No. 24A966

In the Supreme Court of the United States

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

v.

GWYNNE A. WILCOX AND CATHY A. HARRIS

REPLY IN SUPPORT OF APPLICATION FOR STAY

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TABLE OF CONTENTS

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Article II of the Constitution vests the "executive Power"—"all of it"—in the President alone. *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 203 (2020). The district court held otherwise. It ruled that the President must have cause to fire the leaders of executive agencies that dictate the terms of private employment relationships and control aspects of federal employment, and it compelled the President to continue entrusting significant executive power to principal executive officers whom he considers unfit to wield it. Those decisions were gravely erroneous, and they should be stayed.

Respondents now claim the mantle of the status quo. They argue that court-ordered reinstatement of these principal officers is a minor and reasonable imposition on the President's constitutional prerogatives, and they warn of separation-of-powers chaos if *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), does not broadly justify removal restrictions across multimember agencies.

That doomsaying gets the merits and equities backwards. Respondents treat *Humphrey's Executor* as a precedent on par with *Marbury* v. *Madison*, 1 Cranch 137 (1803). Yet they refuse to take seriously this Court's admonitions in *Seila Law* that "unrestricted removal" is the "general rule"; that *Humphrey's Executor* is a narrow

"exceptio[n]" at the "'outermost * * * limits'" of what the Constitution permits, if it is within those limits at all; that for-cause removal restrictions for principal officers (at most) extend to "multimember expert agencies," like the 1935 Federal Trade Commission (FTC), that "*do not wield substantial executive power*"; and that courts and Congress cannot "elevate" *Humphrey's Executor* "into a freestanding invitation" to "impose additional restrictions on the President's removal authority." *Id.* at 215, 218, 228 (emphasis added; citation omitted). And while respondents focus heavily on *other* agencies such as the Federal Reserve Board, they ignore *Seila Law*'s observation that the Federal Reserve's tenure protection presents a distinct question with a unique historical pedigree. See *id.* at 222 n.8. That question is not at issue here.

The agencies actually at issue here—the National Labor Relations Board (NLRB) and Merit Systems Protection Board (MSPB)—wield substantial executive power in executing federal labor and civil-service laws, including the power to conduct agency adjudications, to make or block rules, and to litigate in federal court on behalf of the government. Under *Seila Law*, those agencies cannot fit into the narrow exception of *Humphrey's Executor*.

Respondents also ignore that reinstating removed principal officers is not a routine restoration of the status quo. Rather, it is a grave affront to the President's ability to run the Executive Branch and exceeds the limits on district courts' equitable powers. Respondents do not dispute that this Court has squarely held that a court of equity may not "restrain an executive officer from making a wrongful removal," *White* v. *Berry*, 171 U.S. 366, 377 (1898) (citation omitted); that no federal statute grants courts the authority to issue such an order; or that, until this Administration, no federal court had issued an order reinstating a principal executive officer fired by the President. Respondents instead argue that courts have traditionally tried the title to

public offices in actions for writs of mandamus. But respondents cannot "defend the district court's exercise of its *equitable* remedial authority by pointing to a distinct *legal* remedy" that "the district court never invoked"—not least because mandamus carries heightened procedural and substantive standards they cannot meet. *Bessent* v. *Dellinger*, 145 S. Ct. 515, 517 (2025) (Gorsuch, J., dissenting).

Moreover, the costs of such reinstatements are immense. "The moment that [the President] loses confidence" in an executive officer, "he must have the power to remove [the officer] without delay." *Myers* v. *United States*, 272 U.S. 52, 134 (1926). Forcing the President to entrust his executive power to respondents for the months or years that it could take the courts to resolve this litigation would manifestly cause irreparable harm to the President and to the separation of powers. The President would lose control of critical parts of the Executive Branch for a significant portion of his term, and he would likely have to spend further months voiding actions taken by improperly reinstated agency leaders. By contrast, in the unlikely event that respondents were to ultimately prevail, they could seek the traditional remedy of back-pay. In short, their asserted harms during the pendency of litigation are remediable, while the President's are not. The Court should stay the district court's judgments and grant certiorari before judgment.

A. Article II Empowers The President To Remove NLRB And MSPB Members At Will

1. Respondents rely chiefly on *Humphrey's Executor*, which they contend authorizes Congress to grant tenure protection to "multimember agencies," Wilcox Opp. 1, or "multimember boards or commissions," Harris Opp. 2. But *Seila Law* forecloses respondents' position. *Seila Law* described *Humphrey's Executor* as a narrow "exceptio[n]" to the "general rule" of "unrestricted removal." *Seila Law*, 591 U.S. at

215. The Court explained that "the contours of the *Humphrey's Executor* exception depend upon the characteristics of the agency before the Court"—*i.e.*, the FTC "as it existed in 1935." *Ibid.* It explained that the exception applied only to "'officers of the kind * * * under consideration'" there—*i.e.*, to members of "a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions and was said not to exercise any executive power." *Id.* at 215-216 (citation omitted). The Court made clear that the exception represented the "'outermost constitutional limi[t] of permissible congressional restrictions'" on the President's power to remove principal executive officers, and it declined "to extend" that precedent any further. *Id.* at 218, 220 (citation omitted). *Seila Law*, in short, establishes that the *Humphrey's Executor* exception extends, at most, to certain "multimember expert agencies *that do not wield substantial executive power*," *id.* at 218 (emphasis added)—not, as respondents now contend, to multimember agencies in general.

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

Respondents cite (Wilcox Opp. 14; Harris Opp. 11) the remedial portion of *Seila Law*, in which three Justices stated that their "severability analysis does not foreclose Congress from pursuing alternative responses to the problem—for example, convert-

ing the [Consumer Financial Protection Bureau] into a multimember agency." 591 U.S. at 237 (opinion of Roberts, C.J.). But that statement means only what it says: The Court's "severability analysis" did not "foreclose" Congress from reconstituting the CFPB as a multimember agency. *Ibid.* The Court did not purport to decide in advance whether Article II would allow Congress to grant tenure protection to such a hypothetical multimember agency if Congress's "alternative respons[e]," *ibid.*, did not *also* involve limiting the CFPB's powers to go no further than the 1935 FTC's powers. *Seila Law*'s tentative observation that "there may be means of remedying the defect in the CFPB's structure," *ibid.*, cannot reasonably be read to override its detailed description of the limits on *Humphrey's Executor*'s scope, see *id.* at 215-217 (majority opinion).

Respondents note (Wilcox Opp. 12-13; Harris Opp. 15-16) that Congress has created independent multimember agencies since at least the Interstate Commerce Commission in 1887. But the constitutional text controls over contrary historical practice, see *INS* v. *Chadha*, 462 U.S. 919, 945-959 (1983), and practice from the Founding era controls over practice from long afterwards, see *Powell* v. *McCormack*, 395 U.S. 486, 541-547 (1969). This Court accordingly explained in *Myers* that late-19th-century legislative practice could not overcome Article II and the "decision of 1789"—especially given that the practice "ha[d] never been acquiesced in by either the executive or the judicial department." 272 U.S. at 142, 176; see *id.* at 171-176. And the Court in *Seila Law* reaffirmed the "general rule" of "unrestricted removal," 591 U.S. at 215, rejecting the dissenting Justices' reliance on the same history that respondents now invoke, see *id.* at 275-276 (opinion of Kagan, J.).

Contrary to Harris's suggestion (Opp. 6), there is nothing untoward about giving *Humphrey's Executor* a "narro[w]" reading—not least when this Court has already

done so. "When determining how broadly or narrowly to read a precedent," this Court "will often consider how the precedent squares with the Constitution's text and history." *United States* v. *Rahimi*, 602 U.S. 680, 730 (2024) (Kavanaugh, J., concurring).[1] Because "text, first principles, the First Congress's decision in 1789, [and] *Myers*" all establish that the President may remove executive officers at will, this Court has confined *Humphrey's Executor* to "'officers of the kind'" considered there and has repeatedly declined to "extend" that precedent to "novel context[s]." *Seila Law*, 591 U.S. at 204, 215, 228 (citation omitted); see *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477, 483 (2010) (declining to extend *Humphrey's Executor* to "a new situation"). Wilcox contends (Opp. 2) that *stare decisis* requires respecting *Humphrey's Executor*. But *stare decisis* cuts the other way: respondents cannot adopt an excessively narrow reading of *Seila Law*—treating it as a case only about single-headed agencies while ignoring all its reasoning—while insisting on a broad reading of *Humphrey's Executor* that *Seila Law* already rejected.

Respondents' disagreement about the extent of executive power involved underscores their problems in pigeonholing the agencies at issue into the narrow *Humphrey's Executor* exception. Wilcox does not dispute that the NLRB's authority exceeds the 1935 FTC's, yet Harris argues (Opp. 3) that the MSPB "exercises far less significant authority." Harris is wrong. While the 1935 FTC could order violators to "cease and desist" from unlawful practices, *Humphrey's Executor*, 295 U.S. at 620, the MSPB may impose severe disciplinary sanctions—including suspension, removal,

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[1] See, *e.g.*, *SEC* v. *Jarkesy*, 603 U.S. 109, 136-140 (2024) (narrowing *Atlas Roofing Co.* v. *OSHRC*, 430 U.S. 442 (1977)); *Vega* v. *Tekoh*, 597 U.S. 134, 152 (2022) (narrowing *Miranda* v. *Arizona*, 384 U.S. 436 (1966)); *Carson* v. *Makin*, 596 U.S. 767, 788-789 (2022) (narrowing *Locke* v. *Davey*, 540 U.S. 712 (2004)); *Egbert* v. *Boule*, 596 U.S. 482, 491 (2022) (narrowing *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971)); *Arizona Christian School Tuition Organization* v. *Winn*, 563 U.S. 125, 130 (2011) (narrowing *Flast* v. *Cohen*, 392 U.S. 83 (1968)).

debarment, and civil penalties—upon federal employees. 5 U.S.C. 1215(a)(3)(A). While the 1935 FTC had to go to court to seek enforcement, see *Humphrey's Executor*, 295 U.S. at 620-621, the MSPB may enforce its own orders, see 5 U.S.C. 1204(a)(2) and (e)(2). And while *Humphrey's Executor* did not allude to any authority that 1935 FTC Commissioners could exercise unilaterally, MSPB members may unilaterally stay executive agencies' personnel actions—as Harris did when she blocked the firing of thousands of probationary employees without even giving the affected agency the opportunity to comment. See Appl. 34. Upholding respondents' tenure protection would require extending *Humphrey's Executor*—the very step that *Seila Law* bars courts from taking.

2. Respondents next argue (Wilcox Opp. 17; Harris Opp. 9) that Congress may insulate all primarily adjudicatory bodies from at-will presidential removal, and that the NLRB and MSPB so qualify. That putative exception too would vastly expand *Humphrey's Executor* beyond its narrow bounds, and it would contradict other precedents as well. Agency adjudications are "exercises of * * * the 'executive Power.'" *City of Arlington* v. *FCC*, 569 U.S. 290, 305 n.4 (2013). Article II accordingly requires "political accountability and effective oversight for adjudication," just like for other exercises of the executive power. *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 20 (2021). Agency adjudicators "must remain 'dependent on the President,'" *id.* at 17 (citation omitted), who "may consider [a] decision after its rendition as a reason for removing the officer," *Myers*, 272 U.S. at 135.

Regardless, respondents' proposed exception does not even fit their agencies, because the NLRB and MSPB are not purely adjudicatory bodies. The NLRB has the power to issue rules, the MSPB has the power to invalidate rules issued by the Office of Personnel Management, and both agencies have the power to litigate in federal

court. See Appl. 15-18. Respondents describe (Wilcox Opp. 31; Harris Opp. 3) the NLRB and MSPB as "principally" or "predominantly" adjudicatory entities, but "[c]ourts are not well-suited to weigh the relative importance" of an agency's various functions. *Collins* v. *Yellen*, 594 U.S. 220, 253 (2021). The scope of the President's removal power accordingly cannot "hing[e] on such an inquiry." *Ibid.*

Moreover, even on its own terms, respondents' special rule for adjudicators is erroneous. Respondents argue (Wilcox Opp. 2; Harris Opp. 19-20) that tenure protection is essential to the fairness of agency adjudications. But executive officers have conducted adjudications "since the beginning of the Republic." *Arlington*, 569 U.S. at 305 n.4. Until the 20th century, it was common for executive officers exercising such functions to be subject to at-will removal. See Harold J. Krent, *Presidential Control of Adjudication Within The Executive Branch*, 65 Case W. Reserve L. Rev. 1083, 1089-1091 (2015). Even today, the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, allows agency heads—including heads without tenure protection—to preside at hearings in lieu of administrative law judges, see 5 U.S.C. 556(b)(1)-(2), and to issue final decisions, see 5 U.S.C. 557(b).

Respondents also err in claiming that agency adjudicators serve as "neutral arbiter[s]" (Wilcox Opp. 2) who do not "set policy" (Harris Opp. 3). Agencies "are generally free to develop regulatory standards 'either by general legislative rule or by individual order' in an adjudication." *FDA* v. *Wages & White Lion Investments, LLC*, No. 23-1038, slip op. 19 (Apr. 2, 2025) (citation omitted); see, *e.g.*, *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 294 (1974) (adjudications often "serve as vehicles for the formulation of agency policies") (citation omitted). Moreover, even if respondents' duties were limited to "apply[ing] the law" (Wilcox Opp. 2), Article II would *still* entitle the President to remove them at will. Without that power, the President could

not fulfill his own duty to "take Care" that respondents are "faithfully execut[ing]" the law. U.S. Const. Art. II, § 3; see *Seila Law*, 591 U.S. at 214.

Contrary to respondents' contention (Wilcox Opp. 1; Harris Opp. 1), *Wiener* v. *United States*, 357 U.S. 349 (1958), does not establish an exception to the President's removal power for adjudicators. *Seila Law* treated *Wiener* as an "appli[cation]" of *Humphrey's Executor*, not as an additional exception to the removal power. *Seila Law*, 591 U.S. at 216. The NLRB's and MSPB's adjudicatory powers also far exceed those of the War Claims Commission in *Wiener*. The Commission was a temporary body that awarded a government benefit (payment from a compensation fund). See 357 U.S. at 349-350. The NLRB and MSPB, by contrast, are permanent agencies whose orders can deprive individuals of liberty and property. See, *e.g.*, 29 U.S.C. 160(c) (NLRB's authority to award back pay); 5 U.S.C. 1215(a)(3)(A) (MSPB's authority to impose debarment and civil penalties).

3. Respondents argue (Wilcox Opp. 2; Harris Opp. 1) that ruling for the government would necessarily invalidate removal restrictions for the Board of Governors of the Federal Reserve System. See 12 U.S.C. 242. But that distinct question is not presented here. This Court has stated that "financial institutions like the * * * Federal Reserve" may be able to "claim a special historical status." *Seila Law*, 591 U.S. at 222 n.8. If there is an "exception" to the President's removal power for the Federal Reserve—a question that this Court need not decide, as in *Seila Law*—it would be "an historical anomaly" that reflects "the unique function of the Federal Reserve with respect to monetary policy." *PHH Corp.* v. *CFPB*, 881 F.3d 75, 192 n.17 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting). The Federal Reserve is "not a model or precedent" for "a vast independent regulatory state." *Ibid.*; see *CFPB* v. *Community Financial Services Ass'n of America, Ltd.*, 601 U.S. 416, 467 n.16 (2024)

(Alito, J., dissenting) (The Federal Reserve "is a unique institution with a unique historical background.").

Respondents also analogize (Wilcox Opp. 2; Harris Opp. 15) the NLRB and MSPB to tenure-protected Article I tribunals like the Tax Court and the Court of Appeals for the Armed Forces. But this Court has distinguished such tribunals from administrative agencies. For example, the Court has explained that administrative agencies exercise executive power, see *Arlington*, 569 U.S. at 305 n.4, but has stated (rightly or wrongly) that Article I tribunals "exercise the judicial power," *Freytag* v. *Commissioner*, 501 U.S. 868, 889 (1991). Relatedly, the Court has held that free-standing administrative agencies constitute "Departments" for purposes of the Appointments Clause, see *Free Enterprise Fund*, 561 U.S. at 511, but that entities like the Tax Court are "Courts of Law," see *Freytag*, 501 U.S. at 892. And the Court has held that Article III allows it to hear appeals from the Court of Appeals from the Armed Forces, see *Ortiz* v. *United States*, 585 U.S. 427, 431 (2018), but has distinguished appeals from "adjudicative bodies in the Executive Branch * * * advancing an administrative (rather than judicial) mission," *id.* at 448. Whether or not Congress may insulate Article I tribunals from removal—another question that the Court need not resolve in these cases—those tribunals do not serve as precedents for regulatory agencies such as the NLRB and MSPB.

B. The District Court's Remedies Exceeded Its Authority

The government is independently likely to succeed in showing that the district court exceeded its remedial authority. Respondents offer no convincing response to the long line of precedents establishing that "a court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee." *White*, 171 U.S. at 377 (citation omitted); see, *e.g.*, *In re Sawyer*, 124 U.S.

200, 210 (1888). They dismiss those precedents as "outdated," Wilcox Opp. 20, and state that "'much water has flowed over the dam'" since then, Harris Opp. 26 (brackets and citation omitted). That response is at odds with their insistence that *Humphrey's Executor* circa 1935 must be given the fullest *stare decisis* effect, never mind intervening precedents cabining it. Nor do respondents square their eagerness to jettison cases like *White* with their insistence (Wilcox Opp. 2) that "precedents can't be casually cast aside on the emergency docket." The courts below remained bound by those precedents despite any intervening events, see *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997), and the government has "a 'likelihood of success' '*under existing law*,'" Harris Opp. 2 (citations omitted).

Contrary to respondents' suggestion (Wilcox Opp. 21; Harris Opp. 4), *Service* v. *Dulles*, 354 U.S. 363 (1957), *Vitarelli* v. *Seaton*, 359 U.S. 535 (1959), and *Sampson* v. *Murray*, 415 U.S. 61 (1974), do not support the district court's injunctions. Those cases all involved *employees*, not principal executive officers. See *Service*, 354 U.S. at 372; *Vitarelli*, 359 U.S. at 536; *Sampson*, 415 U.S. at 62. *Service* also considered only "the validity of the termination," 354 U.S. at 372, and *Vitarelli* similarly focused on "the validity of [the] discharge," 359 U.S. at 538; neither decision addressed the propriety of reinstatement as a remedy. *Sampson*, meanwhile, explained that the reviewability of personnel decisions in federal courts "does not, without more, create the [reinstatement] authority" that "was held lacking in cases such as *White*." 415 U.S. at 72. *Sampson* additionally required the employee, "at the very least," to satisfy a heightened standard to overcome the "factors cutting against" injunctive relief "in Government personnel cases." *Id.* at 84. Respondents do not satisfy even the usual test for injunctive relief, much less *Sampson*'s heightened standard.

Equally mistaken is respondents' claim (Wilcox Opp. 3; Harris Opp. 28) that

the government waived its objections to the district court's declaratory judgments. In fact, respondents have consistently sought reinstatement to office, and the government has just as consistently objected to that relief, even if provided through a declaratory judgment.[2] In the very footnote on which respondents rely (Wilcox Opp 22; Harris Opp. 4), the government stated that it "contested any declaratory judgment" that provides "reinstatement." Gov't C.A. Br. 40 n.7. To the extent respondents now mean to argue that the district court could have granted a declaratory judgment that stopped short of ordering their reinstatement, they do not explain what such a judgment would look like, why this Court should craft such a judgment in the first instance, or how such an abstract pronouncement would be jurisdictionally proper in the absence of any other concrete relief.

Respondents also contend (Wilcox Opp. 20; Harris Opp. 26-27) that the district court could have issued writs of mandamus restoring them to office. But this Court reviews the judgments that lower courts actually issued, not hypothetical relief. The district court issued injunctions and declaratory judgments, not writs of mandamus. Respondents may not defend the equitable remedies that the court granted by pointing to a distinct legal remedy that it did not grant.

Respondents, in any event, have no right to mandamus. First, as Harris concedes (Opp. 31), a court may award mandamus only if the litigant satisfies the high bar of showing a "clear and indisputable" right to relief. *United States ex rel. Bernardin* v. *Duell*, 172 U.S. 576, 582 (1899). Respondents have not cleared that hurdle. See Appl. App. 14a (Rao, J., dissenting). Second, in deciding whether to award man-

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[2] See, *e.g.*, Gov't C.A. Br. 40 (contesting "declar[atory]" relief); Gov't *Wilcox* C.A. Stay Mot. 9 (contesting "declaratory relief"); Gov't *Harris* C.A. Stay Mot. 8 (contesting "declaratory relief"); Gov't *Wilcox* D. Ct. Stay Mot. 3 (contesting "declaratory" relief); Gov't *Harris* D. Ct. Stay Mot. 4 (contesting "declaratory judgment").

damus, a court must consider "separation of powers" principles. *Cheney* v. *U.S. District Court*, 542 U.S. 367, 381 (2004). As the government has explained (Appl. 21-23), and as respondents do not seriously dispute, an order requiring the President to entrust executive power to a fired principal executive officer raises grave separation-of-powers concerns. Third, respondents "have failed to identify a single case in which mandamus has been granted when an [executive] officer contests his removal by the President." Appl. App. 14a-15a (Rao, J., dissenting). They cite (Wilcox Opp. 3; Harris Opp. 4) *Marbury*, which Chief Justice Taft already distinguished as involving "an office [of] the District of Columbia," not an executive office of the United States. *Myers*, 272 U.S. at 143. The fact that respondents' requested remedy "is without a precedent" "is of much weight against it." *Mississippi* v. *Johnson*, 4 Wall. 475, 500 (1867).

Harris complains (Opp. 36) that back pay is not "a sufficient remedy." But that is the remedy that executive officers traditionally have sought when challenging their removals. For good reason: Officers do not have a personal stake in maintaining the powers that come with their office, above and beyond their salaries. See Appl. 35-36. Regardless, "the question of whether a given remedy is adequate is a legislative determination that must be left to Congress, not the federal courts." *Egbert* v. *Boule*, 596 U.S. 482, 498 (2022). That is particularly true here, where the reinstatement remedy that respondents seek would severely intrude on the President's Article II powers.

C. The Equities Support A Stay

1. Respondents argue that "there is no immediate urgency here," Wilcox Opp. 23, and that the "government will not suffer irreparable harm in the few short months in which this case is decided in the D.C. Circuit," Harris Opp. 34. But this Court has recognized that "sudden removals" are sometimes "necessary," *United States* v. *Germaine*, 99 U.S. 508, 510 (1879), and that the President "must have the

power to remove [executive officers] without delay," *Myers*, 272 U.S. at 134. Forcing the President to postpone the removal of executive officers for months would "make impossible that unity and co-ordination in executive administration essential to effective action." *Ibid.* The harm to the President is especially acute now, in the early months of his Administration. Without the power to fire holdover officers, the new President could not "shape his administration and respond to the electoral will that propelled him to office." *Collins*, 594 U.S. at 278 (Gorsuch, J., concurring in part). In any event, respondents' prediction of a decision from the D.C. Circuit in "a few short months" is highly questionable, as that court has already granted en banc consideration of the government's stay motion and may well do so again on the merits.

Wilcox errs in suggesting (Opp. 24) that the President's ability to appoint new NLRB members solves the problem. Such appointments require the Senate's advice and consent, which typically take time to secure. In the meantime, Wilcox's reinstatement irreparably harms the President by forcing him to leave the NLRB in the control of the opposing political party. See Appl. 33 (explaining that, with Wilcox, the NLRB would have two Democratic members and one Republican member). It also irreparably harms the President by forcing him to continue entrusting executive power to an officer who has not "been operating in a manner consistent with [his] objectives" and whom he does not trust to "fairly evaluate matters" or to "faithfully execute" federal labor law. *Wilcox* Compl. Ex. A at 2-3.[3]

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[3] Wilcox additionally notes (Opp. 25) that the government has not yet sought a stay in *Grundmann* v. *Trump*, No. 25-cv-425, 2025 WL 782665 (D.D.C. Mar. 12, 2025), a case where a district court blocked the President's removal of a member of the Federal Labor Relations Authority. But when the district court issued that order, the government's stay motions in these cases were already pending before the D.C. Circuit. See Gov't *Wilcox* C.A. Stay Mot. (Mar. 10, 2025); Gov't *Harris* C.A. Stay Mot. (Mar. 6, 2025). The government reasonably decided to wait for decisions in these cases before seeking relief in *Grundmann*.

2. Respondents identify no competing equities that justify denying a stay. They assert an interest in "resuming [their] work," Wilcox Opp. 26, and "performing [their] duties," Harris Opp. 36. Article II, however, vests the executive power in the President, not in respondents. NLRB and MSPB members, like other executive officers, "ought to be considered as the assistants or deputies of the chief magistrate." *The Federalist* No. 72, at 487 (Jacob E. Cooke ed., 1961) (Alexander Hamilton). They wield the President's power on the President's behalf. They have no personal interest in wielding executive power at all, and they certainly have no legitimate interest in continuing to wield that power over the President's objection. See Appl. 35-36.

Respondents also observe (Wilcox Opp. 1; Harris Opp. 5) that their removals would leave the NLRB and MSPB without quorums. But it is for the President, not the courts, to decide whether it is better to deprive those agencies of quorums than to continue entrusting executive power to respondents. The creation of quorums to take actions that the President opposes is itself an irreparable harm to the government. If this Court ultimately sides with the government, moreover, those quorums might be retroactively vitiated, and courts or the agencies themselves might have to undo the actions taken during this litigation by agency heads who were wrongfully reinstated and could not exercise executive power. See Appl. 35; Coalition for a Democratic Workplace Amicus Br. 21-25.

D. This Court Should Grant Certiorari Before Judgment

1. Observing that this Court recently denied certiorari in two recent cases concerning the constitutionality of tenure protections for members of the Consumer Product Safety Commission, respondents argue (Wilcox Opp. 20 n.6; Harris Opp. 2 n.1) that the questions presented are not certworthy. See *Leachco, Inc.* v. *CPSC*, No. 24-156, 2025 WL 76435 (Jan. 13, 2025); *Consumers' Research* v. *CPSC*, 145 S. Ct. 414

(2024) (No. 23-1323). But the argument for certiorari in *Wilcox* and *Harris*, which involve direct challenges to removals, is far stronger than in *Leachco* and *Consumers' Research*, which involved claims that removal restrictions rendered other agency actions unlawful. *Leachco* arose in a preliminary-injunction posture; the court of appeals affirmed the denial of preliminary relief for lack of irreparable harm and discussed the merits only briefly. See Br. in Opp. at 7-8, *Leachco*, *supra* (No. 24-156). The government argued that *Leachco* "would not be an appropriate vehicle in which to take up" the constitutional question. *Id.* at 7. In *Consumers' Research*, meanwhile, private parties contested the agency's processing of Freedom of Information Act requests on the ground that Congress had restricted the President's power to remove the agency's members. See Br. in Opp. at 2, *Consumers' Research*, *supra* (No. 23-1323). The government questioned the parties' standing and argued that their "highly artificial suit" was an "exceptionally poor vehicle for deciding a constitutional question of this magnitude." *Id.* at 10.

In this case, by contrast, the President has removed respondents from the NLRB and MSPB, and respondents have sued the President to contest their removal. The questions presented have become more important and more urgent now that the President has exercised his removal power. And these cases do not involve any of the vehicle problems that plagued *Leachco* and *Consumers' Research*. These cases plainly warrant this Court's review.

2. Respondents additionally argue that "there is no emergency warranting certiorari before judgment," Wilcox Opp. 33, and that "there is no need for this Court to hear this case on a rushed timetable," Harris Opp. 39. But after the D.C. Circuit motions panel granted the government a stay, Wilcox told the en banc court that its intervention was "urgently necessary," that "the practical consequences of delay are

severe and immediate," and that "[t]o allow multiple federal agencies to persist in this state of uncertainty * * * is unsustainable." Wilcox C.A. En Banc. Pet. 1-2. Harris similarly argued the en banc court's "intervention [wa]s urgently needed," that there was a "pressing need" for "immediate guidance," and that only an "authoritative" decision "can quell the uncertainty." Harris C.A. En Banc Pet. 1, 3, 18. The lower courts, too, recognized the importance of resolving this case promptly; the district court entered final judgment in each case just one day after the hearing, and the court of appeals set highly expedited briefing schedule. See Appl. 27-28; see also Appl. App. 5a (Henderson, J., dissenting) ("Only the Supreme Court can decide the dispute and, in my opinion, the sooner, the better.").

Denying certiorari before judgment could significantly delay the eventual resolution of this dispute. Most notably, if the D.C. Circuit merits panel rules in the government's favor, the full court will likely again rehear the case en banc. Even without en banc review, it might take months for the D.C. Circuit to issue a decision, for the losing party to file a petition for a writ of certiorari, and for this Court to consider and grant that petition. By contrast, if this Court grants certiorari before judgment, it could resolve the questions presented far more promptly, including after hearing argument in a special siting in May or September. See *Citizens United* v. *FEC*, 558 U.S. 310 (2010) (reargued September 2009; decided January 2010); *McConnell* v. *FEC*, 540 U.S. 93 (2003) (argued September 2003; decided December 2003); *Hudson* v. *Michigan*, 547 U.S. 586 (2006) (reargued May 2006; decided June 2006); *Raines* v. *Byrd*, 521 U.S. 811 (1997) (argued May 1997; decided June 1997).

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In both *Wilcox* and *Harris*, this Court should stay the judgment of the U.S. District Court for the District of Columbia pending the resolution of the government's appeal to the U.S. Court of Appeals for the D.C. Circuit and pending any proceedings in this Court. The Court should also construe this application as a petition for a writ of certiorari before judgment and grant the petition.

Respectfully submitted.

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