No. 25-250

IN THE

Supreme Court of the United States

DONALD J. TRUMP, *et al.*,

Petitioners,

v.

V.O.S. SELECTIONS, INC., *et al.*,

Respondents.

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

BRIEF OF *AMICUS CURIAE* PETER W. SAGE IN SUPPORT OF PRIVATE RESPONDENTS

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

Peter W. Sage, age 76, is a retired professional who operates a small farm and vineyard in Southern Oregon. He lives primarily on Social Security and modest personal investments and expects to receive income from his vineyard. He is financially vulnerable to extra costs imposed by tariffs, as well as to harm from losing access to foreign markets for his wine in the face of retaliatory tariffs. Mr. Sage brought these concerns to the attention of his congressional representatives. The tariff on wine bottles dramatically reduces the margin on sales of inventory-clearing wines at discount venues such as Costco and Trader Joe's, where margins were already thin. Those sales are critical to a healthy wine industry.

Mr. Sage relies on the constitutional structure of the United States, specifically on the separation of powers and Congress's exclusive authority to impose tariffs, to protect his financial interests. He depends on the stability of congressional action, rather than the unilateral deal-making of an executive, to ensure a reliable supply chain and stable markets for his vineyard's products. Congressional authority over tariffs provides him with practical access to decision-makers in the House and Senate who understand and represent the needs of small agricultural producers in Southern Oregon like himself.[2]

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1. No party or party's counsel authored this brief in whole or in part, and no person other than the amicus curiae, its members, or its counsel or contributed money intended to fund the preparing or submission of this brief.

2. Mr. Sage depends on a competent, merit-based federal civil service to safeguard his business, well-being and that of his

In addition to these concrete economic concerns, Mr. Sage has, for almost a decade, written about executive overreach in his political blog, *Up Close with Peter Sage*,[3] where he reports on in-person interactions with presidential candidates in New Hampshire and Iowa. Until recently, Mr. Sage's warnings about unchecked executive power were largely theoretical. However, he now fears targeted retaliation by the President of the United States, including politically motivated IRS audits, placement on a no-fly list, interference with the naturalization status of family members, and harassment of lawfully present Hispanic workers at his vineyard. These are no longer abstract possibilities; they have become tangible concerns in light of recent examples of executive retaliation against critics.[4] Mr. Sage is concerned about the erosion of boundaries and the dismantling of checks and balances.

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community. He relies on the National Weather Service for accurate forecasts to protect his crops from frost damage and to provide critical data for managing and responding to regional forest fires, which at times leave his region immersed in hazardous smoke for weeks. He depends on career professionals at the Department of Health and Human Services to administer his Social Security and Medicare benefits fairly and accurately. He also relies on the integrity of financial regulators, including the SEC and the Treasury Department, to protect his investments from fraud, bank failures, and market instability. Political interference in these agencies and the courts threatens Mr. Sage's livelihood and erodes public trust in essential governmental functions.

3. https://peterwsage.blogspot.com/

4. Mr. Sage notes with alarm that the Executive Department recently filed lawsuits against every District Court judge in the state of Maryland — an act that is unprecedented and demonstrates a shocking lack of respect for judicial review of executive actions. *United States v. Russell*, No. 1:25-CV-02029, 2025 WL 2448955 (D. Md. Aug. 26, 2025).

These threats are manifesting now, in real time. Each breach of constitutional boundaries, including, in this case, the circumvention of Congress's authority over tariffs, normalizes further encroachments and weakens the framework of limited government.

SUMMARY OF ARGUMENT

The International Emergency Economic Powers Act (IEEPA) does not explicitly authorize the imposition of tariffs, particularly not the expansive authority claimed in this instance. In Mr. Sage's view, interpreting IEEPA to grant such unlimited power to impose taxes on the American public would represent the most evident unconstitutional transfer of legislative authority in his lifetime. The President seeks to undermine the core constitutional principle that only Congress holds the power to regulate commerce and levy duties under Article I, Section 8. Mr. Sage can talk to his elected representatives, but not to the President. His economic interests as a small vineyard operator in Southern Oregon are directly threatened by cutting Congress out of its role in regulating tariffs.

Unstable tariffs and potential retaliatory measures from trading partners can raise costs and cut off market access. Mr. Sage actively protects his interests by engaging with his Oregon Senators and Congressman, whom he can readily contact for representation. In turn, his Oregon representatives can politically horse trade with representatives in sister states, they can bargain and barter for their constituencies seeking win-win outcomes. Mr. Sage wants tariffs to be controlled exactly as the constitution provides. Accordingly, the Supreme Court should affirm the lower court's decision.

This brief frames Mr. Sage's argument around three statutory domains where Congress has exercised exclusive authority: tariffs, the judiciary, and the civil service. These domains, grounded in Article I and shaped by generations of legislative action, are the constitutional guardrails preventing executive power from subsuming the entire machinery of government. Each domain illustrates how Congress constructs, funds, and governs essential systems—setting tariffs, establishing courts, and protecting a merit-based federal workforce. When the Executive breaches these statutory barriers, as in the imposition of global tariffs without authorization or in suing Maryland's entire district bench, the separation of powers itself is imperiled.

The lower courts correctly determined that the President's imposition of broad Worldwide, Retaliatory, and Trafficking Tariffs under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701–1710, was at least in substantial part an unconstitutional exercise of executive power, exceeding congressional authorization and violating the separation of powers. Mr. Sage contends that unchecked executive authority threatens Congress's exclusive Article I powers over trade and taxation and undermines the meticulously constructed statutory protections for the federal civil service under the Civil Service Reform Act (CSRA), 5 U.S.C. §§ 1101 et seq., as well as the indispensable independence of the federal judiciary under Article III. This brief will demonstrate that executive overreach in any of these domains constitutes a profound violation of the separation of powers, undermines democratic accountability, and erodes the rule of law.

The generation that carried out the American Revolution and drafted the Constitution asserted that taxation without representation was tyranny. James Otis of Massachusetts wrote:

> The very act of taxing, exercised over those who are not represented, appears to me to be depriving them of one of their most essential rights, as freemen; and if continued, seems to be in effect an entire disfranchisement of every civil right.

See, Rights of the British Colonies Asserted and Proved, in The Collected Political Writings of James Otis (Richard A. Samuelson ed., Liberty Fund 2015). Tariffs were a point of controversy at the nation's founding. Alexander Hamilton sought to persuade Congress of the value of protecting infant industries with tariffs, as he outlined in his Report on the Subject of Manufactures. See, Alexander Hamilton, Report on the Subject of Manufactures (Dec. 5, 1791). James Madison, a member of the House of Representatives, spoke on the floor of the House of the need to consider the concerns of different constituencies:

> That it will be necessary on the one hand, to weigh and regard the sentiments of the gentlemen from the different parts of the United States; but on the other hand, we must limit our consideration on this head, and notwithstanding all the deference and respect we pay to those sentiments, we must consider the general interest of the union, for this is as much every gentleman's duty to consider as is the local or state interest—and any system of

> impost that this committee will adopt, must be founded on the principles of mutual concession.

James Madison, Import and Tonnage Duties (Apr. 9, 1789), Founders Online, Nat'l Archives.[5] The First Congress immediately got to work on a tariff. The Tariff of 1789 advantaged and disadvantaged certain goods. For example: Madeira wine, 18 cents a gallon; all other wines, 10 cents a gallon; brown sugars, one cent a pound; loaf sugars, three cents a pound; tallow candles, two cents a pound; wax or spermaceti candles, six cents a pound. See, Tariff of 1789 (Hamilton Tariff), First Congress (July 4, 1789).[6]

In 1804, Congress amended the Act of 1789. It added a list of items exempted from tariffs: rags of linen; cotton, woolen, and hempen cloth; bristles of swine; regulus of antimony; unwrought clay; unwrought burr stones; and the bark of the cork tree. See, An Act for Imposing More Specific Duties on the Importation of Certain Articles, Eighth Congress (Mar. 27, 1804).[7] Mr. Sage may not succeed in eliminating tariffs on wine bottles; he expects that he will not. He recognizes that his is a particular

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5. Import and Tonnage Duties, [9 April] 1789," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/01-12-02-0047. [Original source: *The Papers of James Madison*, vol. 12, *2 March 1789–20 January 1790 and supplement 24 October 1775–24 January 1789*, ed. Charles F. Hobson and Robert A. Rutland. Charlottesville: University Press of Virginia, 1979, pp. 69–74.]

6. https://fraser.stlouisfed.org/title/tariff-1789-hamilton-tariff-5884

7. https://www.govinfo.gov/content/pkg/STATUTE-2/pdf/STATUTE-2-Pg298-2.pdf#page=1

interest, but not one more particular than the interest of people making use of bristles of swine in 1804, and that particular problem found relief in legislation. Tariffs injure different people in different ways, which is why Mr. Sage considers it both constitutional and reasonable that Congress—an institution that combines and melds a multiplicity of interests—is the body given authority to weigh and negotiate the various claims of people affected by a tariff.

Mr. Sage argues that the people who hear his concerns must be decision-makers, not bystanders, for there to be representation. He recognizes that congressional legislation can be messy and full of special cases, but that is a feature, not a bug; the country itself is messy and full of special cases.

Mr. Sage has both a private and public interest in ending the practice of the government using pretexts of war powers or emergencies to remove his right of representation on tax matters. Pretextual emergencies, if allowed by the courts to stand, create an unchecked executive. It is dangerous behavior and precedent. Mr. Sage considers this a strong place to draw the line, since the notion that taxation requires representation is both written into the Constitution and deeply rooted in American history.

The unchecked use of tariff authority by the Executive risks transforming them into instruments of domestic retribution, selectively harming particular regions, industries, or groups of citizens within our own borders. Targeting a state or a sector gives the executive the power to punish an area or industry unmoored from the representational process that was designed to restrain

such targeting. Every member of Congress must face the political consequences of tariff policy at home; a second-term president, by contrast, faces none. That insulation from accountability makes the unilateral exercise of tariff power especially dangerous.

The only thing worse than the messy, interest-laden, compromise-driven process of Congress exercising its constitutional tariff powers is Congress not exercising them at all. Disorder in legislation is a symptom of democratic engagement; order imposed by a single will is a symptom of tyranny. The Framers understood that the taxing power, including tariffs, belongs to the people's representatives precisely because its burdens fall unevenly. Mr. Sage therefore asks this Court to reaffirm the principle that taxation—by whatever name, and however imposed—must remain under the control of those answerable to the people.

ARGUMENT

I. TRADE AND TARIFF DOMAIN: CONGRESSIONAL AUTHORITY

A. The Constitution Grants Congress Exclusive Authority Over Trade and Tariffs

The authority to impose tariffs is a cornerstone of congressional power within the U.S. Constitution, which vests Congress with exclusive authority over trade and tariffs, ensuring democratic accountability in economic policy. Article I, Section 8, Clause 3 grants Congress the power to "regulate Commerce with foreign Nations," while Clause 1 authorizes Congress to "lay and collect Taxes, Duties, Imposts and Excises." The Necessary and Proper

Clause enables Congress to enact all laws "necessary and proper" for these powers, ensuring comprehensive legislative oversight. The Tenth Amendment clarifies that powers not delegated to the federal government are "reserved to the States respectively, or to the people," precluding executive authority over trade and taxation. This design reflects the Framers' intent to ensure accountability in economic policy through a balanced legislative process.

The assignment of tariff authority to Congress was a response to the economic chaos under the Articles of Confederation, where states imposed conflicting tariffs, leading to commercial disputes and a weakened national economy. The Framers recognized that a unified economic policy was essential for national prosperity and stability. Alexander Hamilton, a key architect of the constitutional order, articulated the need for centralized tariff authority in The Federalist Papers. In Federalist No. 12, he emphasized that Congress's power to "lay and collect... Duties, Imposts and Excises" was crucial for efficient revenue collection and preventing smuggling. He noted that state-level tariffs led to economic fragmentation, undermining national revenue and coherence. *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 291 n.12 (1976).

Hamilton argued in Federalist No. 35 that tariffs necessitated legislative deliberation to balance competing regional interests, ensuring national policy reflected broad consensus. James Madison, in Federalist No. 42, clarified that the commerce clause aimed for uniform tariff policies to prevent destructive interstate conflicts and promote national interests. Madison's warnings in Federalist Nos. 47 and 48 against consolidating legislative and executive powers, cautioning that executive overreach

could undermine essential checks and balances and result in despotic government. *Plaut v. Spendthrift Farm*, 514 U.S. 211, 241 (1995). The Framers' design reflects a deliberate choice to vest tariff authority in Congress, ensuring trade policies reflect diverse interests through representative debate and legislative compromise. This structure stands in stark contrast to monarchical systems, where unilateral executive control over trade often served narrow, arbitrary interests, a danger Hamilton explicitly highlighted in Federalist No. 22.

B. Early American Tariff Policy and Unwavering Congressional Control

The allocation of tariff authority to Congress was decisively operationalized in the early years of the republic, establishing a precedent that has endured. The Tariff of 1789, one of the first acts of the First Congress, imposed duties on imports to generate revenue and protect American industries. This act established congressional control, as lawmakers debated specific rates and exemptions, balancing regional interests. Hamilton's Report on Manufactures (1791) solidified this legislative role, advocating for protective tariffs to foster industrial development and economic self-sufficiency.[8] His report

8. https://constitution.org/2-Authors/ah/rpt_manufactures.pdf. From the earliest days of our country's existence statesmen have recognized in their public utterances this broad scope of the power to appropriate for the public welfare; Congress has recognized it in innumerable appropriations of money and property aggregating in value billions of dollars; and those appropriations have never been successfully challenged in this Court. *Hamilton: Opinion to Washington, Hamilton's Works, Lodge's ed.*, III, pp. 179, 217; *Report on Manufactures*, ibid., pp. 294, 371, 372. *Massachusetts v. Mellon*, 262 U.S. 447, 478, 43 S. Ct. 597, 598 (1923)

underscored the necessity of legislative deliberation to weigh long-term benefits against short-term consumer costs, reinforcing Congress's role as the primary arbiter of national tariff policy.

The enduring nature of congressional control over tariffs was tested during the "Tariff of Abominations" in 1828, *United States ex rel. Hoover v. Franzen*, 669 F.2d 433, 443 n.21 (7th Cir. 1982) igniting the Nullification Crisis. South Carolina opposed high duties favoring Northern industries, perceived as detrimental to Southern agriculture. President Andrew Jackson defended federal authority, but the crisis was resolved through legislative compromise: the Tariff of 1833, which gradually reduced rates. This demonstrated Congress's capacity to adjust tariffs in response to economic realities and political pressures, reaffirming its central role in national trade policy, balancing revenue needs and regional harmony, as envisioned by Hamilton in Federalist No. 35. *United States v. Lopez*, 514 U.S. 549, 590 (1995)

C. The Separation of Powers Requires Congressional Control Over Trade Policy

The separation of powers is a cornerstone of American governance, ensuring that no branch usurps the functions of another. *INS v. Chadha*, 462 U.S. 919, 951 (1983), rejected claims of convenience to bypass this structure, holding that the Constitution's division of powers is non-negotiable. *Biden v. Nebraska, 600 U.S. 477, 506–08 (2023)*, reinforced the major questions doctrine, requiring clear congressional authorization for executive actions with significant economic and political impact. The *V.O.S.* court applied this doctrine, holding that IEEPA's

authorities are limited to unusual and extraordinary threats and that the tariffs, justified by persistent trade deficits, did not meet this threshold. Slip Op. 25-66, at 9 (quoting 50 U.S.C. § 1701(b)).

II. THE FEDERAL JUDICIARY: PROTECTING ARTICLE III INDEPENDENCE

A. The Maryland Judges vs. the President

The Maryland litigation exemplifies the constitutional crisis that inevitably follows from unchecked executive power. In *United States of America v. Chief Judge George L. Russell III*, et al., No. 1:25-cv-02029 (D. Md.), filed June 24, 2025, the Executive Branch launched an unprecedented attack on judicial independence by suing every federal judge in Maryland's district court. This extraordinary action demonstrates precisely how executive overreach in one constitutional domain, such as the tariff authority at issue here, spreads inexorably to threaten all institutional checks on presidential power.

The administration's lawsuit targets Chief Judge Russell's standing orders that provide automatic two-day stays of removal proceedings when immigration detainees file habeas corpus petitions. These modest due process protections, designed to address the influx of after-hours habeas petitions that created scheduling difficulties and resulted in hurried and frustrating hearings, triggered a ferocious executive response. Rather than pursuing normal appellate remedies, the administration characterized routine judicial oversight as lawless judicial overreach and demanded that all Maryland judges recuse themselves from the case.

The Executive's characterization of this dispute reveals its broader constitutional strategy. Attorney General Bondi declared that judicial orders blocking executive actions undermine the democratic process and cannot be allowed to stand. The Justice Department's complaint asserts that every unlawful order entered by district courts robs the executive branch of its most scarce resource—time to put policies into effect—and diminishes the votes of citizens who elected the head of the executive branch. This theory treats electoral victories as licenses to override constitutional limitations, effectively arguing that democratic mandates supersede separation of powers constraints.

The constitutional theory underlying this judicial intimidation campaign mirrors exactly the dangerous precedent that would flow from accepting unlimited executive tariff authority. Just as the administration claims inherent power to impose tariffs without congressional authorization, it now claims authority to intimidate judges who exercise their Article III functions. Both assertions rest on the same constitutional fallacy: that executive power, when democratically legitimated, recognizes no institutional boundaries.

B. Erez Reuveni's Whistleblower Retaliation: Executive Overreach in Action

The executive branch's retaliation against Erez Reuveni, former Acting Deputy Director of the Department of Justice's (DOJ) Office of Immigration Litigation (OIL), further exemplifies the dangerous overreach threatening Article III independence. In *Abrego Garcia v. Noem*, No. 25-cv-951 (D. Md.), Mr. Reuveni defended the government's unlawful removal of Abrego Garcia to El

Salvador's Center for Terrorism Confinement (CECOT) on March 15, 2025, despite a 2019 Immigration Judge order prohibiting deportation to El Salvador due to a clear probability of future persecution. (Doc. 21, No. 25-cv-951). The government conceded this was an "administrative error", yet failed to rectify it, prompting Judge Paula Xinis to order Mr. Abrego Garcia's return by April 7, 2025. See, DOJ Atty Firing Highlights Tension Between 2 Ethical Duties", Law360 (June 25, 2025). The Supreme Court partially upheld this order, vacating the deadline but mandating due process compliance. *Noem v. Abrego Garcia*, 145 S.Ct. 1017 (2025).

On April 4, 2025, Mr. Reuveni candidly informed Judge Xinis that the removal was erroneous, mirroring the government's own declaration by ICE official Robert Cerna. That evening, DOJ leadership, including Senior Counselor James Percival, directed him to file an appeal brief misrepresenting facts about the removal and alleging unsubstantiated MS-13 ties, which lacked evidentiary support. Citing his ethical obligations under Rule 3.3(a)(1) of the Model Rules of Professional Conduct, which prohibits false statements to a tribunal, Mr. Reuveni refused. On April 5, he was placed on administrative leave for his alleged failure to zealously advocate and engaging in conduct prejudicial to his client, and was terminated on April 11, 2025. See, *Trump Admin. Suspends Lawyer in Case of Maryland Man Mistakenly Deported for Failing to 'Zealously Advocate'*, Fox News (Apr. 5, 2025).[9] His whistleblower complaint, filed with the Office of Special Counsel and DOJ's Office of Inspector General,

9. https://www.foxnews.com/politics/trump-admin-suspends-lawyer-case-maryland-man-mistakenly-deported-failing-zealously-advocate?msockid=09b67f5c2f3e6d8d20a26a302efe6c0c

alleges retaliation for his protected disclosures under the Whistleblower Protection Act (WPA), 5 U.S.C. § 2302, including his refusal to obey illegal orders and reports of DOJ's non-compliance with court orders. See U.S. Senate Committee on the Judiciary, *Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice* (June 24, 2025).[10] This stance mirrors the DOJ's attack on the District of Maryland's judicial independence, treating Article III as an obstacle to executive will.

C. Congressional Authority Over the Judiciary: Constitutional Design and Historical Practice

The authority to establish the federal judiciary, particularly district courts, is a cornerstone of congressional power within the U.S. Constitution. This power is vested in Congress through Article III, Section 1, which grants discretion to "ordain and establish" inferior courts, and Article I, Section 8, Clause 9, which empowers Congress to "constitute Tribunals inferior to the supreme Court." This design reflects the Framers' intent to ensure an independent judiciary, safeguarding the separation of powers.

The Constitution's assignment of authority over the federal judiciary to Congress addresses the weaknesses of the judicial system under the Articles of Confederation.

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10. https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf

The Framers recognized that a unified and independent judiciary was essential for national cohesion and protection of individual rights. Article III, Section 1.

James Madison articulated the rationale for the separation of powers in *The Federalist No. 47* and *No. 48*, warning against consolidating powers, which he deemed the definition of tyranny. Allowing the executive to dictate the structure of the courts would undermine essential checks and balances. The Framers deliberately vested authority over the judiciary in Congress to ensure that federal courts remain an independent, co-equal branch, accountable through legislative oversight, not executive whim.

The theoretical allocation of judicial authority to Congress was quickly operationalized in the early years of the American republic. The Judiciary Act of 1789, one of the first acts of the First Congress, exemplified this assertion of congressional power. This legislation organized a federal judiciary that the Constitution had only outlined, creating a three-part system: a Supreme Court, U.S. district courts, and U.S. circuit courts. The Supreme Court included a Chief Justice and five associate justices. Federal judges presided over district courts in each state, which heard admiralty, maritime, and some minor civil and criminal cases. The circuit courts functioned as principal trial courts with limited appellate jurisdiction, presided over by two Supreme Court justices and the local district judge. presiding in these courts. See, *Landmark Legislation: Judiciary Act of 1789*, Federal Judicial Center (1992).[11] This act established a precedent

11. From *Origins of the Federal Judiciary: Essays on the Judiciary Act of 1789*, Maeva Marcus, ed. New York: Oxford

for congressional control, defining the jurisdiction and operational aspects of federal courts.

Congress has continuously adapted the federal judiciary to meet evolving national needs, demonstrating exclusive authority over judicial structure and administration. The codification of federal statutes in Title 28 of the United States Code aimed to improve organization and accessibility of these laws. The Judicial Code of 1948 created the basic structure of Title 28 that exists today, regularizing court names and making substantive changes related to jurisdiction and venue.

D. The Executive Lacks Authority to Nullify Judicial Offices or Systems Created by Congress

Attempts to defund essential judicial systems or disrupt operations would violate the separation of powers just as with tariff control by Congress. *Bowsher v. Synar*, 478 U.S. 714, 730 (1986), warned against actions rendering one branch subservient to another. This principle applies to executive interference with judicial functions. The judiciary's independence is critical to the rule of law, ensuring impartial adjudication. Executive attempts to disrupt judicial systems would render the judiciary subservient, mirroring the unconstitutional overreach rejected in *Bowsher*.

University Press, 1992. https://www.fjc.gov/history/legislation/landmark-legislation-judiciary-act-1789-0#:~:text=In%20the%20Judiciary%20Act%20of%201789%2C%20the%20First,inferior%20courts%2C%20the%20Congress%20instituted%20a%20three-part%20judiciary.

E. Policy Implications and Contemporary Challenges for the Judiciary

Any erosion of congressional authority over the judiciary at the hands of the executive carries profound implications for governance and individual liberties. The independence of the judiciary is fundamental to the impartial application of laws and maintaining a stable constitutional order. Legislative oversight is essential to ensure that the administration of justice serves the public good, free from political interference. Unilateral executive overreach risks prioritizing short-term political goals over the integrity of the justice system. Attempts to control judicial resources or access to court information could undermine due process and create uncertainty for litigants. Congress's deliberative process ensures judicial policies reflect diverse input and constitutional principles, leading to stable outcomes.

III. THE CIVIL SERVICE DOMAIN OF CONGRESSIONAL AUTHORITY

Over more than 140 years, Congress has built a merit-based system through landmark statutes, beginning with the Pendleton Act of 1883 and continuing through the Civil Service Reform Act and the Whistleblower Protection Act. These enactments ensure impartial administration, protect whistleblowers, and safeguard due process rights for federal employees. Recent executive efforts threaten this established structure.

A. The Early Republic: A De Facto Merit System and the Emergence of Patronage

In the early years of the United States, the federal government operated under a de facto merit-based system for administrative appointments. The first six Presidents prioritized competence and integrity over political patronage. Frederick Mosher characterizes this period as "Government by Gentlemen," noting President Washington insisted that "fitness of character" should guide nominations. This "fitness of character" was not merely an abstract ideal; it was often "tempered by a sagacious regard for geographic representation," a practical consideration vital for ensuring the new government's legitimacy and fostering national unity by reflecting the diverse composition of the nascent nation. Frederick C. Mosher, "Democracy and the Public Service" (1982), at 60.[12] See also, Leonard White, in "The Federalists: A Study in Administrative History" (1947).[13]

However, the seeds of the patronage-driven spoils system were sown early, even amidst meritocratic ideals. As documented in "History of the Federal Civil Service, 1789 to the Present" by the United States Civil Service Commission (1941),[14] at page 2, the informal practice of "Senatorial courtesy" emerged. This custom led Members of Congress to expect their advice on local

12. https://archive.org/details/democracypublic00mosh

13. https://archive.org/details/federalistsstudy0000leon/page/n5/mode/2up

14. https://books.google.com.vn/books?id=dwbvhZnJT9sC&printsec=frontcover&hl=vi&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

appointments to be accepted. The election of Andrew Jackson in 1828 marked the full embrace of the spoils system, characterized by the slogan "To the Victor Belong the Spoils!" coined by Senator William L. Marcy in 1832. Id. at 19-20.

B. The Pendleton Act of 1883: Establishing a Merit-Based System and Congressional Control

The catalyst for decisive action came with the tragic assassination of President James A. Garfield in 1881 by Charles Guiteau, a disgruntled office seeker who believed he was owed a government position. As recounted in *Arnett v. Kennedy*, 416 U.S. 134, 148 (1974), the public outrage over this profound tragedy brought to a head the widespread sentiment for civil service reform, transforming a long-standing grievance into an urgent national imperative. This singular event provided the necessary political momentum for Congress to overcome entrenched opposition and enact the landmark Pendleton Civil Service Act of 1883. This Act fundamentally reshaped federal employment, establishing a non-partisan civil service and shifting appointments from a system of political patronage to one based on merit. Willis Ryder Arnold and Meghna Chakrabarti, "How the civil service system changed American government" (2025), at 1.

C. Modern Developments and the Civil Service Reform Act of 1978

The federal civil service evolved throughout the 20th century, adapting to new challenges. The New Deal era saw a temporary decline in classified employees due to the creation of "emergency" agencies but ultimately

led to further expansion and debate over executive accountability. Joseph Postell, "From Merit to Expertise and Back: The Evolution of the U.S. Civil Service System" (2020), at 18-19.[15]

D. Whistleblower Protections as a Structural Safeguard of Congressional Intent

Congress's whistleblower protections under the Whistleblower Protection Act (WPA), 5 U.S.C. § 2302(b)(8), and the right of federal employees to communicate with Congress, 5 U.S.C. § 7211, are essential checks designed to ensure transparency and prevent abuses of power. These protections are integral to the civil service framework, designed by Congress to safeguard public integrity. In *Dept of Homeland Sec. v. MacLean*, 574 U.S. 383, 394 (2015), the Supreme Court held that executive agencies cannot override these protections through internal regulations, reinforcing congressional intent in defining employee rights.

15. https://administrativestate.gmu.edu/wp-content/uploads/2020/02/Postell-From-Merit-to-Expertise-and-Back.pdf

CONCLUSION

In the annals of history, the erosion of democratic institutions and human rights often begins not with cataclysmic events, but with acquiescence to strong-arm executive or legislative impulses. This Court's decisions don't just record historical events, it begets them. Mr. Sage recalls the Court's infamous Dred Scott decision in 1857 that entrenched slavery (*Dred Scott v. Sandford*, 60 U.S. 393), or the wartime internment of Japanese Americans during World War II, *Korematsu v. United States*, 323 U.S. 214 (1944), which betrayed constitutional protections under the guise of emergency. These moments illustrate how societies can slip away from protective civilization when citizens and leaders fail to vigilantly challenge encroachments on the constitutional order. We have a history of allowing the fragile constructs of justice and governance to unravel thread by thread. Handing over to the Executive the constitutional powers of the Legislature is to invite despotic government.

Respectfully submitted,

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