assuming that Congress has sought to burden the President's removal power. *Shurtleff* v. *United States*, 189 U.S. 311, 315 (1903). The district court, however, cited no statutory provision that provides, much less clearly, that courts may restore CPSC members whom the President has removed without cause.

In addition, the district court's order violated traditional principles of equity, which constrain a court's issuance of injunctions and declaratory judgments. See *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-319 (1999) (injunctions); *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293, 300 (1943) (declaratory judgments). One of the most well-established principles of equity jurisprudence is that "a court of equity will not, by injunction, restrain an ex-

ecutive officer from making a wrongful removal of a subordinate appointee, nor restrain the appointment of another." *White* v. *Berry*, 171 U.S. 366, 377 (1898) (citation omitted); see, *e.g.*, *Baker* v. *Carr*, 369 U.S. 186, 231 (1962); *Walton* v. *House of Representatives*, 265 U.S. 487, 490 (1924); *Harkrader* v. *Wadley*, 172 U.S. 148, 165 (1898); *In re Sawyer*, 124 U.S. 200, 212 (1888). And because a declaratory-judgment suit is "'essentially an equitable cause of action,'" "the same equitable principles relevant to the propriety of an injunction must be taken into consideration by federal district courts in determining whether to issue a declaratory judgment." *Samuels* v. *Mackell*, 401 U.S. 66, 70, 73 (1971) (citation omitted). The remedies issued here flout those longstanding remedial principles.

At a minimum, the district court abused its discretion in granting equitable relief. A court's decision to grant or deny an injunction or a declaratory judgment is an "act of equitable discretion." *eBay Inc.* v. *MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); see *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286 (1995). Given that orders reinstating removed executive officers present obvious and serious constitutional concerns, the prudent exercise of equitable discretion requires, at a minimum, that the President's removal decisions remain in effect while litigation remains ongoing. Cf. *Myers*, 272 U.S. at 123-125 (even those members of the First Congress who believed that the removal of executive officers required Senate consent agreed that the President could suspend the officers pending the Senate's final decision).

The district court observed that courts have historically "determine[d] the title to a public office" through writs of mandamus. App., *infra*, 29a (citation omitted). But a court may award mandamus only if the applicant has a "clear and indisputable" right to relief. *United States ex rel. Bernardin* v. *Duell*, 172 U.S. 576, 582 (1899). For the reasons discussed above, respondents' right to relief is, at a minimum, unclear.

See pp. 11-15, *supra*. In addition, while this Court has approved the use of mandamus to try the title to judicial or local offices, we are unaware of any precedent (from before this Administration) for using mandamus to reinstate an executive officer removed by the President. See *Ex parte Hennen*, 13 Pet. 230, 256 (1839) (mandamus to reinstate court clerk); *Marbury* v. *Madison*, 1 Cranch 137, 168 (1803) (mandamus to reinstate justice of the peace in the District of Columbia).

B. The Other Factors Support Relief From The District Court's Orders

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. As in *Wilcox*, those factors, too, support a stay.

1. As this Court implicitly determined when granting a stay in *Wilcox*, the issues raised by this case are certworthy. First, the question whether the President may remove CPSC members at will warrants the Court's review; the Court has often granted certiorari to consider the validity of restrictions on the President's removal power. See *Collins*, 594 U.S. at 236; *Seila Law*, 591 U.S. at 209; *Free Enterprise Fund*, 561 U.S. at 488. Second, the remedial question, too, warrants this Court's review, given the serious separation-of-powers concerns raised by court orders reinstating removed officers. See p. 16, *supra*. Finally, the "interim status" of the removals—that is, whether respondents may continue to exercise executive power "while the parties wait for a final merits ruling"—"*itself* raises a separate question of extraordinary significance" that should be resolved by this Court. *Labrador* v. *Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring).

2. As this Court recognized in *Wilcox*, the government faces a serious risk of irreparable harm when a district court reinstates a removed principal executive

officer. See 145 S. Ct. 1415. Such an order harms the Executive Branch by "allowing a removed officer to continue exercising the executive power" over the President's objection. *Ibid.* Such an order also subjects the agency to "the disruptive effect of the repeated removal and reinstatement of officers during the pendency of th[e] litigation." *Ibid.*

The facts of this case dramatically illustrate the harm caused by "allowing a removed officer to continue exercising the executive power." *Wilcox*, 145 S. Ct. at 1415. By reinstating three members to the five-member CPSC, the district court transferred control of the agency from President Trump to three Commissioners who had been appointed by President Biden. The reinstated Commissioners have acted quickly and aggressively to undo almost every action taken by the two Commissioners who have retained the President's trust. See D. Ct. Doc. 31-4, at 4. On top of that, they have acted to prevent the CPSC from "facilitating compliance with President Trump's * * * Executive Order" seeking to improve government efficiency. *Id.* at 5. The district court's order and the actions it has enabled represent an extraordinary affront to the President, the separation of powers, and our democratic system. See *CASA*, No. 24A884, slip op. 24 (the government suffers irreparable harm when a district court "'improperly intrudes' on 'a coordinate branch of the Government' and prevents the Government from enforcing its policies") (citation omitted).

The facts of this case likewise illustrate "the disruptive effect of the repeated removal and reinstatement of officers during the pendency of th[e] litigation." *Wilcox*, 145 S. Ct. at 1415. The CPSC took various actions after respondents' removal, but respondents purported to undo almost all those decisions after their reinstatement. Respondents' actions, in turn, might themselves need to be overturned if the Fourth Circuit or this Court reverses the district court's judgment. See *Collins*, 594 U.S. at

259 (recognizing that, if "the President had attempted to remove [an agency head] but was prevented from doing so by a lower court decision," the removal restriction "would clearly cause harm" that could entitle a challenger to judicial relief). The prospect of mass invalidation and revalidation of the CPSC's actions as this litigation progresses provides a further reason to grant immediate relief.

3. Finally, the balance of the equities favors the government. The district court found that respondents face irreparable harm because, "[w]ithout an injunction, [they] would be prevented from serving out the remainder of their limited terms" and thus would "lose the opportunity to fulfill the[ir] statutory duties." App., *infra*, 27a. Judge Wynn's concurrence relied on similar reasoning. See *id.* at 47a. But this Court determined in *Wilcox* that "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." 145 S. Ct. at 1415. The district court and court of appeals identified no good reason to balance the equities differently here.

Seeking to distinguish this Court's precedent, the district court asserted that *Wilcox* involved "a stay of preliminary injunctive relief," while this case involves a grant of "*permanent* injunctive relief as a final judgment." App., *infra*, 29a n.11. That is incorrect; in fact, the government's application in *Wilcox* sought a stay of final judgments granting permanent injunctive relief and declaratory relief. See *Wilcox* v. *Trump*, No. 25-cv-334, 2025 WL 720914, at *18 (D.D.C. Mar. 6, 2025) (NLRB); *Harris* v. *Bessent*, No. 25-cv-412, 2025 WL 679303, at *15-*16 (D.D.C. Mar. 4, 2025) (MSPB). The court also claimed that respondents have "performed their duties as CPSC Commissioners ably" and that their removal "would only deprive the CPSC of [their] ability and expertise." App., *infra*, 40a. Under Article II, however, the authority to eval-

uate respondents' job performance belongs to the President, not to the courts. Finally, the court asserted that "the public's interest in protection from hazardous and unsafe consumer products" "exceed[s] the public interests presented" in *Wilcox*. App., *infra*, 40a. But the court provided no good reason to think that accountability to the President would somehow endanger the CPSC's ability to protect consumers. In any event, "[c]ourts are not well-suited to weigh the relative importance of the regulatory and enforcement authority of disparate agencies," and the President's ability to remove an agency head cannot "hing[e] on such an inquiry." *Collins*, 594 U.S. at 253.

Judge Wynn, meanwhile, reasoned that a stay would injure the public, which has an interest in "ensuring that federal officers are removed only in accordance with the procedures that lawfully enacted." App., *infra*, 47a. *Wilcox* makes clear, however, that the government is likely to show that the CPSC's removal protections were not "lawfully enacted." *Ibid.* And contrary to Judge Wynn's reasoning, "a stay is in the public interest because the people elected the President, not the removed [CPSC] members, to wield the executive power." C.A. Order at 4, *Jackson*, *supra* (No. 25-5185).

C. This Court Should Issue An Administrative Stay While It Considers This Application

In *Wilcox*, the Chief Justice granted an administrative stay of the district court's judgments pending the Court's resolution of the government's application. See *Wilcox* v. *Trump*, No. 24A966, 2025 WL 1063917 (Apr. 9, 2025). An administrative stay is even more clearly warranted here. In a meeting held two business days after the district court's decision, respondents annulled a host of agency decisions. See pp. 7-8, *supra*. Respondents held a further meeting on June 25, 2025, where they purported to adopt a new agency policy prohibiting the use of agency resources to take

any action towards reductions in force of agency staff. See p. 9, *supra*. The CPSC's Acting Chairman regards respondents' actions as procedurally improper and thus invalid, but one of the reinstated Commissioners has threatened to take action against staff members who do not carry out respondents' directives. See, *e.g.*, D. Ct. Doc. 31-3, at 2. The ongoing dysfunction at the agency has put career employees in the untenable position of deciding which Commissioners' directives to follow, has distracted the agency from its mission of protecting consumer safety, and has done serious harm to the President's policy agenda. Put simply, the district court's decision and the court of appeals' refusal to stay it have left the CPSC at loggerheads with the President and with itself.

Though this Court granted a stay *Wilcox*, the district court and court of appeals both denied a stay in this case. And though the Chief Justice granted an immediate administrative stay in *Wilcox*, the Fourth Circuit waited for two weeks before issuing a one-sentence order denying relief. Given the serious harm that the district court's order has already caused and is continuing to cause, as well as respondents' aggressive exercise of executive power while stay proceedings have unfolded in the lower courts, this Court should immediately grant an administrative stay.

D. This Court Should Grant Certiorari Before Judgment

In addition to granting a stay, this Court should construe this application as a petition for a writ of certiorari before judgment. The Court should grant review of the following questions: (1) whether 15 U.S.C. 2053(a) violates the separation of powers by prohibiting the President from removing a member of the Consumer Product Safety Commission except for "neglect of duty or malfeasance in office"; and (2) whether the district court's order restoring respondents to office exceeded the court's remedial authority. Although the Court did not grant a similar request in *Wilcox*, see

Appl. at 36-38, *Wilcox*, *supra* (No. 24A966), developments since *Wilcox* have made the need for this Court's intervention more urgent.

The stay application in *Wilcox*, filed in April 2025, explained that members of four multimember administrative agencies—the NLRB, MSPB, FTC, and FLRA—had brought suits in district court challenging their removal and seeking reinstatement to office. See Appl. at 37, *Wilcox*, *supra* (No. 24A966). That number has since grown; in May 2025, respondents brought this case to challenge their removal from the CPSC. Until this Court issues a final decision, each of those agencies will operate under a cloud of uncertainty and will risk legal challenges to any actions that it takes.

Despite *Wilcox*, moreover, district courts have continued allowing removed officers to exercise executive power over the President's objection. In this case, in a decision issued after *Wilcox*, the district court countermanded the President's removal of three members of the CPSC. In two other decisions issued after *Wilcox*, the U.S. District Court for the District of Columbia refused to stay earlier final judgments countermanding the President's removal of a member of the FLRA, see *Grundmann* v. *Trump*, No. 25-cv-425, 2025 WL 1671173 (D.D.C. June 13, 2025), and members of the Board of Directors of the United States Institute of Peace, see *United States Institute of Peace* v. *Jackson*, No. 25-cv-804, 2025 WL 1499131 (D.D.C. May 23, 2025). Those decisions have subjected the President to ongoing intrusions on his exercise of executive power, have exposed agencies to the disruption of repeated removals and reinstatements, and have required federal courts to continue to resolve emergency applications concerning the removal of executive officers. See C.A. Order, *Grundmann* v. *Trump*, No. 25-5165 (D.C. Cir.) (June 18, 2025) (setting briefing schedule on stay motion and granting administrative stay); C.A. Order, *Jackson*, *supra* (No. 25-5185) (granting stay). This Court should grant certiorari before judgment now, hear

argument in the fall, and put a speedy end to the disruption being caused by uncertainty about the scope of *Humphrey's Executor*.

CONCLUSION

This Court should stay the judgment of the U.S. District Court for the District of Maryland pending the resolution of the government's appeal to the U.S. Court of Appeals for the Fourth Circuit and pending any proceedings in this Court. The Court should also enter an administrative stay of the district court's judgment.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

JULY 2025