IN THE
SUPREME COURT OF THE UNITED STATES

No. 24A966

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Applicants,

v.

GWYNNE A. WILCOX,
Respondent

SCOTT BESSENT, SECRETARY OF THE TREASURY, *et al.*,
Applicants,

v.

CATHY A. HARRIS,
Respondent.

On Application for Stay Pending Appeal

BRIEF *AMICUS CURIAE* OF AMERICA'S FUTURE, GUN OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION, GUN OWNERS OF CALIFORNIA, CITIZENS UNITED, PUBLIC ADVOCATE OF THE UNITED STATES, PUBLIC ADVOCATE FOUNDATION, U.S. CONSTITUTIONAL RIGHTS LEGAL DEFENSE FUND, AND CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND IN SUPPORT OF APPLICATION FOR STAY OF INJUNCTION

Jeffrey C. Tuomala
Winchester, VA 22602

John C. Eastman
Alexander Haberbush
Long Beach, CA 90802

Patrick M. McSweeney
Powhatan, VA 23139

Michael Boos
Washington, DC 20003

William J. Olson*
Jeremiah L. Morgan
Robert J. Olson
William J. Olson, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180-5615
(703) 356-5070
wjo@mindspring.com
*Counsel of Record

April 15, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae America's Future, Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Citizens United, Public Advocate of the United States, Public Advocate Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income taxation under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, which have filed numerous *amicus curiae* briefs in federal and state courts. These *amici* filed an *amicus* brief in *Wilcox v. Trump* in the Court of Appeals. *See* Brief *Amicus Curiae* of America's Future, *et al.*, *Wilcox v. Trump*, D.C. Circuit No. 25-5057 (Mar. 29, 2025).

STATEMENT OF THE CASE

National Labor Relations Board ("NLRB") members are appointed by the President with the advice and consent of the Senate.[2] *See* 29 U.S.C. § 153. The NLRB was created by Congress in 1935 as an "independent agency." *See Wilcox v. Trump*, 2025 U.S. Dist. LEXIS 40651 at *11 (D.D.C. 2025) ("*Wilcox*"). On January 27, 2025, President Donald Trump terminated Respondent Gwynne Wilcox as a member of NLRB without asserting a basis under the requirement of the National Labor Relations Act ("NLRA"), which provides Board members may be removed

---

[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] The Government's Application also addresses a challenge by a member of the Merit Systems Protection Board to her firing by the President, but this *amicus* brief focuses on Wilcox's challenge.

only for "neglect of duty or malfeasance in office, but for no other cause." 29 U.S.C. § 153(a). President Trump asserts that the NLRA requirements impose an unconstitutional restriction on his Article II powers to remove principal officers who exercise executive powers.

Wilcox filed suit, alleging that the President did not have power to remove her without cause. *Wilcox* at *12. The government argued, *inter alia*, that *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), was based on an error, "that the FTC [was understood] at the time not to exercise any 'executive power' ... and that the NLRB today clearly 'wield[s] substantial executive power.'" As a result, the President had authority to fire Wilcox. *Wilcox* at *21.

The district court relied heavily on *Humphrey's Executor* for the proposition that Congress may "create such expert commissions with quasi-legislative and quasi-judicial authority [with] 'power to fix the period during which they shall continue, and to forbid their removal for except for cause in the meantime.'" *Wilcox* at *18 (quoting *Humphrey's Executor* at 629). The district court rejected the government's position, ruling that "cases since *Humphrey's Executor* ha[ve] reinforced the constitutionality of removal restrictions on multimember expert boards" and that the President did not have authority to fire Wilcox. *Id.* at *25. It ordered her reinstatement. *Id.* at *49.

A motions panel of the D.C. Circuit granted the Government's motion to stay the district court order on March 28, 2025. *See Harris v. Bessent*, 2025 U.S. App.

LEXIS 7301 (D.C. Cir. 2025). The D.C. Circuit then acted *en banc* to reverse the action of the motions panel and direct Wilcox to assume a position on the NLRB, while declining to take the case *en banc* for hearing on the merits. *See Harris v. Bessent*, 2025 U.S. App. LEXIS 8151, 8152 (D.C. Cir. 2025).

SUMMARY OF ARGUMENT

The Government's Application for Stay raises vital issues of law that fully justify this Court treating it as a petition for writ of certiorari before judgment and granting it. Too many lower courts imposing injunctions against the Trump Administration have tainted their decisions with political observations. Whether the President of the United States has the authority under Article II to remove members of multi-member agencies exercising executive power, even when Congress has purported to limit that authority, should be addressed sooner, not later. The power to remove is inherent in the President's appointment powers under Article II, and to the extent this Court's decision in *Humphrey's Executor* conflicts with those powers, it should be overturned. The proper analysis of these issues was expressed by this Court in its 1926 decision in *Myers*, but the district court was unnecessarily critical of that decision, describing it as "unreliable" and "prolix." So-called "independent agencies" are antithetical to our constitutional structure of government answerable to the People. Indeed, with the vast expansion of federal powers and the growth of the administrative state, it becomes even more necessary that the People have the power to elect a President who can effect real change in the government, for the preservation of individual liberty.

ARGUMENT

I. THE APPLICATION FOR STAY SHOULD BE TREATED AS A PETITION FOR CERTIORARI BEFORE JUDGMENT AND SHOULD BE GRANTED.

The Government's Application, in addition to requesting a stay of the district court's injunction, asks this Court to treat the Application as a petition for writ of certiorari before judgment and to grant it. *See* Application at 36-38. Treatment of an application for stay as a petition for certiorari may not be routine, but it certainly is not unusual. In the last two years, there have been three cases in which some of these *amici* filed *amicus* briefs where this Court granted review based on an application for stay. On December 1, 2022, in *Biden v. Nebraska*, No. 22-506, this Court treated an application for stay filed by the United States as a petition for certiorari before judgment and granted it. On January 5, 2024, in *Moyle v. United States*, No. 23-726, this Court treated an application for a stay filed by Idaho Speaker Moyle as a petition for a writ of certiorari before judgment and granted it. On February 28, 2024, in *Trump v. United States*, No. 23-939, this Court granted the Special Counsel's request to treat a stay application filed on behalf of now-President Trump as a petition for a writ of certiorari and granted it.

The issues presented by this case are critical questions involving the separation of powers. The three questions raised by the Government's Application (at 36) all relate to whether the legislative branch can statutorily limit the executive's inherent Article II powers.

No benefit is likely to come from months or years of percolation of this case. The district court has already shown shocking animus to the President's position. *See* Section II, *infra.* Too many lower courts have demonstrated an eagerness to hamstring the policies of this administration. The injunction granted here would put back in office a person whose views are inimical to the administration and do much damage to the President's agenda. Therefore, no good reason exists to delay a resolution of these questions now, at the outset of the new administration.

II. THE DISTRICT COURT PUT THE ISSUE PRESENTED INTO A CONTRIVED, POLITICAL CONTEXT.

The district court was presented with an important issue of constitutional law with important legal arguments presented on both sides. Yet the court felt it necessary to denigrate President Trump's position by seemingly characterizing the President's exercise of his removal power as an arbitrary act of a megalomaniacal "Man Who Would Be King."

> [T]he Framers made clear that no one in our system of government was meant to be **king** — the **President** included — and not just in name only. *See* U.S. Const. Art. I, § 9, cl. 8 ("No **Title of Nobility** shall be granted by the United States."). [*Wilcox at* *3 (emphasis added).]

Continuing the stream of political accusations bordering on invective, the district court wrote: "Luckily, the Framers, anticipating such a **power grab**, vested in Article III, not Article II, the power to interpret the law,[3] including

---

[3] The district court's view that the President has no "power to interpret the law" is an extreme position, especially since the Constitution requires only the President, and not federal judges, to swear an Oath to "preserve, protect and defend

resolving conflicts about congressional checks on presidential authority. The President's interpretation of the scope of his constitutional power — or, more aptly, **his *aspiration*** — is **flat wrong**." *Id.* at *6-7 (bolding added). The court derided the President's legitimate constitutional arguments as "excuse[s]" for "**blatantly illegal**" action. *Id.* at *14 (emphasis added). The court insulted the President's arguments, writing that: "They are again **misguided**. While the *Myers* Court made clear that the President has a general removal power for executive officials, defendants' **myopic** focus on this case loses sight of the limitations in its holding, a point driven home in *Humphrey's Executor*...." *Id.* at *29-30 (emphasis added).

The district court compared the President's constitutional argument, which she says would lead to "**absolutist**" presidential power and a federal government with "**widespread corruption**" and "**inefficiency**," to that of a former President with a "controversial legacy." *Id.* at *35, n.17 (emphasis added). And worse:

> The President seems intent on **pushing the bounds of his office** and exercising his power in a manner **violative of clear statutory law** to **test how much the courts will accept** the notion of a presidency that is **supreme** ... with the result that the President need not be subject to criminal *or civil* legislative constraints.[4] The courts are now again forced to determine how much **encroachment on the legislature** our **Constitution can bear** and face a **slippery slope** toward endorsing a presidency that is **untouchable by the law**. The

---

the Constitution of the United States." Article II, § 4. It would be even worse if the district court meant to endorse the once expressed, but never repeated, assertion that a Supreme Court's interpretation of the Constitution constitutes "the supreme law of the land." *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

[4] Here, the district court appears to be criticizing this Court's decision in *Trump v. United States*, 603 U.S. 593 (2024).

> President has given no sufficient reason to accept that path here.... Defendants' **hyperbolic characterization** that legislative and judicial checks on executive authority, as invoked by plaintiff, present "extraordinary intrusion[s] on the executive branch," is both **incorrect and troubling**. Under our constitutional system, such checks, by design, guard against executive **overreach** and the risk such overreach would pose of **autocracy**. An American **President is not a king**—not even an "elected" one.... [*Id.* at *47-48 (citations omitted) (bolding added).]

Such disparaging comments from a district court are inappropriate, demonstrate animus, and only serve to diminish the reputation of the courts in the eyes of the public.[5] These *amici* urge this court to reject the district court's inflammatory and partisan rhetoric which is more suitable for a political diatribe than a judicial opinion, grant the application for stay, and also issue a writ of certiorari before judgment.

III. THE NATURE OF THE PRESIDENT'S POWER TO REMOVE IS BEST UNDERSTOOD AND SUPPORTED BY *MYERS V. UNITED STATES*.

President Trump has exercised the power of the Presidency to remove at-will any principal officer of the United States exercising executive power. That act of the President may violate the terms of a statute, but it is well supported, particularly by *Myers v. United States*, 272 U.S. 52 (1926). There, this Court ruled

---

[5] Judge Beryl Howell's comments about January 6 protestors have been widely reported. *See, e.g.,* K. Cheney, "Federal judges in Jan. 6 cases slam Trump's pardons," *Politico* (Jan. 22, 2025) ("'No "national injustice" occurred here, just as no outcome-determinative election fraud occurred in the 2020 presidential election,' U.S. District Judge Beryl Howell wrote in an eight-page order in the case of two Jan. 6 defendants who pleaded guilty to felonies. 'No "process of national reconciliation" can begin when poor losers, whose preferred candidate loses an election, are glorified for disrupting a constitutionally mandated proceeding in Congress and doing so with impunity.'").

that Congress could not condition the removal of a principal officer exercising executive power on the advice and consent of the Senate. The general principle that should be drawn from that case is that Congress may place no conditions on the President's power to remove principal officers who exercise executive power, including as with the NLRA.

In reaching the conclusion that Congress could not place restrictions on the President's power to remove principal officers who exercise executive powers, the *Myers* Court provided a detailed historical survey of the drafting and early Congressional interpretation of the President's powers of appointment and removal. From this survey, the Court identified two rationales for reaching its conclusion.

The first rationale is that the President would be unable to fulfil his constitutional duty to ensure that the laws are faithful executed unless he has the power to remove officers who have lost his confidence. *Id*. at 117. The Court in *Myers*, and others since then, have convincingly supported this rationale.

The second rationale offered by the *Myers* Court is that the power to remove is "incident to the power of appointment." *Id*. at 122. This *amicus* brief principally focuses on this second rationale.

Thereafter, this Court lost sight of the basic principles set out in *Myers* when deciding two cases that should be considered outliers — *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and *Morrison v. Olson*, 487 U.S. 654 (1988). Those two cases attempted to justify limits placed on Presidents' removal power, although the rationales provided in the two cases are at odds not only with *Myers*,

but also with each other. These departures from *Myers* reflect two major deviations from the fundamental design of the U.S. Constitution, the hallmarks of which are the separation of powers among the three branches of government and the limited number of enumerated powers of the federal government.

President Trump ably and correctly argues that this case can be resolved in favor of his power to remove principal officers who exercise executive power without overruling *Humphrey's Executor*. *See* Application at 14. However, these *amici* agree with the Applicants that this Court should issue a writ of certiorari to take this opportunity to set out constitutionally correct principles in order to lay the groundwork to correct the departure from the *Myers* path taken in *Humphrey's Executor* and *Morrison*. *See* Application at 14 ("the government intends to ask this Court to hold ... that *Humphrey's Executor* was wrongly decided, is not entitled to *stare decisis* effect, and should be overruled").

The district court incorrectly asserts that "an unbroken line of cases since *Humphrey's Executor* has reinforced the constitutionality of removal restrictions on multimember expert boards...." *Wilcox* at *25. However, in the past 15 years, this Court has taken small but important steps to return to the principles undergirding *Myers*, with several Justices openly criticizing the *Humphrey's Executor* ruling. In *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010), the Court ruled that Congress could not impose two layers of for-cause removal restrictions. Writing for the majority, Chief Justice Roberts held that "[t]he President cannot 'take Care that the Laws be faithfully executed' if he cannot

oversee the faithfulness of the officers who execute them." *Free Enterprise Fund* at 484. In *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020), this Court ruled that Congress could not create an independent agency headed by one person removable only for cause. The Chief Justice, writing again for the majority, distinguished *Humphrey's Executor* and narrowly confined it to its facts. *Id.* at 204-05, 214-17. Justice Thomas, in a thorough concurrence joined by Justice Gorsuch, described *Humphrey's Executor as* "a direct threat to our constitutional structure and, as a result, the liberty of the American people." *Id.* at 239 (Thomas, J., conc.). He noted that "[c]ontinued reliance on *Humphrey's Executor* to justify the existence of independent agencies," as the district court below did, "creates a serious, ongoing threat to our Government's design," and while he acknowledged that the Court undercut *Humphrey's Executor* "enough to resolve" the case before it, he urged that "in the future, we should reconsider *Humphrey's Executor in toto*." *Id.* at 251.

Neither of these decisions formally overruled *Humphrey's Executor* or *Morrison*, but they certainly did not reaffirm *Humphrey's Executor*, as incorrectly asserted by the district court. *See Wilcox* at *25. Rather, these two cases should, at minimum, be viewed as harbingers of a return to first principles of constitutional interpretation, calling into question the continuing validity of *Humphrey's Executor* and *Morrison*. And the district court's rejection of *Myers* provides additional reasons for granting the Application.

IV. THE PRESIDENT'S POWER OF REMOVAL MAY NOT BE EXPRESSLY STATED IN THE CONSTITUTION, BUT IT IS NEVERTHELESS SOLIDLY GROUNDED.

A. The Constitutional Role of a President.

The President of the United States is the only official in America who is elected by the participation of all the People.[6] Thus, whether pundits characterize the magnitude of his election as sufficient to be termed a "mandate," the President has the authority and obligation to advance the platform on which he ran. Article II provides: "The executive Power shall be vested in a President of the United States of America." Art. II, § 1. One of the duties of his office is to "take Care that the Laws be faithfully executed." Art. II, § 3. The President takes an oath swearing: "I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States." Art. II, § 1. Presidential races are hotly contested because of the office's vast powers. Given these vast responsibilities, including his role often being described as "leader of the free world," one would assume that he would have all of the powers reasonably necessary to succeed.

The basic power a President would need to possess is the ability to recruit and place persons in his Administration who share his vision and who could assist him in carrying out his responsibilities. This personnel power would necessarily include both appointing and removing subordinate officials. Without that power, no

---

[6] President Trump won both the Electoral College (312 to 226) and the popular vote, with over 77 million votes, and won all seven battleground states.

President would be able to perform his constitutional duties to exercise "executive power," to "take Care that the Laws be faithfully executed," and to "preserve, protect and defend the Constitution." Yet the district court had no problem with approving ill-advised Congressional legislation which for all too long has usurped the legitimate powers of the President by labeling them "checks and balances." While those serving in the bureaucracy may have cooperated with the agenda of prior Presidents, few if any were hampered by the internal resistance faced by President Trump. The refusal of thousands of federal officials to help implement the agenda that 77 million voters supported has made it necessary for the President to take on this battle and seek to return to the original constitutional plan.

The district court colorfully describes limits on the power to remove federal officials as a way to prevent the President from reigning and ruling as a "king." Actually, it is the limits on removal which the district court so admires that have a very different and dangerous effect. Those limits render the President unable to implement the platform on which he was elected. Without the ability to clear the decks of those who disagree with him, and replace them with those who would help him carry out his agenda, there is conflict and paralysis.[7] The failure of Presidents to implement their platforms is one of the main reasons that the American People

[7] The onslaught of injunctions entered by federal district judges has certainly done its part to contribute to the chaos. *See* Appendix.

have so little faith in government, so many are disaffected, and so many do not participate. No matter for whom they vote, most policies stay the same.[8]

One of the principal reasons that Presidents can be stymied in making reforms is that there exists an establishment with the power to erect many impediments to preserve their power. All courts, but particularly this Court, need to ensure that those in the federal judiciary who believe that the wrong candidate was elected do not wield their power in a partisan manner. President Trump has now been in office for almost three months, and as of the date of the preparation of this brief, the Trump Administration has been subjected to **54 known district court injunctions**. *See* Appendix. **Of these 54 injunctions, 42 were issued by district judges appointed by Presidents Clinton (6), Obama (16) and Biden (20).** To be sure, there was sophisticated judge shopping, and certain challenges were dropped once they were assigned to Republican President appointed judges.[9] Nevertheless, it appears that many unelected federal judges view themselves as serving the country by using their equitable powers to block the agenda that President Trump was elected to implement.

---

[8] *See* E. Fitz & K. Saunders, "Distrusting the Process: Electoral Trust, Operational Ideology, and Nonvoting Political Participation in the 2020 American Electorate," 88 *Public Opinion Quarterly* 843 (July 16, 2024).

[9] *See e.g.,* The State of New Jersey brought its challenge to the President's Birthright Citizenship Executive Order not in New Jersey, but in Massachusetts *(New Jersey v. Trump*, 1:25-cv-10139); a challenge to the Birthright Citizenship Executive Order brought in USDC-DC was dropped after being assigned to Judge Trevor McFadden (*OCA-Asian Pacific American Advocates v. Rubio*, 1:25-cv-00287).

B. The Necessity of Implicit Powers.

Based on the clear, complete, and unequivocal vesting of executive power, most discussions of Presidential power are focused on his "executing" specific constitutional or statutory powers. However, authority for the President to perform many of his powers cannot be sourced to any specific constitutional provision or particular section of the U.S. Code. Utilization of these implicit powers is essential to the operation of the Executive Branch of government. It is essential for a President to have such implicit powers to carry out his constitutional duties. The President acts through subordinate officials. Appointing and removing officers are a necessary means to ensure that the laws are faithfully executed.

It is true that the Constitution grants Congress a before-the-fact check on the President's appointment powers through the "advise and consent" requirement for principal offices. And it is true that the Constitution grants Congress an after-the-fact check on the President's appointments through the impeachment power. However, there is no other Constitutional power given to Congress to limit the removal of officials exercising executive branch powers. Although the NLRB has been with us for 90 years, longevity does not equate to legitimacy. *Dred Scott v. Sandford*[10] was considered good law, and so also was *Korematsu v. United States*,[11]

---

[10] 60 U.S. 383 (1857).

[11] 323 U.S. 214 (1944).

and more recently *Roe v. Wade* for about 50 years.[12] None was good law, even while in effect.

It is curious that the same lawyers who would bar the President from removing those who are exercising power in multi-member agencies have no problem with the Congress exercising powers to regulate Americans by finding penumbras and emanations in the Constitution, including giving virtually unlimited application to the Commerce Clause,[13] the Spending Power and General Welfare Clause,[14] the Taxing Power,[15] and the Necessary and Proper Clause, discussed *infra.*

---

[12] 410 U.S. 113 (1973).

[13] *See, e.g., Wickard v. Filburn*, 317 U.S. 111 (1942), which has never been overruled, but which on one occasion was described by this Court as "perhaps the most far reaching example of Commerce Clause authority over intrastate activity" which operated to "greatly expand[] the previously defined authority of Congress under that Clause...." *United States v. Lopez*, 514 U.S. 549, 560, 556 (1995). Justice Thomas asserted that *Wickard's* "substantial effect on interstate commerce" test was "far removed from both the Constitution and from [this Court's] early case law." *Id.* at 601 (Thomas, J., concurring).

[14] *See, e.g., Helvering v. Davis*, 301 U.S. 619, 640-42 (1937), where the Court defaulted on its obligation to rule whether a particular spending measure was for the "general welfare" by deferring to Congress's discretion — a rule still followed. *See also* Federalist No. 41 ("It has been urged and echoed, that the power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,' amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare.... For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power?").

[15] *See NFIB v. Sebelius*, 567 U.S. 519 (2012), where even five Justices (Roberts, Scalia, Kennedy, Thomas, and Alito) found the individual mandate in the Patient Protection and Affordable Care Act (known as "Obamacare") not authorized by the Commerce Clause or Necessary and Proper Clause, five Justices (Roberts, Ginsburg, Breyer, Sotomayor, and Kagan) found it to be a lawful exercise of the

The powers of appointment and removal are both essential means for ensuring the execution of the office of the Presidency, but they are not executive powers in the sense of enforcing the law. These powers are inherent in any organization as well as nations, but are subject to the restriction of those who are founders of an organization or of a nation.

Many examples can be drawn from Article II of powers that the people have delegated to the President that are not executive by nature in the sense of enforcing the law. The power to make treaties is a foreign affairs power and is neither executive nor legislative by nature. Until a treaty is made, there is no law to enforce; and a treaty cannot be made by legislation. Similarly, the power to recommend legislation to Congress, like the veto power, is generally considered to be legislative in nature. Likewise, the powers of appointment and removal are not executive in the sense of enforcing the laws. Thus, they are distinct from legislative, executive, and judicial powers. Another inherent power that each branch of government possesses is the power to make rules and regulations for their internal operation.[16]

Taxing Power.

[16] In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice Marshall noted that in deciding cases the Court is bound not only by the Constitution and acts of Congress but by general principles of law. *Id*. at 170. The Declaration of Independence identifies the source of authority for these general principles of law, also known as "the Laws of Nature and of Nature's God," as the "Creator" and "Supreme Judge of the World."

The Supreme Court has recognized the power of organizations formed by contract, and those that preexist the state, to appoint and remove officers of their own choosing to ensure proper functioning of those organizations in pursuance of their respective missions. In *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819), the Supreme Court recognized the preexisting right or general principle of law to form a voluntary organization by contract and to appoint its officers to execute the terms of its agreement. Similarly, in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 184, 191 (2012), the Supreme Court recognized the preexisting right of churches to appoint and remove officers according to the tenets of their faith.

The People have placed certain conditions on the President's inherent power of appointment. *See* Article II, § 2. Otherwise, the President has the inherent power to appoint officers of his own choosing. Similarly, he has the power to remove officers subject to limitations that the people place on him. The only limit on his power of removal is that Congress may remove an officer through the impeachment process that the President would rather retain in office. Article I, § 2, cl. 6; Article I, § 3, cl. 6-7; Article II, § 4.

The only possible source of a Congressional power to limit the President's removal power is the Necessary and Proper Clause. *See, e.g.*, *Myers*, 272 U.S. at 180-81 (McReynolds, J., dissenting); *Seila Law Inc*, 591 U.S. at 267, 295-96 (Kagan, J., dissenting). That Clause states:

> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. [Article I, § 8, cl. 18.]

It is generally recognized that this Clause gives Congress the power to establish the great departments of government and offices necessary to operate them. In *Marbury*, the Court recognized the power of Congress to establish the State Department and office of Secretary of State. Congress had the power to channel the Secretary of State's discretion in the operation of that office, as evidenced by the particular laws giving Marbury a right to his commission as justice of the peace for the District of Columbia. *Marbury*, 5 U.S. at 170. The *Marbury* Court recognized a general principle of law that the Constitution is supreme and paramount law because it was adopted by the People, who exercised their original will in pursuance to their original right to adopt it. *Id*. at 176. The general principle of law that the head of an organization has an inherent power of appointment and removal is operative. Although Congress may believe that independent agencies are "necessary" (*i.e.*, useful or convenient), they are, rather, not "proper." The district court asserted that restrictions on the removal power provide essential checks and balances, but that is only a pretext to justify allowing Congress — as well as the judiciary — to usurp an inherent power of the Presidency required for real separation of powers and federalism.

V. THE EXPANSION OF FEDERAL POWERS HAS INCENTIVIZED CONGRESS TO LIMIT THE PRESIDENT'S REMOVAL POWER, BUT THAT DOES NOT MAKE IT CONSTITUTIONAL.

All officers and employees in the executive branch are duty bound to carry out lawful policies at the chief executive's direction. The district court's fear and consternation that so much power resides in one person is not due to the President's constitutional power to remove officials exercising executive authority. Rather the root problem is that Congress, with the collaboration of the courts, has turned the United States government from one of enumerated powers into one of general powers.

In order to govern this legislatively created Leviathan, Congress has created the administrative state largely with a willing President and compliant judiciary, thus greatly compromising the twin doctrines of separation of powers and enumerated powers. To place some limits on the discretion of the President over such a vast enterprise, Congress created the independent agency, experimented with an office of independent counsel, and established a civil service system. However, the desire of Congress to exceed its constitutional powers, and the willingness of the judiciary to permit it, should not justify denying to the President the rightful powers of his office, especially when they are so much in alignment with the Supreme Court's interpretation in *Myers v. United States*.

The most dramatic difference between the state governments and the federal government is that the states have hundreds of officers exercising executive power, who are elected directly by and are accountable to the people, while the federal

government has just one — the President of the United States. Until recently, the federal government has a 4.4 million-strong workforce. *See Free Enterprise Fund* at 520 (Breyer, J., dissenting). Undoubtedly, most are employed in the executive branch, and, therefore, serve at the direction of the President.

It is little wonder that Congress, with the condonation of the federal courts, has devised several means designed to place some restraints on the exercise of the President's executive power. One of the chief means, which is at issue in this case, is the invention of the independent agency. These agencies, like the NLRB, are typically headed by a multi-membered decision-making body exercising executive, legislative, and judicial types of power. They are denominated "independent agencies" because they do not serve at the pleasure of the President, and their principal officers or agency heads can be removed from office only for cause, yet they wield executive, legislative, and judicial power.

The rise of these powerful agencies marks a radical departure from the foundational doctrine of the separation of powers by which the legislative, executive, and judicial powers are assigned to three separate branches of government. Madison wrote that "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands ... may justly be pronounced the very definition of tyranny." The Federalist No. 47. To this principle, the courts have turned a blind eye.

In *Mistretta v. United States*, 488 U.S. 361, 380-81 (1989), this Court actually appealed to The Federalist No. 47 to justify a "flexible approach to separation of

powers" such as it had approved in *Humphrey's Executor*. Rather than confine itself to a formalistic approach to interpreting the Constitution, the Court took a functionalist approach. The powers of government need not be kept separate in accordance with the text of the Constitution, and the powers can be realigned so long as the respective powers of three branches were not unduly aggrandized or diminished. *See Mistretta*, 488 U.S. at 380-82.

The demise of the doctrine of separation of powers accompanied the evisceration of another hallmark of American constitutionalism — the doctrine of enumerated powers. Perhaps no Supreme Court case is so emblematic of the demise of federalism as *Wickard v. Filburn*, 317 U.S. 111 (1942). In *United States v. Lopez*, 514 U.S. 549 (1995), this Court started "with first principles" by quoting The Federalist No. 45: "'the powers delegated by the proposed Constitution to the federal government are few and defined.'" *Id*. at 552. Despite that promising start, the Court affirmed *Wickard*, although it offered a somewhat more restrictive version of the substantial effects test.

Between the Court's Commerce Clause and Tax and Spending Clause jurisprudence, there are few areas of life that Congress cannot effectively control if it desires. Justice Breyer gave a brief summary of all the subjects Congress now provides, regulates, or administers:

> taxes, welfare, social security, medicine, pharmaceutical drugs, education, highways, railroads, electricity, natural gas, nuclear power, financial instruments, banking, medical care, public health and safety, the environment, fair employment practices, consumer protection and

> much else besides. [*Free Enterprise Fund* at 520 (Breyer, J., dissenting).]

Nearly every subject Congress cannot reach by the Court's interpretation of the power to regulate interstate commerce, it can reach through the Court's interpretation of the power to tax and spend. Rather than being a government of few and enumerated powers, it is a government with potentially unlimited powers. Yet this expansion of powers does not justify placing unconstitutional limits on the Presidential removal power.

VI. REMOVAL OF RESPONDENT WILCOX.

A. *Humphrey's Executor*

In *Humphrey's Executor*, this Court believed that the FTC exercised only quasi-legislative and quasi-judicial power, but not executive power. But, as the Court has subsequently acknowledged, the FTC's powers do constitute executive powers as those powers are understood today. *See Morrison* at 689 n.28. In other words, *Humphrey's Executor* served the purpose not only of eviscerating the doctrine of separation of powers by sanctioning Congress placing all three powers of government in the same hands, but also of burdening the President's power to faithfully enforce the law. The Court in *Humphrey's Executor* solved the problem of an apparent inconsistency with *Myers* by claiming that only what was called "quasi-judicial" and "quasi-legislative" power had been delegated to the Federal Trade Commission. In truth, there is nothing "quasi" about these judicial and legislative powers.

Wilcox has argued that the NLRB maintains a separation of executive functions, performed by its General Counsel, from its judicial and rulemaking functions, performed by the Board. The General Counsel is removable at the President's will, while only members of the Board enjoy for-cause protection from removal. Complicating the conceptual problem of maintaining the distinction between executive powers on one hand and judicial and legislative powers on the other, the President's counsel argues that the judicial and rulemaking functions of the NLRB are simply a means of exercising executive powers. To counter the President's argument that the NLRA places rulemaking under the General Counsel, the district court claimed that, in general, rulemaking is accomplished through the process of adjudication.

President Trump asked the Court of Appeals to strike the for-cause removal provision from the NLRA. He claims that granting this relief does not require overruling *Humphrey's Executor* because it was premised on the claim that the FTC exercised only quasi-legislative and quasi-judicial powers and not executive powers. Since the NLRB exercises all three powers of government, the facts of this case can be distinguished from *Humphrey's Executor*.

B. *Morrison v. Olson*

The Court's opinion in *Morrison* may have led to unintended consequences when it ruled that the Independent Counsel was an inferior officer. This justified the appointment of the Independent Counsel by someone other than the President and without securing advice and consent of the Senate. The *Morrison* Court also

wrote that it changed its mind about its basis for distinguishing *Humphrey's Executor* from *Myers*. The Court wrote that Congress could give officers exercising purely executive power for-cause removal protection. To justify this conclusion, the Court said Congress could place this limit on the President so long as it did not undermine his ability to faithfully execute the law too much.

The Independent Counsel in *Morrison* was an inferior officer, while members of the NLRB are admittedly principal officers. Therefore, the controlling precedent is *Myers*, as it involved the removal of a principal officer exercising executive power. Of course, one can easily distinguish the situation in *Myers* from the situation in this case, but this Court can do better by deciding based on principle.

In *Myers*, this Court ruled that the President has the power to remove at-will principal officers exercising executive powers. Then, *Humphrey's Executor* distinguished the facts of that case from *Myers*, claiming that Congress had delegated only quasi-judicial and quasi-legislative powers to the FTC. More recently, *Morrison* acknowledged that the FTC did in fact exercise executive powers. Although the Independent Counsel in *Morrison* exercised purely executive power, the Supreme Court ruled that Congress could place for-cause removal power in the Attorney General so long as it did not interfere with the President's exercise of his constitutional power too much.

C. Recent Cases

The *Myers-Humphrey's-Morrison-Mistretta* line of cases, reasoning, and distinctions this Court has made have the feel not of an integrated body of law, but

of a splendid work of sophistry unmoored by principle. It is impossible to discern whether this Court's reasoning in *Free Enterprise Fund* (prohibiting two layers of for-cause removal) and *Seila Law, Inc.* (prohibiting an independent agency headed by a single person) constitutes steps in a return to *Myers*.

The district court faulted the President as wanting to exercise the powers of a king in claiming the right to remove officers exercising executive power at-will. No fault has been placed on Congress for the impact its laws have had of centralizing power in the federal government. The basic problem is not the President's claim of power to remove principal executive branch officers at will, but rather that he is attempting to shrink the size of a bloated government which many seek to protect.

CONCLUSION

For the foregoing reasons, this Court should intervene to prevent lower courts injunctions from encroaching upon a co-equal branch of government. It also should issue a writ of certiorari to address and affirm that the President's inherent authority to manage agencies which are part of the Executive.

Respectfully submitted,

Jeffrey C. Tuomala
114 Creekside Ln.
Winchester, VA 22602

John C. Eastman
Alexander Haberbush
CONSTITUTIONAL COUNSEL GROUP
444 W. Ocean Blvd. Ste. 1504
Long Beach, CA 90802

William J. Olson*
Jeremiah L. Morgan
Robert J. Olson
WILLIAM J. OLSON, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180-5615
(703) 356-5070
wjo@mindspring.com
*Counsel of Record
April 15, 2025

Patrick M. McSweeney
3358 John Tree Hill Road
Powhatan, VA 23139

Michael Boos
CITIZENS UNITED
1006 Pennsylvania Ave., SE
Washington, DC 20003

APPENDIX

FEDERAL COURT INJUNCTIONS AGAINST THE TRUMP ADMINISTRATION
(January 20, 2025 through April 15, 2025)

BIRTHRIGHT CITIZENSHIP

1. *New Hampshire Indonesian Community Support v. Trump*, No. 1:25-cv-00038 — Judge Joseph N. Laplante (G. W. Bush) of the District of New Hampshire enjoined any enforcement of Trump's birthright citizenship EO within the state.

2. *Washington v. Trump*, No. 2:25-cv-00127 — Judge John C. Coughenour (Reagan) of the District of Washington enjoined any enforcement of Trump's birthright citizenship EO nationwide. The case was appealed to the Ninth Circuit and the Supreme Court, where it is pending.

3. *New Jersey v. Trump; Doe v. Trump*, No. 1:25-cv-10139 — Judge Leo T. Sorokin (Obama) of the District of Massachusetts enjoined any enforcement of Trump's birthright citizenship EO within the state. The case was appealed to the First Circuit and the Supreme Court, where it is pending.

4. *CASA Inc. v. Trump*, 8:25-cv-00201 — Judge Deborah L. Boardman (Biden) of the District of Maryland enjoined any enforcement of Trump's birthright citizenship EO nationwide. The case was appealed to the Fourth Circuit and the Supreme Court, where it is pending.

IMMIGRATION

5. *J.G.G. v. Trump*, 1:25-cv-00766 — Judge James E. Boasberg (Obama) of the District of D.C. ordered flights of gang members and terrorists rerouted back to the United States, and then ordered that Trump cannot deport anyone under the Alien Enemies Act without a hearing. Upheld by D.C. Circuit, and appealed to SCOTUS.

6. *Chung v. Trump*, No. 1:25-cv-02412 — Judge Naomi Reice Buchwald (Clinton) of the Southern District of New York issued a temporary restraining order preventing Trump from deporting a Columbia student for pro-Hamas activism.

7. *Phila. Yearly Meeting of The Religious Soc'y of Friends v. U.S. Dep't of Homeland Sec.*, No. 8:2025-cv-00243 — Judge Theodore D. Chuang (Obama) of the Maryland district court enjoined ICE raids in houses of worship.

8. *Khalil v. Joyce*, 2:25-cv-01963 — The above case was transferred on March 19, and Judge Michael E. Farbiarz (Biden) of the District of New Jersey ordered on that

same day that "Petitioner shall not be removed from the United States unless and until the Court issues a contrary Order."

9. *Parra v. Castro*, 1:24-cv-00912 — Judge Kenneth J. Gonzales (Obama) of the District of New Mexico enjoined the transfer of three Venezuelans to Gitmo. They were then removed to their home country instead, and voluntarily dismissed their case.

10. *Vizguerra-Ramirez v. Choate*, 1:25-cv-00881 — Judge Nina Wang (Biden) of the District of Colorado enjoined the ICE deportation of a Mexican citizen.

11. *National TPS Alliance v. Noem*, 25-cv-01766 — Judge Edward M. Chen (Obama) of the Northern District of California enjoined ending Temporary Protected Status ("TPS") for 350,000 to 600,000 Venezuelans.

12. *Pacito v. Trump*, 2:25-cv-00255 — Judge Jamal Whitehead (Biden) of the Western District of Washington granted a nationwide preliminary injunction on February 28 blocking President Trump's Executive Order indefinitely halting entry through the U.S. Refugee Admissions Program (USRAP). On appeal, the Ninth Circuit partially granted the Trump administration's emergency motion to stay. On April 3, Plaintiffs filed a motion asking the district court to enforce the first preliminary injunction, and Defendants replied April 8 arguing Plaintiffs' reading of the Ninth Circuit's stay order is too narrow and requesting the court hold Plaintiffs' motion in abeyance pending the Ninth Circuit's ruling on their pending appeals.

TRANSGENDER

13. *Talbott v. Trump*, No. 1:25-cv-00240 — Judge Ana C. Reyes (Biden) of the District of D.C., a lesbian, enjoined Trump's rule preventing "transgender" persons from serving in the military. The case is on appeal to the D.C. Circuit.

14. *PFLAG v. Trump*, 8:25-cv-00337 — Judge Brendan A. Hurson (Biden) of the Maryland district court granted an injunction against Trump's order denying federal funding to institutions performing chemical or surgical "transgender" mutilation on minors.

15. *Washington v. Trump*, No. 2:25-cv-00244 — Judge Lauren J. King (Biden) of the Western District of Washington enjoined Trump's order denying federal funding to institutions performing chemical or surgical "transgender" mutilation on minors. The case is on appeal to the 9th Circuit.

16. *Ireland v. Hegseth*, No. 1:25-cv-01918 — Judge Christine P. O'Hearn (Biden) of the New Jersey district court enjoined the Air Force from removing two

"transgender" service members pursuant to Trump's order banning "transgender" service members.

17. *Doe v. McHenry; Doe v. Bondi*, 1:25-cv-00286 — Judge Royce C. Lamberth (Reagan) of the District of D.C. enjoined the transfer of twelve "transgender women" to men's prisons under Trump's order, and terminating their taxpayer-funded hormone treatments. The injunction has been appealed to the D.C. Circuit.

18. *Moe v. Trump*, No. 1:25-cv-10195 — Senior Judge George A. O'Toole Jr. (Clinton) of the Massachusetts district court enjoined the transfer of a "transgender woman" to a men's prison under Trump's order. This case has been transferred to another, unidentified, district.

19. *Jones v. Trump*, 1:25-cv-401 — Judge Royce C. Lamberth (Reagan) of the D.C. district court enjoined the transfer of three "transgender women" to men's prisons and termination of their taxpayer-funded hormone treatments under Trump's order.

20. *Shilling v. Trump*, 2:25-cv-00241 — Judge Benjamin H. Settle (G.W. Bush) of the Western District of Washington enjoined Trump's order to remove "transgender" service members. The 9th Circuit denied a request for a stay of the injunction.

GOVERNMENT OPERATIONS

21. *Dellinger v. Bessent*, No. 1:25-cv-00385 — Judge Amy B. Jackson (Obama) of the District of D.C. issued a restraining order invalidating Trump's firing of U.S. special counsel Hampton Dellinger. The order was upheld by the D.C. Circuit Court of Appeals and the Supreme Court, then was temporarily lifted by the Court of Appeals on March 5; on March 6, Dellinger announced that he was dropping his case.

22. *American Federation of Government Employees, AFL-CIO v. U.S. Office of Personnel Management*, No. 3:25-cv-01780 — Judge William H. Alsup (Clinton) of the Northern District of California enjoined Trump's order for six federal agencies to dismiss thousands of probationary employees. The injunction was upheld by the Ninth Circuit, but the Supreme Court issued a stay based on standing.

23. *Wilcox v. Trump*, No. 1:25-cv-00334 — Judge Beryl A. Howell (Obama) of the D.C. district court enjoined Trump's firing of National Labor Relations Board member Gwynne Wilcox, a Democrat, and ordered her reinstated to finish her term. The D.C. Circuit stayed then injunction, then reinstated it, and an application for a stay has been filed at the Supreme Court, and the district court decision stayed by Chief Justice Roberts.

24. *Harris v. Bessent*, No. 1:25-cv-00412 — Judge Rudolph Contreras (Obama) of the D.C. district court enjoined Trump's firing of Merit Systems Protection Board member Cathy Harris and ordered her reinstated. The D.C. Circuit stayed then injunction, then reinstated it, an application for a stay has been filed at the Supreme Court, and the district court decision stayed by Chief Justice Roberts.

25. *American Foreign Service Association v. Trump*, No. 1:25-cv-00352 — Judge Carl J. Nichols (Trump) of the D.C. district court issued a temporary restraining order against Trump's firing of USAID employees. He later vacated the TRO and denied a preliminary injunction against the firings.

26. *Does 1-9 v. Department of Justice*, No. 1:25-cv-00325 — Judge Jia M. Cobb (Biden) of the D.C. district court enjoined Trump from releasing the names of any FBI agents who worked on the January 6 investigation.

27. *Doctors for America v. U.S. Office of Personnel Management*, No. 1:25-cv-00322 — Judge John D. Bates (G.W. Bush) of the D.C. district court ordered that CDC and FDA webpages that "inculcate or promote gender ideology" be restored after Trump ordered them removed.

28. *Perkins Coie v. DOJ*, No. 1:25-cv-00716 — Judge Beryl A. Howell (Obama) of the D.C. district enjoined Trump's directive barring government agencies doing business with Perkins Coie and banning PC attorneys from federal buildings.

29. *Jenner Block v. DOJ*, No. 1:25-cv-00916 — Judge John D. Bates (G.W. Bush) of the D.C. district court enjoined Trump's directive barring government agencies from doing business with Jenner Block and banning that firm's attorneys from federal buildings.

30. *Wilmer Cutler Pickering Hale and Dorr LLP v. Executive Office of the President*, No. 1:25-cv-00917 — Judge Richard J. Leon (G.W. Bush) of the D.C. district court enjoined Trump's directive barring government agencies from doing business with Wilmer and banning that firm's attorneys from federal buildings.

31. *Susman Godfrey LLP v. Executive Office of the President*, No. 1:25-cv-01107 — Judge Loren L. Alikhan (Biden) of the D.C. district court enjoined Trump's directive barring government agencies from doing business with Susman Godfrey and banning that firm's attorneys from federal buildings.

32. *American Federation of Government Employees, AFL-CIO v. Ezell*, No. 1:25-cv-10276 — Senior Judge George A. O'Toole Jr. (Clinton) of the District of Massachusetts issued a temporary restraining order against Trump's buyout of

federal employees. The judge later lifted the TRO and denied an injunction, allowing the buyout to go forward.

33. *Maryland v. United States Department of Agriculture*, No. 1:25-cv-00748 — James K. Bredar (Obama) of the District of Maryland issued a TRO ordering 38 agencies to stop firing employees and reinstate fired employees. On April 9, the Fourth Circuit stayed the district court injunction, noting the Supreme Court's stay in AFGE, AFL-CIO v. OPM and Ezell).

34. *Does 1-26 v. Musk*, No. 8:25-cv-00462 — Judge Theodore David Chuang (Obama) of the Maryland district court ordered DOGE to reinstate email access for fired USAID employees.

35. *American Federation of Teachers v. Bessent*, No. 8:25-cv-00430 — Judge Deborah L. Boardman (Biden) of the District of Maryland enjoined DOE and Office of Personnel Management from disclosing personal information of employees to DOGE. On April 7, the Fourth Circuit granted a stay to the Defendants pending the appeal.

36. *American Federation of State, County and Municipal Employees, AFL-CIO v. Social Security Administration*, No. 1:25-cv-00596 — Judge Ellen L. Hollander (Obama) of the District of Maryland granted an injunction forbidding the Social Security Administration from providing personal information to DOGE. The Fourth Circuit dismissed an appeal for lack jurisdiction.

37. *Brehm v. Marocco*, No. 1:25-cv-00660 — Judge Richard J. Leon (G.W. Bush) of the D.C. district court issued a temporary restraining order forbidding Trump from removing Brehm from, and appointing Marocco to, the U.S. African Development Foundation.

38. *American Oversight v. Hegseth*, No. 1:25-cv-00883 — Judge James E. Boasberg (Obama) of the D.C. district court issued an order "as agreed by the parties," for the government to preserve all Signal communications related to the leak to an *Atlantic* editor of DoD conversations in Houthi strike.

FUNDING

39. *National Treasury Employees Union v. Vought*, 1:25-cv-00381 — Judge Amy B. Jackson (Obama) of the D.C. district court halted Trump's budget cuts and layoffs at the Consumer Financial Protection Bureau. On March 31, the government appealed Judge Jackson's preliminary injunction order to the D.C. Circuit; which on April 11 ordered a partial stay of the preliminary injunction.

40. *AIDS Vaccine Advocacy Coalition v. Department of State*, No. 1:25-cv-00400 — Judge Amir H. Ali (Biden) of the D.C. district court ordered Trump to unfreeze and spend $2 billion in USAID funds. The Supreme Court, in a 5-4 ruling with Justices Alito, Thomas, Kavanaugh, and Gorsuch dissenting, left the order in place. On Apr. 2, defendants appealed Judge Ali's Mar. 10 preliminary injunction order to the D.C. Circuit.

41. *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 1:25-cv-00333 — Judge Adam B. Abelson (Biden) of the Maryland district court enjoined Trump's order blocking federal funding for DEI programs. On March 14, the Fourth Circuit granted the government's petition for a stay of the preliminary injunction pending appeal.

42. *National Council of Nonprofits v. OMB*, No. 1:25-cv-00239 — Judge Loren L. AliKhan (Biden) of the Maryland district court blocked Trump's order to pause federal aid while reviewing to determine if it aligned with administration policy.

43. *Massachusetts v. NIH*, No. 1:25-cv-10338 — Judge Angel Kelley (Biden) of the Massachusetts district court issued a preliminary injunction on March 5 prohibiting implementation of the NIH Guidance "in any form with respect to institutions nationwide."

44. *New York v. Trump*, 1:25-cv-00039 — Judge John J. McConnell Jr. (Obama) of the District of Rhode Island enjoined Trump's order to freeze federal spending while reviewing to determine that it aligned with administration policy. The First Circuit, March 26, denied defendants' motion for a stay pending appeal of the district court's preliminary injunction order.

45. *California v. Department of Education*, No. 1:25-cv-10548 — Judge Myong J. Joun (Biden) of the District of Massachusetts granted a temporary restraining order blocking Trump's withdrawal of funds to schools teaching DEI. The First Circuit denied a motion for stay pending appeal. On April 4, the Supreme Court granted a stay pending appeal, writing "the Government is likely to succeed in showing the District Court lacked jurisdiction" and that the case may need to be brought in the Court of Federal Claims.

46. *RFE/RL, Inc. v. Lake*, No. 1:25-cv-00799 — Judge Royce C. Lamberth (Reagan) of the D.C. district court issued a temporary restraining order forbidding Trump from cutting funds to Voice of America.

47. *Massachusetts Fair Housing Ctr. v. HUD*, No. 3:25-cv-30041 — Judge Richard G. Stearns (Clinton) of the Massachusetts district court enjoined Trump's cuts to HUD grant funding and ordered spending reinstated.

48. *Climate United Fund v. Citibank, N.A.*, 1:25-cv-00698 — Judge Tanya S. Chutkan (Obama) of the D.C. district court issued a temporary restraining order enjoining EPA's Termination of Greenhouse Gas Reduction Fund Grants.

49. *Association of American Medical Colleges v. NIH*, No. 1:25-cv-10340 — Judge Angel Kelley (Biden) of the District of Massachusetts enjoined Trump's NIH grant funding cuts. The Case has been appealed to the First Circuit.

50. *American Association of Colleges for Teacher Education v. McMahon*, 1:25-cv-00702 — Judge Julie R. Rubin (Biden) of the Maryland district court issued an injunction requiring reinstatement of terminated education grant funds. Defendants appealed the preliminary injunction to the Fourth Circuit. On April 1, the Fourth Circuit denied Plaintiffs' motion to place the case in abeyance, and on April 10 granted the defendants' motion for stay pending appeal.

51. *Chicago Women in Trades v. Trump*, No. 1:25-cv-02005 — Senior Judge Matthew F. Kennelly (Clinton) of the Northern District of Illinois entered a temporary restraining order commanding the reinstatement of DEI grants.

52. *Mayor and City Council of Baltimore et al. v. Vought*, No. 1:25-cv-00458 — Judge Matthew J. Maddox (Biden) of the District of Maryland issued a TRO preventing Trump from defunding the CFPB.

53. *Association of American Universities v. Department of Health and Human Services*, No. 1:25-cv-10346 — Judge Angel Kelley (Biden) of the District of Massachusetts issued a nationwide injunction against Trump's NIH funding cuts. Defendants appealed to the First Circuit on April 9.

54. *Doe 1 v. Office of the Director of National Intelligence*, No. 1:25-cv-00300 — Judge Anthony J. Trenga (G.W. Bush) of the Eastern District of Virginia issued an "administrative stay" against firing DEI employees with CIA and DNI. The court then considered and rejected imposing a TRO to the same effect.