

No. 25-1110

IN THE
Supreme Court of the United States

CATHY A. HARRIS,

Petitioner,

v.

SCOTT BESSENT, SECRETARY OF TREASURY, ET AL.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

**BRIEF OF *AMICI CURIAE* FORMER BOARD
MEMBERS AND GENERAL COUNSEL OF THE
MERIT SYSTEMS PROTECTION BOARD IN
SUPPORT OF PETITIONER**

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INTERESTS OF AMICI CURIAE¹

James M. Eisenmann, Raymond Limon, and Jessica Parks respectfully submit this brief as *amici curiae* in support of Petitioner Cathy Harris. *Amici* were appointed under three different Presidents to serve in various capacities at the Merit Systems Protection Board (“MSPB” or the “Board”).² Mr. Eisenmann was appointed by then-MSPB Chairman Susan T. Grundmann to be General Counsel of the MSPB in January 2010.³ He served in that position until January 2013, when he was appointed Executive Director of the Board. Mr. Eisenmann remained as Executive Director until he resigned from the MSPB in September 2018. Mr. Limon was nominated by President Joe Biden to serve as a Board Member in 2021 and later served as Vice Chairman and Acting Chairman before he retired on February 28, 2025, the last day of his term. Ms. Parks was nominated by President George H.W. Bush to serve as a Board Member in 1990 and was named Vice Chair of the

¹ No counsel for a party authored this brief in whole or in part, no party or counsel for a party contributed money that was intended to fund preparing or submitting this brief, and no person other than *amici* or their counsel contributed money that was intended to fund the preparation or submission of this brief. Counsel of record for the parties received notice of *amici*’s intent to file this brief at least 10 days prior to its due date.

² *Amici* have collective experience working on and appearing before the MSPB that spans many years. However, *amici*’s individual knowledge of internal Board practices and statistics is limited to the periods in which they held their Board positions. Any reference to *amici*’s knowledge or belief is as of that time period only.

³ Mr. Eisenmann previously represented Petitioner before the district court below, but he does not represent any party on appeal.

Board by President Bill Clinton in 1993 before concluding her term in 1995.⁴

Amici curiae submit this brief to clarify the MSPB's mission and emphasize its predominantly adjudicatory functions within narrow and limited jurisdictional bounds. *Amici* have seen how important it is to protect the integrity of the civil service, and to ensure that federal employees can serve the public good without fear of retaliation. In *amici's* experience, Board Members' for-cause removal protection is critical to maintaining the Board's impartiality and fostering independent and consistent review of adverse employment actions without fear of reprisal in the wake of political transitions.

⁴ Although Ms. Parks is a member at Kator, Parks, Weiser & Wright, PLLC, she has had no involvement in the firm's representation of Ms. Harris and submits this brief in her personal capacity.

SUMMARY OF ARGUMENT

Amici provide a brief summary of the history of the modern-day civil service to give context for the MSPB's creation and mission. The MSPB was designed to protect and promote the country's merit-based civil service, and furthers that mission by exercising its narrow jurisdiction to efficiently adjudicate appeals of certain adverse employment actions and issue decisions that are reviewable by an Article III court. These adjudicatory functions are the Board's core and predominant activities, as the District Court correctly concluded.

ARGUMENT

I. The MSPB is the Capstone of This Country's Development of a Merit-based Civil Service.

The country's modern merit-based civil service is rooted in the 1883 Pendleton Act, which sought to combat the patronage or "spoils" system, and created a Civil Service Commission to oversee a competitive examination system for public servants.⁵ The Act was an important milestone in a multigenerational debate over the patronage system, under which the civil service was routinely reshuffled by the reigning political party to reward the President's supporters and their friends and families with federal jobs.⁶ The Pendleton Act set the stage for career federal employees to be selected for their "fitness, capacity, honesty, [and] fidelity," rather than solely their "personal fidelity and partisan activity."⁷

Over time, Congress has reaffirmed and expanded protections for civil servants. This includes the guarantee that certain civil servants could be

⁵ Pendleton Act, 47 Cong. Ch. 27, 22 Stat. 403 (1883).

⁶ 14 Cong. Rec. 206 (1882) (Statement of Sen. George Pendleton) (Under the system that existed prior to the Act's passage, "the President and his Cabinet and those who are charged with the responsibility [of selecting government officials had] remitted the question of fitness to their own partisan friends" in Congress who then helped secure positions for "those whose friends and families and connections and aids and deputies will serve their purpose.")

⁷ *Id.*

removed only for cause,⁸ the adoption of protections for whistleblowing civil servants,⁹ and the requirement that civil servants receive a written record of charges against them before dismissal.¹⁰ These efforts to bolster the country's civil service culminated in the Civil Service Reform Act of 1978 ("CSRA"), which implemented additional measures to protect career federal employees from undue partisan political influence and to otherwise adopt "the most effective possible civil service; that is, one in which employees are hired and removed on the basis of merit and one which is accountable to the public through its elected leaders."¹¹ To achieve that goal, Congress "designed" the CSRA "to balance the legitimate interests of the various categories of federal employees with the needs of sound and efficient administration."¹²

⁸ See Lloyd-La Follette Act of 1912, Pub. L. No. 62-336, § 6, 37 Stat. 539, 555 (1912) ("[N]o person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing ...").

⁹ *Id.* (providing that "the presenting ... of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from" the civil service).

¹⁰ *Id.* (requiring that "copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal ... shall be furnished to the person affected").

¹¹ S. Rep. No. 95-969, at 2 (1978), as reprinted in 1978 U.S.C.C.A.N. 2723, 2724–25 (report of the Senate Committee on Governmental Affairs to accompany S. 2640).

¹² *United States v. Fausto*, 484 U.S. 439, 445 (1988).

In passing the CSRA, Congress recognized that the Civil Service Commission’s “performance” and “credib[ility]” had suffered because of its “conflicting functions” as both “management agent for a president elected through a partisan political process” and neutral adjudicator of federal-employment disputes.¹³ The Act therefore dissolved the Commission, dividing its managerial and oversight functions among new agencies: the Office of Personnel Management (“OPM”), Office of Special Counsel (“OSC”), and Merit Systems Protection Board.¹⁴ “[M]anagerial functions” were “explicitly entrusted by statute to OPM—and to OPM alone.”¹⁵ And the Commission’s oversight functions were split between OSC and the Merit Systems Protection Board to “discourage subversions of merit principles”¹⁶ and provide additional protection for “employees who disclose government illegality, waste, and corruption.”¹⁷ The OSC investigates allegations of prohibited personnel practices, prosecutes violators of civil service rules and regulations, and enforces the Hatch Act.¹⁸ Although originally an office of the Board, since 1989, the OSC is an independent Executive Branch agency

¹³ S. Rep. No. 95-969, at 5 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2723, 2727.

¹⁴ *Id.* at 7; *Lachance v. Devall*, 178 F.3d 1246, 1254–55 (Fed. Cir. 1999).

¹⁵ *Lachance*, 178 F.3d at 1255.

¹⁶ S. Rep. No. 95-969, at 7 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2723, 2729; *see also Lachance*, 178 F.3d at 1255.

¹⁷ S. Rep. No. 95-969, at 8 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2723, 2730.

¹⁸ *See* 5 U.S.C. §§ 1212, 1216.

charged with prosecuting certain cases before the Board.¹⁹

II. The MSPB is an Adjudicatory Body with Narrow Jurisdiction and Authority.

In the nearly five decades since it was created, the MSPB's core mission has remained the same: to protect the country's merit- and performance-based, nonpartisan workforce. By law, the Board must be bipartisan—with no more than two of the three Board members from the same political party who serve staggered appointments—and comprised of individuals with a “demonstrated ability, background, training or experience” to carry out the Board's functions. 5 U.S.C. § 1201.

A. The Board's primary statutory function is to adjudicate federal employee appeals of adverse employment actions. *See* 5 C.F.R. § 1201.3. These include terminations, suspensions without pay, adverse actions taken “because of the appellant's whistleblowing or other protected activity,” 5 C.F.R. § 1201.3(b)(2),²⁰ and terminations of probationary employees “motivated by partisan political reasons.” 5 C.F.R. § 1201.3(a)(3).²¹ The substantive rights at

¹⁹ *See* Whistleblower Protection Act of 1989, Pub. L. 101–12, 103 Stat. 16 (1989).

²⁰ *See, e.g., Whitmore v. Dep't of Labor*, 680 F.3d 1353 (Fed. Cir. 2012) (seminal case involving the retaliatory termination of a Department of Labor employee for whistleblowing activity related to reporting and disclosure failures by the Occupational Safety and Health Administration).

²¹ *See, e.g., Starkey v. Dep't of Hous. & Urb. Dev.*, 2024 M.S.P.B. 6 (2024) (denying agency petition seeking to reverse

issue in these appeals derive not from Board rules but from civil-service statutes and the regulations of executive branch agencies with managerial authority over federal employees, like OPM. *See* 5 C.F.R. § 1201.3 (listing the statutory or regulatory bases for Board appellate-jurisdiction matters).

Appeals are first heard by an Administrative Judge (“AJ”), who issues an initial decision that identifies material issues of fact and law, summarizes the evidence, makes credibility determinations, and issues conclusions of law. Appellants and agencies may then appeal the AJ’s decision to the Board via Petition for Review (“PFR”). The Board grants review of AJ decisions to correct four types of errors prescribed in its Practices and Procedures regulations, 5 C.F.R. § 1201.115: (i) a “material” factual error of “sufficient weight to warrant an outcome different from that of the initial decision,” *Elder v. Dep’t of the Air Force*, 124 M.S.P.R. 12, ¶ 36 (2016); (ii) the AJ’s decision is based on an “erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case,” *Brown v. Dep’t of the Air Force*, 2022 WL 1572406, *1 (M.S.P.B. May 18, 2022); (iii) the AJ’s rulings “were not consistent with required procedures or involved abuse of discretion, and the resulting error affected the outcome of the case,” *id.*; or (iv) “new and material evidence or legal argument is available that, despite the petitioner’s due diligence, was not available when the record closed,” *id.*

Administrative Judge decision finding political-affiliation discrimination in firing of probationary employee).

In considering a PFR, the Board may hear oral argument, request additional briefing, remand the appeal to the AJ for additional proceedings, or affirm, reverse, modify, or vacate the AJ's initial decisions. 5 C.F.R. § 1201.117. Employees and applicants “adversely affected or aggrieved by a final order or decision of the [MSPB] may obtain judicial review” in an Article III court, 5 U.S.C. § 7703(a)(1), and the Director of the Office of Personnel Management can independently petition for judicial review of Board decisions that have a “substantial impact on a civil service law, rule, regulation, or policy directive,” 5 U.S.C. § 7703(d).

The Board's decision-drafting process is adjudicatory in nature and designed to reach consensus based on established MSPB and federal case law. Unlike other administrative agencies, the Board's decisions are drafted by a cadre of career attorneys in the Office of Appeals Counsel (“OAC”),²² who draft opinions for Board members based on Board and applicable court precedent. The career attorneys in the Office of Appeals Counsel are trained to draft opinions not for a single Board member, but for the Board as a whole. Further, it is usually not the practice for individual Board members to instruct OAC attorneys to draft initial opinions to get to a certain result. Instead, because the Board's case law remains consistent and linear despite changes in the Board's composition, OAC attorneys draft opinions that routinely garner unanimous support—a clear

²² To be clear, the Office of Appeals Counsel is not organizationally housed within any particular Board member's office but is a separate office headed by a career senior executive.

indication that the Board's decisions are not swayed by partisan affiliations. This entire appeals process is therefore designed to provide orderly, consistent, and neutral consideration of federal employment appeals before the MSPB and within the Court of Appeals for the Federal Circuit—further underscoring the adjudicatory nature of the Board's work.

B. When assessing an agency's action, the MSPB must give the presiding agency considerable deference. *Warren v. Dep't of Army*, 804 F.2d 654, 656 (Fed. Cir. 1986) (MSPB “must ‘give deference to the judgment of each agency of the employee's performance in light of the agency's assessment of its own personnel needs and standards” (citation omitted)), *superseded in part on other grounds by statute*, Whistleblower Protection Act of 1989, Pub. L. No. 101-12, 103 Stat. 16; *Hollander v. Off. of Pers. Mgmt.*, 39 M.S.P.R. 195, 198–99 (1988) (Board will “ordinarily give great deference” to the agency's interpretation of a statute “with whose implementation it is charged,” unless there are “compelling reasons to conclude that such an interpretation is erroneous or unreasonable”), *aff'd sub nom. Horner v. Hollander*, 895 F.2d 759 (Fed. Cir. 1990). This deference is founded in the Board's role as an adjudicatory body exercising none of the managerial authority statutorily assigned to executive agencies like OPM. *See Lachance v. Devall*, 178 F.3d 1246, 1258 (Fed. Cir. 1999) (The Board “may not ... infringe upon an agency's exclusive domain as workforce manager, for to do so would frustrate the framework of the [CSRA].”).

For example, the Board’s review of agency-selected penalties flows from the familiar arbitrary-and-capricious standard requiring agency “consideration of the relevant factors” and no “clear error of judgment.” *Rodriguez v. Dep’t of Veterans Affs.*, 8 F.4th 1290, 1302 (Fed. Cir. 2021) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)); accord *Sayers v. Dep’t of Veterans Affs.*, 954 F.3d 1370, 1377–78 (Fed. Cir. 2020). In *Douglas v. Veterans Administration*, 5 M.S.P.B. 313, 331–32 (1981), the Board listed factors “recognized” as relevant to agency penalty selection by “[c]ourt decisions and OPM and Civil Service Commission issuances.” So long as “the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness” in setting its penalty, the Board will not “insist that the balance be struck precisely where the Board would choose to strike it.” *Id.* at 332–33; see also *Rodriguez*, 8 F.4th at 1302. And even in the instances in which the Board finds an agency’s penalty unreasonable, the Board lacks “independent authority to set penalties” itself. *Lachance*, 178 F.3d at 1247. Instead, the Board may only reduce an agency’s chosen penalty to the “maximum reasonable penalty” or another reasonable penalty designated by the agency. *Id.* at 1260.²³

²³ Congress has limited the MSPB’s authority to mitigate penalties for certain types of adverse actions. See 38 U.S.C. § 714(d)(3)(C) (limiting mitigation of penalties against employees of the Department of Veterans Affairs). If the Board determines that an agency’s penalty is unreasonable in those cases, it must

In practice, the MSPB grants very few appellate Petitions for Review—approximately one in ten since 2000.²⁴ Board decisions are almost always unanimous (and therefore not along partisan lines). For example, based on *amici*'s familiarity with internal Board statistics from March 2022 to March 2025, it is estimated that more than 99% of decisions were unanimous during that three-year period alone.

Finally, although the Board may order an agency or employee to comply with its final decision, it exercises limited authority to enforce those orders. Federal statute provides that the Board may order that a non-compliant employee “shall not be entitled to receive payment for service” during a period of non-compliance. 5 U.S.C. § 1204(e)(2)(A). While *amici* are aware of instances when a Board's decision has referenced this authority, *amici* recall no instance when it was actually exercised during their tenures. As a result, if that provision was formally revoked, it would have little effect on the Board's practices.

C. The Board also has limited original jurisdiction over (i) certain actions brought by the Special Counsel; (ii) requests for informal hearings by career appointees removed from the Senior Executive Service for performance deficiencies; and (iii) certain adverse actions against administrative law judges (“ALJs”), *see* 5 U.S.C. § 7521. The Board's exercise of original jurisdiction over career appointees' informal hearings and ALJ adverse actions is narrow. With

remand to the agency for reconsideration. *Brenner v. Dep't of Veterans Affs.*, 990 F.3d 1313, 1325 (Fed. Cir. 2021).

²⁴ *See* Appendix A, Analysis of MSPB Decisions (2000–2024).

regard to the informal hearings, the Board simply designates an official to conduct an informal hearing regarding the career appointee's removal, which is not subject to appeal. *See* 5 C.F.R. §§ 1201.143–1201.145. And the Board has limited authority to consider agency proposals to remove, suspend, furlough, or enter a reduction in pay or grade for an ALJ. 5 C.F.R. § 1201.137.

As in its review of agency penalties, *see supra* § II.B, the Board lacks independent authority to discipline ALJs. *See Dep't of Health & Hum. Servs. v. Jarboe*, 2023 M.S.P.B. 22, ¶ 9 (2023). In these cases, the Board's role is only to determine whether good cause exists for the adverse action, as required by 5 U.S.C. § 7521. A “finding of good cause for removal does not bind the employing agency to actually remove [an ALJ], but merely authorizes it to do so.” *Jarboe*, 2023 M.S.P.B. 22, ¶ 9. “The employing agency retains discretion to take the Board-approved action, impose a lesser sanction, or take no action at all.” *Id.*

The Board's authority to review certain matters upon the Office of Special Counsel's request is similarly narrow and entirely reactionary. If the Special Counsel “determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice,” it may request “any member of” the Board to order a stay. 5 U.S.C. § 1214(b)(1)(A)(i).²⁵

²⁵ The Board may also issue “any order that may be necessary to protect a witness or other individual from harassment during an investigation by the Special Counsel” upon motion by the Special Counsel. 5 C.F.R. § 1201.146(a)–(b).

The Board member has very little discretion when considering such a request, and “shall order” the requested stay unless they determine that “under the facts and circumstances involved, such a stay would not be appropriate.” 5 U.S.C. § 1214(b)(1)(A)(ii). The presumption in favor of a stay is so strong that if the request is not denied within 3 calendar days, it “shall be granted.” 5 U.S.C. § 1214(b)(1)(A)(iii).

Moreover, the stay itself is simply designed to “maintain the *status quo ante* while the OSC and the agency involved resolve the disputed matter,” and to “minimize the consequences of an alleged prohibited personnel practice” in the meantime. *Special Counsel v. Dep’t of Transp.*, 74 M.S.P.R. 155, 157 (1997). A request to extend a stay—considered by the full Board, 5 U.S.C. § 1214(b)(1)(B)—is reviewed with similar deference: the Board must review the record in the light most favorable to OSC and grant the extension request so long as the OSC’s underlying claim is “not clearly unreasonable.” *Dep’t of Transp.*, 74 M.S.P.R. at 158. The stay may be terminated by the Board at any time. *See* 5 C.F.R. § 1201.136(d).

A review of publicly available MSPB annual reports from 2000 through 2024 confirms that the Board’s exercise of its original jurisdiction accounts for an incredibly small percentage of its adjudicatory work.²⁶ During those years, the Board decided more than 24,000 petitions for appellate review in federal personnel actions.²⁷ Over that period, less than 2% of the Board’s decisions were made in its original

²⁶ The FY 2009 MSPB Annual Report is not available.

²⁷ *See* Appendix A, Analysis of MSPB Decisions (2000–2024).

jurisdiction.²⁸ This includes Board decisions in cases when OSC requested a stay or when an agency took adverse action against an administrative law judge, with each category accounting for approximately 0.5% or less of MSPB decisions since 2000.²⁹

D. Like Article III courts³⁰ and non-Article III courts,³¹ the MSPB may promulgate rules of practice and procedure. *See* 5 U.S.C. § 1204(h). In *amici*'s experience, the Board uses this power as a court would, regulating the presentation of cases and conduct of parties appearing before it. Under 5 U.S.C. § 1305, the Board also has limited authority to prescribe regulations “for the purpose” of 5 U.S.C. § 7521, which requires an MSPB hearing and “good cause established” for adverse actions against ALJs. The Board’s scant regulations regarding adverse actions against ALJs—primarily concerning the form and content of filings, response deadlines, and service requirements—confirm the Board’s rulemaking in this area is likewise focused on internal procedures. *See* 5 C.F.R. §§ 1201.137–1201.142.³²

²⁸ *See id.*

²⁹ *See id.*

³⁰ *See* 28 U.S.C. § 2071; *see also* Fed. R. App. P. 47(a)(1); Fed. R. Civ. P. 83(a)(1).

³¹ *See, e.g.*, 10 U.S.C. § 944 (United States Court of Appeals for the Armed Forces); 26 U.S.C. § 7453 (United States Tax Court); 28 U.S.C. § 2503(b) (United States Court of Federal Claims); 38 U.S.C. § 7264 (United States Court of Appeals for Veterans Claims).

³² The procedural rights for ALJ adverse actions described by 5 C.F.R. § 1201.139(b) are the same rights provided by statute to

The Board also has authority to review OPM rules and regulations upon request, or on its own motion, to determine if the regulation or its implementation causes a person to commit a prohibited personnel practice. 5 U.S.C. § 1204(f)(1). In our experience—and based on reporting by the MSPB—these types of review are exceedingly rare. MSPB’s annual reports since 2000 confirm that petitions for review of OPM rules and regulations accounted for approximately 0.4% of the MSPB’s decisions.³³ Those same reports do not indicate any instance when the MSPB issued a *sua sponte* decision regarding any OPM rule or regulation, and *amici* can recall no instance during their tenures when such a review occurred.

III. As Designed by the Civil Service Reform Act, the MSPB is Functionally the Court of First Review for Federal-Employment Issues.

The Board “spends nearly all of its time adjudicating ‘inward-facing personnel matters,’” with approximately 98% of its decisions relating to petitions for review of federal-employee claims. *Harris v. Bessent*, 775 F.Supp.3d 164, 176 (D.D.C. 2025).³⁴ The Board must “passively wait” for these cases to be brought, and all of the Board’s decisions over employee claims are reviewable by Article III courts.

any federal employee subject to OSC disciplinary action before the Board. *Compare* 5 C.F.R. § 1201.139(b), *with* 5 U.S.C. § 1215(a)(2).

³³ See Appendix A, Analysis of MSPB Decisions (2000–2024).

³⁴ See also Appendix A, Analysis of MSPB Decisions (2000–2024).

Harris, 775 F.Supp.3d at 176. Those courts rely on the Board’s subject-matter expertise to adjudicate federal-employee claims in the first instance and to facilitate subsequent Article III review. *See Elgin v. Dep’t of Treasury*, 567 U.S. 1, 19, 22–23 (2012) (analogizing the MSPB’s factfinding role to that of federal magistrate judges and noting its role in addressing employment-law questions prior to Article III review of constitutional ones); *Sayers v. Dep’t of Veterans Affs.*, 954 F.3d 1370, 1377–78 (Fed. Cir. 2020) (noting “importance” of MSPB’s first review of whether an agency’s penalty is arbitrary and capricious).

The “painstaking detail” of the CSRA’s review framework for federal-employment claims makes it “fairly discernible” that “Congress intended covered employees ... to proceed exclusively through the statutory review scheme.” *Elgin*, 567 U.S. at 10–12. This “integrated scheme of administrative and judicial review ... was designed to replace an outdated patchwork of statutes and rules” that resulted in federal-employee suits “in district courts across the country.” *Id.* at 13 (quotation marks omitted) (quoting *United States v. Fausto*, 484 U.S. 439, 444–45 (1988)). In creating that arrangement, Congress relied on for-cause removal protection to ensure the Board’s adjudicatory independence. *See* 5 U.S.C. § 1202(d); *see also* 5 U.S.C. § 7701(d)(1)(B) (“Nothing in this title shall be construed to permit the Office [of Personnel Management] to interfere with the independent decisionmaking of the Merit Systems Protection Board.”); S. Rep. No. 95-969, at 7 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2723, 2729 (“Members’ terms will last 7 years, with removal only for cause. ... As a

result of this structure, the Board should be insulated from the kind of political pressures that have led to violations of merit principles in the past.”); *id.* (“Absent such a mandate for independence for the Merit Board, it is unlikely that the committee would have granted the Office of Personnel Management the power it has or the latitude to delegate personnel authority to the agencies.”).

“At the core of its plan to achieve the[] dual objectives” of managerial efficiency and employee procedural protection, the CSRA “created two separate, distinct, and independent bodies—OPM and the Board—in recognition of the problems inherent in having a single authority serve as judge in its own case.” *Lachance v. Devall*, 178 F.3d 1246, 1254 (Fed. Cir. 1999). The D.C. Circuit’s conclusion that Congress may not limit removal of MSPB members undermines the “separation of ... managerial and oversight functions” which “forms a cornerstone of the [CSRA],” destabilizing both the detailed review scheme it created and the modern merit-system principles it sought to protect. *Id.* at 1255.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted. In the alternative, the Court should hold the petition pending *Trump v. Slaughter*, No. 25-332, and then grant, vacate, and remand to the D.C. Circuit.

Respectfully submitted,

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APPENDIX

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Appendix A
Analysis of MSPB Decisions (2000–2024).....1a

**APPENDIX A: ANALYSIS OF MSPB
DECISIONS (2000–2024)**

Year	Total Cases ¹	Appellate Jurisdiction ²			
		Merits PFRs Decided	Merits PFRs Granted	Merits PFRs Granted	Addendum Case PFRs Decided
2024	2,251	2,129	368	17.3%	114
2023	1,399	1,252	234	18.7%	118
2022	488	428	74	17.3%	48
2021	0	0	0	0.0%	0
2020	0	0	0	0.0%	0
2019	2	0	0	0.0%	0
2018	11	0	0	0.0%	0
2017	195	145	17	11.7%	32
2016	1,140	1,022	131	12.8%	94
2015	3,069	2,963	126	4.3%	96
2014	1,017	876	170	19.4%	131
2013	890	736	136	18.5%	105

¹ Total Cases includes all Board decisions in its original jurisdiction and on appellate Petitions for Review. Percent of Decisions is calculated as a portion of Total Cases. Board data separately tracks decisions in cases remanded from courts or returned by the EEOC, reopened cases, reviews of arbitration decisions, compliance referrals from AJs, reviews of AJ stay rulings, and requests to stay Board decisions. These categories make up a very small portion of the Board’s work. *See infra* n.3.

² The Board separately tracks Petitions for Review in merits cases and Addendum cases, *i.e.*, follow-up petitions for attorney’s fees, damages in discrimination or whistleblower cases, or compliance. MSPB annual reports do not include data regarding the results of Addendum case Petitions.

Year	Total Cases	Appellate Jurisdiction			
		Merits PFRs Decided	Merits PFRs Granted	Merits PFRs Granted	Addendum Case PFRs Decided
2012	956	833	196	23.5%	104
2011	969	849	145	17.1%	97
2010	748	639	104	16.3%	103
2008	1,347	1,211	136	11.2%	132
2007	1,168	1,023	130	12.7%	133
2006	1,292	1,162	151	13.0%	98
2005	1,526	1,383	105	7.6%	130
2004	1,429	1,306	78	6.0%	114
2003	1,112	973	111	11.4%	117
2002	1,206	1,073	81	7.5%	124
2001	1,277	1,131	151	13.4%	130
2000	1,504	1,225	152	12.4%	238
	24,996	22,359	2,796	12.5%	2,258
	<i>% of Decisions</i>	89.5%	11.2%	—	9.0%

Year	Total Cases	Original Jurisdiction			
		Cases Decided	OSC Stay Requests	Reg. Review Requests	Actions Against ALJs
2024	2,251	8	1	2	2
2023	1,399	29	9	6	13
2022	488	12	5	0	3
2021	0	0	0	0	0
2020	0	0	0	0	0
2019	2	2	2	0	0
2018	11	11	11	0	0
2017	195	18	17	0	0
2016	1,140	24	10	9	3
2015	3,069	10	6	1	2
2014	1,017	10	3	3	2
2013	890	49	16	8	22

Year	Total Cases	Original Jurisdiction			
		Cases Decided	OSC Stay Requests	Reg. Review Requests	Actions Against ALJs
2012	956	19	11	4	2
2011	969	23	9	2	8
2010	748	6	2	0	0
2008	1,347	4	0	3	0
2007	1,168	12	3	6	0
2006	1,292	32	2	11	12
2005	1,526	13	6	1	3
2004	1,429	9	4	2	3
2003	1,112	22	2	9	8
2002	1,206	9	2	4	1
2001	1,277	16	0	10	2
2000	1,504	41	6	26	2
	24,996	379	127	107	88
	<i>% of Decisions</i> ³	1.5%	0.5%	0.4%	0.4%

³ Appendix A's source data: MSPB FY2024 Annual Report at 4, 9, *available at* https://www.mspb.gov/about/annual_reports/MSPB_FY_2024_Annual_Report.pdf; MSPB FY2023 Annual Report at 9, 16, *available at* https://www.mspb.gov/about/annual_reports/MSPB_FY_2023_Annual_Report.pdf; MSPB FY2022 Annual Report at 10, 17, *available at* https://www.mspb.gov/about/annual_reports/MSPB_FY_2022_Annual_Report_2022671.pdf; MSPB FY2021 Annual Report at 9, *available at* https://www.mspb.gov/about/annual_reports/MSPB_FY_2021_Annual_Report_1900943.pdf; MSPB FY2020 Annual Report at 11,

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