

No. 25-1110

IN THE
Supreme Court of the United States

CATHY A. HARRIS,
Petitioner,
v.

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

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the D.C. Circuit**

**AMICUS CURIAE BRIEF OF HAWAII,
20 OTHER STATES, AND THE DISTRICT OF
COLUMBIA IN SUPPORT OF PETITIONER**

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INTERESTS OF AMICI¹

Amici are the States of Hawai'i, Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia. Amici have an interest in ensuring that the national government implementing the country's laws and administering vital federal programs is staffed by competent, attentive, and unbiased civil servants.

Since the 1880s, the United States has cultivated the ability and impartiality of its workforce by developing a "merit system" for most federal employment. And since 1978, the watchdog of the federal merit system has been an independent, bipartisan agency that adjudicates "particularly serious" personnel actions against federal employees: the Merit Systems Protection Board (MSPB). *Kloeckner v. Solis*, 568 U.S. 41, 44 (2012).

Defendants' actions, and the D.C. Circuit's majority opinion below, will demolish the independence at the core of the MSPB's design—risking Amici's reliance on the steady and dependable delivery of government services to Amici and their residents. And in ignoring our nation's deeply rooted tradition of ensuring the relative independence of adjudicatory bodies like the MSPB, the decision below imperils the stability of our legal system and threatens to unwind the structure of numerous other adjudicatory federal bodies that Amici's residents rely upon.

¹ Pursuant to Supreme Court Rule 37.2, amici curiae notified counsel of record for all parties of their intent to file this brief at least 10 days before the due date for the brief.

SUMMARY OF ARGUMENT

The Court should grant Harris’ petition and reverse the D.C. Circuit’s decision. The majority—over a dissent by Judge Pan—wrongly concluded that Congress is powerless to restrict “the President’s ability to remove MSPB members” without cause, in part because the MSPB’s powers exceed those of “court-like adjudication . . . bodies such as the War Claims Commission.” Pet. App. 38a-39a.

That is incorrect. The MSPB is a quintessentially adjudicatory body with very similar powers to the War Claims Commission, for whose Commissioners this Court rejected the notion of a presidential at-will removal power in *Wiener v. United States*, 357 U.S. 349 (1958). The MSPB’s mission, as the majority recognized, is to adjudicate “disputes between federal employees and their employing agencies.” Pet. App. 12a. In doing so, it functions far more like a court than a regulator. It must wait for cases to come before it, decide those cases according to law and based on the evidence presented, and its decisions are generally final unless appealed to an Article III court.

A properly functioning and impartial MSPB is extremely important to Amici. Although Amici themselves do not appear before the MSPB, federal civil servants who reside within Amici’s borders do. And when those civil servants appear before the MSPB, it is because they claim to have suffered adverse employment action, in violation of the civil service laws, at the hands of their employers—the executive branch agencies of the United States. Due process guarantees those civil servants a fair and impartial hearing, free from the appearance or reality of impropriety. But when the head of the executive branch (whose agencies are parties adverse to the

employees in MSPB disputes) is free to hang the “Damocles’ sword” of removal over MSPB members’ heads, a fair and impartial hearing is anything but guaranteed. Not only does a presidential “at-will” removal power hang a dark cloud over every MSPB hearing, it also leaves the President free to press his finger on the decisionmaking scales in particular cases in which he has specific interests. That kind of pressure is untenable.

The MSPB is important to Amici for other reasons, too. Its role in safekeeping and enforcing federal merit system principles is vital in ensuring the continuation of efficient, competent, and impartial services across the panoply of federal agencies that the States work alongside and rely upon. Amici therefore suffer when the federal workforce is less competent and less dependable, which is the inevitable result of a less effective and less impartial MSPB, in whom federal civil servants have less confidence.

The D.C. Circuit got it wrong when it held that the MSPB did not fall into the exception to the President’s general removal power for adjudicatory, court-like agencies recognized in *Wiener*. If that ruling stands, it threatens not only the MSPB, but other similar adjudicatory agencies and legislative courts, like the Tax Court and the Court of Appeals for Veterans Claims. As Judge Pan noted in her dissent, “the MSPB is so clearly adjudicatory and free of quintessential executive responsibilities that if it exercises ‘substantial executive power,’” Pet. App. 61a, then the same could be said for virtually every other adjudicatory agency.

ARGUMENT

I. The MSPB Plays a Vital Role in Upholding Merit System Principles in Federal Agencies

The MSPB dates back nearly fifty years, but the merit system it protects has its origin in the nineteenth century. “[G]rass-roots sentiment for ‘Civil Service reform’ began to grow” after the Civil War and was “brought to a head” when President Garfield was assassinated by a “dissatisfied office seeker” in 1881. *Arnett v. Kennedy*, 416 U.S. 134, 148 (1974). Congress subsequently enacted the Pendleton Act, which “created the Civil Service Commission [(CSC)] and provided for the selection of federal civil servants on a merit basis by competitive examination.” *Bush v. Lucas*, 462 U.S. 367, 381 (1983); see *Frazier v. Merit Sys. Prot. Bd.*, 672 F.2d 150, 153 (D.C. Cir. 1982) (“[T]he Pendleton Act . . . sought to replace the ‘spoils system’ . . . with a ‘merit system’ that would base selection and promotion of most civil servants on competence.”).

Over the years, additional legislation, regulations, and executive orders created “an elaborate, comprehensive scheme” of substantive and procedural employment protections for federal civil servants. *Bush*, 462 U.S. at 385. But concerns about the CSC’s “dual responsibility” for managing “an increasing proportion of the federal workforce” and implementing “a wide variety of merit system rules without guidance from Congress” ultimately led President Carter to propose the creation of an “independent agency . . . charged with protecting the merit system principles and adjudicating conflicts between federal workers and their employing agencies.” *Frazier*, 672 F.2d at 153–54. The Civil Service Reform Act of 1978 (CSRA)

abolished the CSC and replaced it with the MSPB and the Office of Personnel Management. *Id.* at 154.

The MSPB’s foremost purpose is to protect federal employees from “arbitrary” and “improper action[.]” *Bush*, 462 U.S. at 385. The MSPB “inherited the CSC’s adjudication functions and provides due process to employees as an independent, third-party quasi-judicial authority for employee appeals of adverse actions . . . and retirement decisions.”² As such, the MSPB’s primary role is to hear and adjudicate disputes between federal employers and employees. See 5 U.S.C. § 1204(a)(1); *Mouton-Miller v. Merit Sys. Prot. Bd.*, 985 F.3d 864, 869 (Fed. Cir. 2021). In the most recent fiscal year for which data is available, the MSPB decided over 7,000 cases arising from dozens of federal agencies.³

In adjudicating employees’ appeals, the MSPB is responsible for upholding the merit system principles. The CSRA included “the first statutory expression of the merit system principles that ha[d] evolved since the creation of the [CSC].” *Frazier*, 672 F.2d at 154; see 5 U.S.C. § 2301. These principles “are essential management practices that help ensure the Federal Government is able to recruit, select, develop, and maintain a high-quality workforce and thereby reduce staffing costs and improve organizational results for the American people.” Strategic Plan at 1. The merit system principles require, among other things, “[r]ecruitment . . . from qualified individuals” where “selection and advancement [is] determined solely on

² U.S. Merit Sys. Prot. Bd., Strategic Plan for FY 2022–2026 2 (2022) (Strategic Plan); see *Frazier*, 672 F.2d at 155.

³ U.S. Merit Sys. Prot. Bd., Annual Report for FY 2024 4, 6-8, 10-11 (2025).

the basis of relative ability, knowledge, and skills[.]” 5 U.S.C. § 2301(b)(1). They also mandate fair and equitable pay and treatment, see *id.* § 2301(b)(2)-(3), and protect employees against, among other things, “arbitrary action, personal favoritism, or coercion for partisan political purposes,” *id.* § 2301(b)(8)(A). In return, the merit system principles call on employees to “maintain high standards of integrity, conduct, and concern for the public interest.” *Id.* § 2301(b)(4). As such, the principles “serve as a lofty ‘constitutional preamble’ to the law of federal employment and a reflection of the cornucopia of policy goals envisioned by the modern civil service reformers.”⁴

States and their residents reap the benefits of a robust and functional federal merit system mediated by the MSPB. The merit system ensures that hiring is based on knowledge and skill, that promotion is based on demonstrated competence, and that key services are delivered across presidential administrations without political favoritism or pressure.⁵ As Congress explained when it enacted the CSRA, the merit system principles were established to implement “the policy of the United States . . . to provide the people of the United States with a competent, honest, and productive Federal work force[.]” CSRA, Pub. L. No. 95-454, § 3, 92 Stat. 1111, 1112 (1978). And it is that “competent, honest, and productive Federal workforce” that allows the federal government to properly function.

⁴ The Civil Service and the Statutory Law of Public Employment, 97 Harv. L. Rev. 1619, 1633 (1984).

⁵ Donald F. Kettl & Daniel Chenok, *The Federal Workplace Is Changing Rapidly, But Merit Principles Must Remain Untouched, Gov’t Executive* (Feb. 27, 2023), <https://www.govexec.com/management/2023/02/federal-workplace-changing-rapidly-merit-principles-must-remain-untouched/383339/>.

A properly functioning federal government is vital to Amici, given how the federal and state governments cooperate, coordinate, and complement one another in countless areas, including public health, law enforcement, education, environmental protection, agriculture, transportation, and emergency management. As the beneficiaries of federal programs and as partners to the federal government in improving the welfare of their residents, Amici depend on the work of federal agencies staffed by a capable, stable, and apolitical workforce.

The benefits of the MSPB model are evidenced by its reflection in state and local governments. For example, Hawai‘i law establishes merit appeals boards for the state, counties, and other government employers to hear appeals from certain actions taken under the civil service law. Haw. Rev. Stat. §§ 76-11, 76-14(a), 76-47(a). Similarly, Ohio has a state personnel board of review that hears appeals from final employment decisions relating to employees in the classified state service and supervises civil service commissions at the city and township level. Ohio Rev. Code § 124.03(A)(1)–(2), (4). And, like Congress, many states and local governments have enumerated their own “merit principle policies” to ensure “the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance.” *Arbles v. Merit Appeals Bd.*, 515 P.3d 217, 227–28 (Haw. Ct. App. 2022) (quoting Haw. Rev. Stat. § 76-1).

II. The D.C. Circuit’s Invalidation of For-Cause Removal Protections for MSPB Members Harms Amici and Their Residents

A core facet of the MSPB—a “purely adjudicatory agency” that “functions more like a court than a regulator.” Pet. App. 80a, 59a (Pan, J., dissenting)—is its relative independence.⁶ Indeed, Congress intended for the MSPB to be “an independent adjudicator of federal employment disputes.” *Kloeckner*, 568 U.S. at 44. And to perform that function, a degree of independence is vital: the President’s free and direct control over the MSPB’s members would allow executive Branch officials to evade any consequences for prohibited practices by simply pressuring the Board.

Unsurprisingly, independence has always been part of the MSPB’s design. President Carter’s initial proposal to Congress for an “adjudicatory arm of the new personnel system,” explained that the structure of the new Board would “guarantee independent and impartial protection to employees.”⁷ To ensure this independence and impartiality, Congress adopted President Carter’s suggestion that the MSPB consist of three highly-qualified members from at least two different political parties serving staggered, non-renewable, seven-year terms unless removed “only for inefficiency, neglect of duty, or malfeasance in office.” See *id.*; 5 U.S.C. §§ 1201, 1202.

⁶ See Jimmy Carter, *Federal Civil Service Reform Message to the Congress*, *The American Presidency Project* (Mar. 2, 1978), <https://www.presidency.ucsb.edu/documents/federal-civil-service-reform-message-the-congress>.

⁷ Jimmy Carter, *Civil Service Reform Message*, *supra*.

Particularly for an agency like the MSPB, given its adjudicatory role in employment disputes brought against the executive branch, that structure “reduces the risk of arbitrary decisionmaking and abuse of power, and helps protect individual liberty.” *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 184 (D.C. Cir. 2018) (Kavanaugh, J., dissenting).

The D.C. Circuit’s decision below eviscerates these protections, and in doing so, inflicts multiple harms on Amici and their residents.

First, it diminishes the real-world efficacy of the MSPB and, in turn, the efficacy of the federal agencies whose employees the MSPB serves. “The public has a right to an efficient and effective Government, which is responsive to their needs,” as well as “a right to a Government which is impartially administered.” S. Rep. No. 95-969, 95th Cong., 2nd Sess. 1978. Indeed, “[o]ne of the primary motivations for the 1883 passage of the Pendleton Act was to ensure competent administration of federal programs by creating a merit-based civil service.”⁸ But when the President is permitted to hang “the Damocles’ sword of removal” over members, as a means of influencing their decision-making, *Wiener*, 357 U.S. at 356, the agency’s ability to make impartial, non-arbitrary decisions based on the law is diminished. And if the MSPB is unable to properly uphold the merit system, those that rely on the federal government—not to mention the civil servants who joined the federal workforce in

⁸ David E. Lewis, *Testing Pendelton’s Premise: Do Political Appointees make Worse Bureaucrats?*, 69 Pol. J. 1073, 1086 (2007).

reliance on the proper administration of the merit principles it espouses—suffer the consequences.⁹

Second, and relatedly, permitting the President to remove MSPB members at will, despite Congress’ purposeful insulation of those members, will seriously harm the public’s trust and confidence in the agency’s decisions. It is beyond dispute that the basic due process requirement of “a fair trial in a fair tribunal . . . applies to administrative agencies which adjudicate as well as to courts.” *Withrow v. Larkin*, 421 U.S. 35, 46 (1975). “Not only is a biased decisionmaker constitutionally unacceptable but ‘our system of law has always endeavored to prevent even the probability of unfairness.’” *Id.* (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). Thus, both courts and adjudicatory agencies must be impartial in both reality and appearance because “[t]he appearance of impartiality is an essential manifestation of its reality.” *Dennis v. United States*, 339 U.S. 162, 182 (1950) (Frankfurter, J., dissenting). Impartiality, though, “requires independence, and independence, the Framers realized, requires freedom from the effect of those ‘occasional ill-humors in the society,’ which as Alexander Hamilton put it in *The Federalist* are ‘the influence of particular

⁹ See generally Eloy Oliveira et al., *What Does the Evidence Tell Us About Merit Principles and Government Performance?*, 102 *Pub. Admin.* 668 (2024) (conducting a broad review of evidence and literature and finding that the application of merit principles in government employment is strongly associated with higher performance and lower corruption); see also Pablo Alonso & Gregory B. Lewis, *Public Service Motivation and Job Performance: Evidence from the Federal Sector*, 31 *Am. Rev. Pub. Admin.* 363, 377 (2001) (finding that “a belief that agencies based promotion and pay decisions on performance was positively related to performance”).

conjunctures.” *Id.* (quoting *The Federalist*, No. 78 at 400 (Beloff ed. 1948)).

Removal protections for the MSPB are important not only because it is an adjudicatory agency, but also because the MSPB adjudicates “disputes between federal employees and their employing agencies.” Pet. App. 12a. The D.C. Circuit’s decision allows the President—the head of the executive branch that houses those same employing agencies—total freedom to remove MSPB members at will. Since every case before the MSPB involves an executive branch agency, impartiality is especially significant here, perhaps more so than for any other adjudicatory agency. Without the relative independence that the MSPB’s removal protections ensure, there is a far greater risk that its decisions are tainted with, at bare minimum, the appearance of impartiality.

Third, permitting presidential at-will removal of members of adjudicatory bodies would allow the President, either by actual removal or its threat, to disable the bodies he disfavors, including by stopping them from hearing or ruling on specific cases. That would prevent agencies from carrying out congressionally mandated functions—a serious harm to *Amici* and the civil servants that rely on the MSPB to uphold merit system principles. Although the MSPB currently has two sitting members,¹⁰ the D.C. Circuit’s decision would allow a President to deprive the Board of a quorum if he so chose, essentially disabling it. Recent history provides evidence of the disruption this would cause. Between January 7, 2017, and March 3, 2022, the MSPB lacked a quorum and was unable to

¹⁰ U.S. Merit Sys. Prot. Bd., *Board Members*, <https://www.mspb.gov/about/members.htm> (last visited April 15, 2026).

vote on petitions for review.¹¹ That lack of quorum resulted in a backlog of “approximately 3,800 cases” that took years to clear.¹²

A loss of quorum, or other interference with the work of the MSPB, would be even more concerning today. Over the past year-and-a-half, the executive branch has engaged in massive reductions in force, terminating thousands of civil servants. These mass terminations raised significant legal questions as to whether various agencies had violated civil service or other laws, and resulted in extensive litigation¹³ and huge influxes of cases at the MSPB.¹⁴ In September 2025, against the backdrop of those mass terminations, the Office of Legal Counsel, at the President’s request, issued an opinion essentially dictating how the MSPB should rule on a key issue in cases brought by those recently terminated employees. Pet. 32. That starkly illustrates the risks of the D.C. Circuit’s decision. If it stands, the danger of improper influence

¹¹ U.S. Merit Sys. Prot. Bd., Frequently Asked Questions about the Lack of Quorum Period and Restoration of the Full Board (Mar. 31, 2025), https://www.mspb.gov/FAQs_Absence_of_Board_Quorum_3_31_2025.pdf.

¹² U.S. Merit Sys. Prot. Bd., Annual Performance Plan for FY 2025-2026 (May 30, 2025), https://www.mspb.gov/about/annual_reports/MSPB_APP_for_FY_2025_2026.pdf.

¹³ See, e.g., *Maryland v. United States Dep’t of Agric.*, 777 F.Supp.3d 432 (D. Md. 2025) (challenge to termination of probationary employees across various agencies); *Am. Fed’n of Gov’t Employees, AFL-CIO v. United States Office of Pers. Mgmt.*, 799 F.Supp.3d 967, 974 (N.D. Cal. 2025) (same); *New York v. McMahon*, 784 F.Supp.3d 311 (D. Mass. 2025) (challenge to reduction in force of the U.S. Department of Education).

¹⁴ U.S. Merit Sys. Prot. Bd., Weekly Number of Cases Received in the Regional and Field Offices Fiscal Year 2025, <https://www.mspb.gov/Recent%20ROFO%20Case%20Receipts.pdf>.

on particular claims will be extreme, as “one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter’s will.” *Wiener*, 357 U.S. at 353.

III. For-Cause Removal Protections for Members of Adjudicatory Federal Bodies like the MSPB Are Constitutional

Recognizing the importance of protecting the MSPB’s impartiality, and to guard against the potential ills outlined above, Congress established modest removal protections for MSPB members—they may be removed by the President “only for inefficiency, neglect of duty, or malfeasance in office.” 5 U.S.C. § 1202(d). The Government does not “contend that . . . Harris engaged in any conduct that would support for-cause removal under” 5 U.S.C. § 1202(d). Pet. App. 14a. Instead, it asserts that the President may remove Harris without regard to these statutory provisions because they are unconstitutional. But that puts the President in direct conflict with the expressed will of Congress. And “[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring).

That principle is particularly important here because the MSPB is in effect a purely adjudicatory agency whose mission Congress has explicitly determined requires relative independence from the President. As Judge Pan recognized below, “[n]either this case nor *Slaughter* is about whether the President should be the master of *all* executive power wielded by the federal government.” Pet. App. 45a (emphasis added). There is no dispute that, as a general rule, “the President possesses ‘the authority to remove those

who assist him in carrying out his duties.” *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 215 (2020) (quoting *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 513-14 (2020)). Rather, the question posed by the President’s removal of Harris is much narrower: “whether the Constitution *mandates* that there can be *no exceptions* to that general rule of at-will removal.” Pet. App. 45a (emphasis in original).

The D.C. Circuit failed to recognize that the MSPB falls into the narrowest of exceptions to that general rule for purely adjudicatory agencies. The MSPB is quintessentially an adjudicatory body, tasked with resolving disputes between civil service employees and their agency employers. As such, the Court’s decision and rationale in *Wiener* control here.

In *Wiener*, the Court considered whether “the President could remove a member of an adjudicatory body like the War Claims Commission merely because he wanted his own appointees on such a Commission.” *Wiener*, 357 U.S. at 356. In no uncertain terms, the Court firmly rejected that notion, holding that it was “compelled to conclude that no such power is given to the President directly by the Constitution.” *Id.* The War Claims Commission, the Court explained, “was established as an adjudicating body with all the paraphernalia by which legal claims are put to the test of proof.” *Id.* at 354. Those claims were to be “‘adjudicated according to the law,’ that is, on the merits of each claim, supported by evidence and legal considerations, by a body that was ‘entirely free from the control or coercive influence, direct or indirect,’ of either the executive or the Congress,” *id.* at 355-56 (citation omitted), with “finality of determination,” *id.* at 355.

The MSPB bears all these hallmarks. Adjudicating disputes “consume[s] approximately 95 percent of MSPB members’ time.” Pet. App. 95a. It decides those disputes on the merits of each claim, according to the law, Pet. App. 61a, and as the district court below explained, it does not “possess its own rulemaking authority except in furtherance of its judicial functions.” Pet. App. 107a. As in *Wiener*, the fact that Congress chose to entrust employment disputes to the jurisdiction of an administrative agency rather than a court does “not alter the intrinsic judicial character of the task with which the [MSPB] was charged.” *Wiener*, 357 U.S. at 356. But unlike in *Wiener*, where “nothing was said in the [War Claims] Act about removal” of War Claims Commissioners, here Congress made explicit that it intended for MSPB members to be free from the “control or coercive influence,” *id.* at 355, of the executive branch. See 5 U.S.C. § 1202. That puts the MSPB on even firmer constitutional footing than the War Claims Commission because here, the President’s direct conflict with Congress means his power is at its “lowest ebb.” *Youngstown Sheet & Tube Co.*, 343 U.S. at 637 (Jackson, J., concurring).

Wiener also remains good law regardless of the fate of *Humphrey’s Executor v. United States*, 295 U.S. 602 (1932). Although the *Wiener* Court referenced *Humphrey’s Executor* and its rationale, *Wiener* is based on a different guiding principle—that adjudicatory agencies whose task is of an “intrinsic judicial character” have a particular need for independence from the executive and legislative branches. That principle pre-dates *Humphrey’s Executor* and is independently valid. See Pet. 20-21; see also Pet. 13 (referencing various remarks during oral argument in *Trump v. Slaughter*, No. 25332 (Dec. 8, 2025), suggesting that overruling *Humphrey’s Executor* does not require overruling *Wiener*).

Just as significantly, the D.C. Circuit’s ruling, by failing to recognize *Wiener*, calls into question the constitutionality of other non-Article III legislative courts and adjudicatory bodies like the Tax Court and the Court of Appeals for Veterans Claims. As Judge Pan explained in her dissent: “the MSPB is so clearly adjudicatory and free of quintessential executive responsibilities that if it exercises ‘substantial executive power,’” Pet. App. 61a, then so too does virtually every other adjudicatory agency.

CONCLUSION

The Court should grant Harris’ petition and reverse the judgment of the D.C. Circuit. In the alternative, the Court should hold this petition pending *Slaughter*, and grant, vacate, and remand this case in light of its decision.

Respectfully submitted,

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