No. 19-7

IN THE
SUPREME COURT OF THE UNITED STATES

Seila Law LLC,

Petitioner,

v.

Consumer Financial Protection Bureau,

Respondent.

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

MOTION OF THE UNITED STATES HOUSE OF REPRESENTATIVES TO PARTICIPATE IN ORAL ARGUMENT AS *AMICUS CURIAE* AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the United States House of Representatives respectfully moves that it be granted leave to participate in the oral argument in this case as amicus curiae supporting the judgment below and that it be allocated ten of the thirty minutes the parties have proposed to allocate to the Court-appointed amicus. The Court-appointed amicus takes no position on this motion, but has no objection to any allocation of time the Court deems helpful. Petitioner and the Solicitor General take no position on this motion.

1. Like the heads of many other independent agencies, the Director of the Consumer Financial Protection Bureau (CFPB) may be removed by the President only for "inefficiency, neglect of duty, or malfeasance in office." 12 U.S.C. § 5491(c)(3). This case presents the question whether that removal protection violates the separation of powers. Petitioner, joined by the Solicitor General, asserts that it does. In so doing, petitioner urges this Court to overrule *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and its other decisions upholding for-cause removal protections. Petr. Br. 31-34. Petitioner also argues that the asserted defect in the Director's removal protection requires the invalidation of *all* of Title X of the Dodd-Frank Act, the portion of the statute creating the CFPB. *Id.* at 41-47.

2. As the House's amicus brief demonstrates, it has several compelling interests in this Court's resolution of those issues.

First, like the Court itself, the House has an interest in avoiding the unnecessary adjudication of sensitive separation-of-powers questions like the one petitioner and the Solicitor General urge the Court to decide. "[J]udging the constitutionality of an Act of Congress is 'the gravest and most delicate duty that this Court is called on to perform.'" *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 204 (2009) (citation omitted). As the House's brief explains, the Court need not undertake that weighty task here because its answer to the constitutional question will have no effect on the outcome of this case.

Second, if the Court does reach the issue, the House has a vital interest in defending the constitutionality of the CFPB Director's removal protection. The House

always has an interest in defending the validity of the laws it passes. That interest is at its zenith here because the Solicitor General, on behalf of the CFPB, has declined to defend the statute and instead joins petitioner in attacking it. This Court has long recognized that "Congress is the proper party to defend the validity of a statute when an agency of government, as a defendant charged with enforcing the statute, agrees with plaintiffs that the statute is . . . unconstitutional." *INS v. Chadha*, 462 U.S. 919, 940 (1983).

Third, petitioner's request that the Court overrule its precedents approving independent agencies implicates Congressional reliance interests of the highest order. In the eighty-five years since *Humphrey's Executor*, the House and Senate have repeatedly relied on that decision, creating numerous agencies with explicit for-cause removal protections. Those agencies exercise a wide range of regulatory and other authorities, and their independent status is deeply embedded in the structure of our government. Overruling *Humphrey's Executor* at this late date would thus disrupt a settled understanding on which the House has repeatedly relied.

Fourth, the House has a vital interest in rebutting petitioner's contention that a constitutional flaw in the CFPB Director's removal protection would require the Court to abolish the CFPB altogether. Congress created the CFPB based on its considered judgment that a single agency focused on consumer protection is essential to curb abuses and prevent a recurrence of the regulatory failures that "led to what has become known as the Great Recession." S. Rep. No. 111-176, at 9-10 (2010).

3. The House respectfully submits that its participation in the oral argument would be of material assistance this Court. The question that petitioner and the Solicitor General urge the Court to decide goes to the heart of the Constitution's allocation of authority between the Executive and Legislative Branches. As half of the Legislative Branch, the House has a unique institutional perspective on that question. The House is also uniquely positioned to address other important issues in the case, including the extent to which Congress has relied on *Humphrey's Executor* and the questions of Congressional intent raised in the parties' severability briefing. The House's distinct perspective and insight on these issues "would provide assistance to the Court not otherwise available." Sup. Ct. Rule 28.7.

4. In recent years, this Court has often permitted oral argument by Chambers or Members of Congress as amici in cases implicating comparably significant Congressional interests. *See, e.g.*, *Dep't of Commerce v. New York*, 139 S. Ct. 1543 (2019) (House); *United States v. Texas*, 136 S. Ct. 1539 (2016) (House); *NLRB v. Noel Canning*, 134 S. Ct. 811 (2013) (Senators); *McCutcheon v. FEC*, 134 S. Ct. 41 (2013) (Senator); *Citizens United v. FEC*, 557 U.S. 952 (2009) (Senators); *Office of Sen. Mark Dayton v. Hanson*, 549 U.S. 1335 (2007) (Senate).

That practice has deep roots. For many decades, this Court has regularly heard from Congress or its Members during oral argument in cases of significance to the Legislative Branch. In an example of particular relevance here, the Court invited Senator George Pepper to brief and argue as amicus in defense of the removal restriction challenged in *Myers v. United States*, 272 U.S. 52 (1926). *See id.* at 56; *see*

also, e.g., *United States v. Lovett*, 328 U.S. 303, 304 (1946) (noting argument by Congress as amicus curiae in a challenge to a statute regarding federal employees); *Jurney v. MacCracken*, 294 U.S. 125, 128 (1935) (noting argument by the House as amicus in a case concerning Congress's contempt power); *The Pocket Veto Case*, 279 U.S. 655, 673 (1929) (noting that a member of the Committee on the Judiciary of the House was granted oral argument and aided the Court "by a comprehensive and forcible presentation of arguments").

5. Hearing from the House of Representative—as part of a co-equal branch of the Federal Government—is equally warranted here.

CONCLUSION

For the foregoing reasons, this Court should grant the House leave to participate in the oral argument in this case as amicus curiae supporting the judgment below and allocate it ten of the thirty minutes the parties have proposed to allocate to the Court-appointed amicus.

Respectfully submitted,

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