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 A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE GOVERNMENT ACCOUNTABILITY PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER'S PETITION FOR CERTIORARI

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INTERESTS OF AMICUS CURIAE

The Government Accountability Project ("GAP") is an independent, nonpartisan, nonprofit organization that promotes government accountability by protecting whistleblowers, advancing occupational free speech, and empowering citizen activists. Founded in 1977, GAP is the nation's oldest whistleblower protection organization. For nearly five decades, GAP has led or been on the front lines of campaigns to enact or defend virtually every modern federal whistleblower statute, including the Whistleblower Protection Act of 1989, Pub. L. No. 101-12, 103 Stat. 16, and the 1994 and 2012 amendments to that legislation.[1]

GAP's work depends on the existence of a functioning, independent Merit Systems Protection Board. The MSPB is the adjudicatory tribunal that makes federal whistleblower protection enforceable—the body before which civil servants seek vindication when they are retaliated against for disclosing waste, fraud, and abuse. Because federal employees are the only workers who can bring retaliation claims before the MSPB, the Board's institutional integrity is not merely a peripheral concern; it is a fundamental precondition on which federal employee whistleblower protection rests. GAP regularly assists whistleblowers navigating MSPB proceedings and has witnessed firsthand how the Board's independence—or

1. Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no person or entity other than amicus, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, counsel of record for all parties received timely notice of the intent to file this brief.

its absence—determines whether the statutory promise of 5 U.S.C. § 2302(b)(8) has real-world meaning.

GAP's experience is consistent with the historical record: when the civil service is politicized, the institutional mechanisms that enforce whistleblower protections collapse. Congress created the merit-based civil service in 1883 after decades of a corrupt spoilage system. The assassination of President Garfield by a disgruntled office-seeker solidified the need to insulate federal service from political influence. The Nixon Administration's Malek Manual, a blueprint for purging career civil servants and replacing them with political loyalists, exposed during the Watergate hearings, demonstrated how fragile that safeguard can be when Executive power goes unchecked. The current administration's dismantling of the merit system through mass terminations, Schedule Policy/Career reclassifications, and the removal of independent adjudicating authorities reprises that threat, invoking tactics reminiscent of the Nixon-era effort and signaling a return to the pre-1883 patronage system. In September 2024, GAP's Legal Director testified before the Senate Homeland Security and Governmental Affairs Committee regarding precisely this danger. The concerns expressed in that testimony have now materialized. GAP is also a plaintiff in *Government Accountability Project v. OPM*, No. 1:25-cv-00347 (D.D.C.), challenging the dismantling of the merit-based civil service.

SUMMARY OF ARGUMENT

The Merit Systems Protection Board is not an ordinary administrative agency. It is the adjudicatory tribunal Congress created to stand between federal employees

and the political pressures of the Executive Branch—the structural mechanism that makes the substantive rights of the Whistleblower Protection Act and the Civil Service Reform Act enforceable in practice, not merely aspirational on paper. MSPB independence is compelled not only by separation-of-powers principles but by the Fifth Amendment's guarantee of a neutral adjudicator to every federal employee holding a statutory property interest in continued employment. The founding record confirms that this design is faithful to, not in tension with, the original understanding of Article II.

The decision below upends that design. By holding that MSPB members may be removed at will by the President, the D.C. Circuit stripped the Board of the independence that gives it constitutional meaning within the legislative-court tradition this Court has recognized since *American Insurance Co. v. 356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 534 (1828). The consequences of eviscerating the independence that insulated the merit system from unchecked political influence for nearly 150 years have already begun to manifest. In September 2025, the Office of Legal Counsel issued an opinion directing MSPB administrative judges how to rule in pending termination cases—what the petition aptly characterizes as "an instruction backed by the not-so-subtle threat those members will face Petitioner's fate should they refuse." Pet. 32. Simultaneously, the Board's caseload has surged to four times its annual historical workload while its workforce has contracted, creating conditions under which a captured or intimidated tribunal cannot deliver the neutral adjudication Congress insisted upon in the Civil Service Reform Act (CSRA).

These harms are systemic, accelerating, and beyond the capacity of any lower court to arrest. Only this Court can restore the structural safeguard that 143 years of civil-service legislation—from the Pendleton Act through the CSRA and WPA—was designed to provide.

ARGUMENT

I. MSPB INDEPENDENCE IS THE STRUCTURAL FOUNDATION OF THE FEDERAL WHISTLEBLOWER SYSTEM CONGRESS BUILT.

A. Congress Designed the MSPB as the Adjudicatory Tribunal That Makes Federal Whistleblower Protection Meaningful.

The Civil Service Reform Act of 1978 created the Merit Systems Protection Board to serve a specific function: neutral adjudication of federal employment disputes. *See* Pub. L. No. 95-454, 92 Stat. 1111. As this Court recently recognized, the MSPB was "established to adjudicate federal employment disputes." *Harrow v. Dep't of Def.*, 601 U.S. 480, 482 (2024). That characterization is precise. The Board does not make policy. It does not promulgate substantive regulations. It does not bring enforcement actions or initiate investigations of external parties. It adjudicates—and Congress designed it to do so with the independence befitting a tribunal exercising quasi-judicial authority.

This design places the MSPB squarely within the constitutional tradition of legislative courts that Congress has established since the founding era. *See Am. Ins. Co. v. 356 Bales of Cotton*, 26 U.S. (1 Pet.) 511 (1828)

(Marshall, C.J.) (recognizing legislative courts as a distinct constitutional category); *Ex parte Bakelite Corp.*, 279 U.S. 438 (1929); *Williams v. United States*, 289 U.S. 553 (1933). The petition traces this tradition in detail, Pet. 17–24, and amicus does not repeat that doctrinal analysis. What amicus can add is the perspective of an organization that has spent decades working within the system Congress built—and that can attest to why its adjudicatory independence is not ornamental but essential.

The MSPB's purely adjudicatory character is not an accident of institutional evolution. It reflects a deliberate legislative choice. Congress structured the Board as a three-member body with staggered seven-year terms, bipartisan composition requirements, and for-cause removal protection. 5 U.S.C. §§ 1201, 1202. The members are also prohibited from holding any other federal positions in order to avoid conflicts of interest and insure impartiality in adjudicating federal employee personnel matters. *Id.* It gave the Board authority to hear appeals from adverse personnel actions, § 7513(d), and to order corrective and disciplinary action when it finds prohibited personnel practices, § 1204(a)(1)–(3). And it routed judicial review of MSPB decisions to the Federal Circuit, § 7703(b)(1), the same court that reviews decisions of the Court of International Trade and the Court of Federal Claims—both, like the MSPB, legislative courts.

The distinction between the MSPB and the policymaking agencies this Court has addressed in its recent removal-power cases could not be sharper. The MSPB is not the Federal Trade Commission, which Congress designed to exercise "quasi legislative" and "quasi judicial" functions across a broad policymaking domain. *See Humphrey's Executor v. United States*, 295

U.S. 602, 624 (1935). It is not the Consumer Financial Protection Bureau, whose single Director "possesses the authority to promulgate binding rules," "unilaterally issue final decisions awarding legal and equitable relief in administrative adjudications," and "seek daunting monetary penalties against private parties on behalf of the United States in federal court." *Seila Law LLC v. CFPB*, 591 U.S. 197, 218-19 (2020). The government itself conceded below that, by contrast, the MSPB "does not establish policy," "performs no investigations of external parties," "does not prosecute cases," "does not initiate disciplinary actions," and lacks "enforcement units." Pet. 9. Over ninety-five percent of the Board's decisions are unanimous. *Id.* The MSPB is, in every functional respect, a court—and it is the court that federal whistleblowers must rely on.

B. The For-Cause Removal Protection in § 1202(d) Is the Mechanism That Makes the Substantive Whistleblower Rights of § 2302(b)(8) Operable.

The Whistleblower Protection Act prohibits retaliation against federal employees who disclose waste, fraud, abuse, and dangers to public health and safety. 5 U.S.C. § 2302(b)(8). This Court has construed that provision broadly, recognizing that Congress intended meaningful protection for employees who serve the public interest. *See Dep't of Homeland Sec. v. MacLean*, 574 U.S. 383 (2015) (holding that WPA protects disclosures not specifically prohibited by statute, even when the employing agency has promulgated regulations restricting disclosure).

But a substantive right without an independent adjudicator to enforce it is a right in name only. Section 1202(d)—the provision at issue in this case—does not

exist in isolation. It is the structural prerequisite that makes § 2302(b)(8) enforceable. When a whistleblower files a retaliation complaint, that complaint is adjudicated by the MSPB. If the Board members who decide that complaint can be removed at will *by the same President whose appointees engaged in the retaliation*, the statutory right of § 2302(b)(8) is functionally nullified.

When Congress enacted the WPA in 1989, it built upon the for-cause protection established in § 1202(d)—thereby establishing substantive whistleblower rights secured by an independent adjudicatory tribunal. The link between procedural protection and substantive rights is not abstract. In *Wiener v. United States*, 357 U.S. 349 (1958), this Court held that the President lacked power to remove a member of the War Claims Commission—an adjudicatory body—even though the statute contained no explicit for-cause removal provision. The Court rejected "the claim that 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," concluding that "no such power is given to the President directly by the Constitution." *Id.* at 356. The reasoning was functional: because the Commission was "entirely free from the control or coercive influence, direct or indirect, of either the Executive or the Congress," presidential removal at-will would destroy the independence on which the body's adjudicatory legitimacy depended. *Id.* at 355-56 (quoting *Humphrey's Executor*, 295 U.S. at 629). The same logic applies with equal—indeed greater—force to the MSPB, where Congress *did* enact an explicit for-cause removal provision.

C. MSPB Independence Is Also Required by the Fifth Amendment Due Process Rights of Every Federal Whistleblower.

The structural case for MSPB independence is reinforced by an independent constitutional guarantee. Since *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 535 (1985), it has been settled that federal employees with statutory "for cause" removal protection holds a Fifth Amendment property interest in their continued employment. *See also Roth v. Brownell*, 215 F.2d 500 (D.C. Cir. 1954); *Briggs v. Nat'l Council on Disability*, 68 M.S.P.R. 296 (1995). That property interest cannot be adjudicated constitutionally by a tribunal whose members serve at the pleasure of the defendant-Executive.

This Court has long recognized that "the substantive right" may not be "viewed wholly apart from the procedure provided for its enforcement." *Arnett v. Kennedy*, 416 U.S. 134, 152 (1974). Nor may due process tolerate adjudicators subject to coercive influence from a party to the dispute. *See Tumey v. Ohio*, 273 U.S. 510 (1927); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876–877 (2009); *Withrow v. Larkin*, 421 U.S. 35, 46–47 (1975). If campaign contributions require recusal under *Caperton*, direct, unreviewable, causeless removal power held by the defendant is an *a fortiori* violation.

This Fifth Amendment ground offers the Court a narrower disposition consistent with *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The Court can grant review and vindicate MSPB independence without reaching the broader question of *Humphrey's Executor's* continuing vitality. That economy of decision is itself a reason to grant certiorari.

II. THE DECISION BELOW HAS ALREADY TRIGGERED THE VERY HARMS § 1202(d) WAS ENACTED TO PREVENT.

A. The September 2025 OLC Opinion Compounds the Threat by Instructing MSPB Members How to Rule on Pain of Removal.

At the threshold, the decision below violates a principle older than the Republic: *nemo iudex in causa sua*—no one may be a judge in his own cause. In every MSPB case that matters, the Executive Branch is the defendant. The government itself conceded below that the Board "does not establish policy," "performs no investigations of external parties," and "does not prosecute cases." Pet. 9. Its role is exclusively that of a neutral arbiter between two litigants—one of which is the Executive. The decision below makes the adjudicator removable at will by that very party. No neutral legal system in the common-law tradition permits such an arrangement, and this Court has rejected far milder conflicts. *See Tumey*, 273 U.S. 510; *Caperton*, 556 U.S. 868; *Withrow*, 421 U.S. at 46–47. The September 2025 OLC opinion, discussed below, is the predictable product of that structural conflict.

On September 26, 2025, the Office of Legal Counsel issued a memorandum opinion titled *The Merit Systems Protection Board's Authority to Adjudicate Constitutional Questions within an Administrative Proceeding*, 2025 WL 2817559 (O.L.C. Sept. 26, 2025). The opinion concluded that MSPB administrative judges "must . . . resolve" constitutional arguments raised by employing agencies seeking to justify terminations—arguments grounded in the proposition that the President possesses inherent

Article II authority to remove federal employees at will. *Id.* at 1.

The opinion appears unremarkable on its face: it reasons that "law" in 5 U.S.C. § 7701(c)(2)(C) encompasses constitutional law, and that the MSPB therefore has jurisdiction to consider constitutional defenses. But the practical effect of the opinion is or will be extraordinary. The OLC opinion instructs the Board's adjudicators to accept and resolve the Executive Branch's own constitutional arguments for the lawfulness of the very terminations those adjudicators are charged with reviewing. It warns that failure to do so could result in the Board ordering reinstatement "against the will of the President"—a framing that unmistakably conveys the Executive's hostility to any reading of the Constitution that limits his authority in any way, however minor. *Id.* at 7.

As the petition observes, this directive amounts to "an instruction backed by the not-so-subtle threat those members will face Petitioner's fate should they refuse." Pet. 32. And that characterization is generous. The OLC opinion was issued after the President had already purported to remove Petitioner from the Board for asserting her statutory right to remain in office—a sequence that transforms the opinion from a legal memorandum into a warning. Every administrative judge and Board member who reads it understands the message: rule in the Executive Branch's favor, or risk the consequences.

This is the antithesis of what Congress intended when it created the MSPB as a neutral adjudicatory body. A "fair trial in a fair tribunal is a basic requirement of due process," and that principle "applies to administrative

agencies which adjudicate as well as to courts." *Withrow v. Larkin*, 421 U.S. 35, 46–47 (1975) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). A tribunal whose members have been told how to rule—and shown what happens to those who resist—cannot satisfy that requirement. The OLC opinion does not merely threaten MSPB independence in the abstract. It operationalizes the threat in the context of specific, pending cases involving the employment rights of thousands of federal workers.

B. Vacancy Creation Invites a Corrosive Incentive Structure for Prospective Adjudicators.

The OLC opinion does not exist in isolation. It is one element of a two-part mechanism—what might be termed the vacancy-plus-directive pincer—that undermines the Board's independence from both directions simultaneously.

The first component is vacancy creation through removal. By purporting to remove a sitting Board member, the Executive demonstrates that § 1202(d) is a dead letter—that members who assert their statutory independence will be displaced. This sends a signal not only to remaining Board members but to every prospective nominee: the path to appointment runs through demonstrated willingness to accommodate the Executive's preferences.

The second component is the OLC directive itself, which tells the remaining adjudicators how to rule. Together, these mechanisms create precisely the corrosive incentive structure that Congress designed § 1202(d) to prevent—one in which sitting members are intimidated and future members are selected for pliability.

The scale of the resulting institutional crisis is documented in the Board's own planning materials. In fiscal year 2025, the MSPB received 20,335 initial appeals—approximately four times its historical annual workload. Merit Sys. Prot. Bd., Annual Performance Plan for FY 2026–2027, at 5 (Apr. 3, 2026). This surge, which began on February 9, 2025, was driven by mass terminations and reductions in force across the federal government. At the same time, the Board's workforce contracted from 183 to 163 employees following a January 2025 hiring freeze, and the Board was furloughed for six weeks between October 1 and November 12, 2025, due to a lapse in appropriations. *Id.* The Board's own performance targets are expressly conditioned on the continued existence of "a quorum of Board members"—a condition that is not guaranteed. *Id.*

These are not speculative harms. The Board is simultaneously overwhelmed with cases, understaffed, operating under an OLC directive that instructs its adjudicators how to rule, and led by an Acting Chairman installed after the Executive purported to remove the member who refused to comply. The vacancy-manipulation theory that amicus advanced in the D.C. Circuit—that at-will removal power corrupts not only through the act of removal but through the vacancies it creates—has moved from prediction to present reality. *See* Nicholas R. Bednar & Todd Phillips, *Commission Quorums*, 78 Stan. L. Rev. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5347384 (last revised Aug. 22, 2025) (documenting how presidential removals that destroy a quorum may frustrate the executive's constitutional duty to faithfully execute the laws).

C. Federal Whistleblowers—and the Public They Protect—Are Reading the Signal.

The consequences of a compromised MSPB are not confined to the Board's docket. They radiate outward through the entire federal workforce, reaching every civil servant who might otherwise come forward to disclose waste, fraud, or danger to public safety.

Consider the paradigm this Court examined in *MacLean*. A TSA air marshal received intelligence that hijackers planned to "smuggle weapons in camera equipment or children's toys through foreign security" and then "fly into the United States . . . into an airport that didn't require them to be screened." 574 U.S. at 387. The marshal disclosed the threat. The agency retaliated. The case went to the MSPB—and this Court ultimately vindicated the disclosure under § 2302(b)(8). That sequence depended on the existence of an independent tribunal willing to rule against the employing agency. Without it, the marshal's disclosure would have ended his career with no recourse—and the public would never have learned of the threat.

Now transpose that scenario to the present moment. A federal employee discovers a comparable threat. She knows that disclosing it will provoke retaliation from agency leadership. She knows that her retaliation claim will be adjudicated by an MSPB whose members have been shown—through the removal of Petitioner and the issuance of the OLC opinion—what happens to adjudicators who rule against the Executive Branch. The rational calculation for that employee is silence. And silence has consequences that extend far beyond

the individual whistleblower—consequences measured in uninvestigated fraud, undetected safety hazards, and uncorrected abuses of authority.

GAP works directly with these individuals. For nearly fifty years, amicus has counseled federal employees weighing the decision to come forward. The single most important factor in that decision—more important than the strength of the legal claim, more important than the severity of the wrongdoing—is whether the employee believes the system will protect her if she speaks. The events of the past year have shattered that belief for a generation of civil servants.

The concrete stakes of that shattered belief are not abstract. MSPB-protected disclosures have, within the memory of this Court, forced delivery of Mine-Resistant Armored Protection vehicles to Iraq and Afghanistan—reducing land-mine casualties from 60% of fatalities to 5%; prevented Federal Air Marshals from abandoning defensive missions before a confirmed Al Qaeda "rerun of 9/11"; exposed the dangers of Vioxx; and brought blanket domestic surveillance to congressional oversight committees in disclosures that led to passage of the USA Freedom Act. Testimony of Thomas Devine, Legal Director, Gov't Accountability Project, Before the S. Comm. on Homeland Sec. & Governmental Affairs 7–8 (Sept. 17, 2024). Each disclosure reached the public because the discloser trusted that an independent MSPB would stand between her and retaliation. Each would have likely died in silence under the regime the decision below installs.

D. The Documented Cost of Chill: Backlogs, Fraud Detection, and the Economics of Silence.

The harm from a captured or quorum-less Board is measurable. When the MSPB's quorum was restored in March 2022, a backlog of approximately 3,800 cases had accrued since 2017, with officials estimating five to six years to catch up. Pet. App. 97a. Petitioner Harris personally participated in nearly 4,500 decisions between June 2022 and February 2025, clearing roughly 99% of that backlog. Pet. App. 180a. The quorum-loss pattern that the decision below now invites would reproduce that multi-year denial of adjudication, on a workforce of three million civil servants.

The economic stakes are equally concrete. The Association of Certified Fraud Examiners has repeatedly found that employee tips are the single largest source of occupational-fraud detection—responsible for approximately 43% of detected fraud, more than all other detection methods combined. ACFE, Report to the Nations (2024 ed.). The Department of Justice reported approximately $2.6 billion in False Claims Act recoveries in FY 2024, the vast majority traceable to whistleblower-initiated qui tam actions. U.S. Dep't of Justice, Fraud Statistics—Overview (2024). MSPB's own 2011 survey, *Blowing the Whistle: Barriers to Federal Employees Making Disclosures*, identified fear of retaliation as the principal deterrent to reporting observed misconduct. Politicizing the adjudicator of retaliation claims eliminates the only structural reassurance that moves observation into disclosure.

III. THE QUESTION IS RECURRING, OF NATIONAL IMPORTANCE, AND WARRANTS THIS COURT'S REVIEW NOW.

A. The Unitary Executive Narrative Is Contradicted by the Founding Record.

The government's position rests on a claim that Article II was originally understood to vest the President with plenary, at-will removal authority over every officer exercising executive power. The founding record refutes that claim. In 1790, the First Congress—acting with many of the Framers—created the Sinking Fund Commission to perform "economically critical executive and policy functions" and directed that two of its five directors be officials the President "could not remove." An Act making provision for the reduction of the Public Debt, ch. 47, § 2, 1 Stat. 186 (1790); *see* Pet. App. 228a. The First Bank of the United States, chartered in 1791, afforded the President no removal authority over its members at all. 1 Stat. 191, 191–93. The Second Bank, chartered in 1816, gave the President control over only five of twenty-five directors. 3 Stat. 266, 269. Territorial judges were shielded beginning in 1789. 1 Stat. 50.

This lineage is not an originalist curiosity. It is the direct historical antecedent of the legislative-court tradition that culminated in the 1926 United States Customs Court, Pub. L. No. 69-304, § 2, 44 Stat. 669, and, ultimately, the MSPB. *Wiener* preserved that tradition long before *Humphrey's Executor*, *see* 357 U.S. at 356, and no OLC opinion or Presidential signing statement has previously called *Wiener* into doubt. Pet. App. 236a–37a. The Executive's current position is not a reassertion

of original understanding. It is a departure from two centuries of settled interbranch practice.

B. The Decision Below Jeopardizes Every Article I Court, Not Just the MSPB.

The D.C. Circuit's reasoning is not limited to the MSPB. If members of the Board—a purely adjudicatory body exercising congressionally delegated authority—may be removed at will, the same logic extends to every non-Article III tribunal Congress has created: the Tax Court, the Court of Appeals for Veterans Claims, the Court of Appeals for the Armed Forces, and the military appellate courts this Court addressed in *Ortiz v. United States*, 585 U.S. 427 (2018). *See also Freytag v. Comm'r*, 501 U.S. 868 (1991) (Tax Court as a "Court of Law" under the Appointments Clause). The decision below cannot be cabined. As Judge Pan warned in dissent, "the MSPB is so clearly adjudicatory and free of quintessential executive responsibilities that if it exercises" an impermissible degree of executive authority, "then every agency does." *Harris v. Bessent*, 160 F.4th 1235, 1267 (2025) (Pan, J. dissenting); Pet. App. 61a.

This is precisely the kind of question that warrants this Court's intervention at the certiorari stage—one that has immediate, cascading consequences for the structural integrity of the federal judicial system.

C. Downstream Litigation Pressure Is Already Building.

The practical consequences of the decision below are already visible in the courts. As the petition documents,

the Court has faced "serious legal questions about the implications" of unchecked removal power over adjudicatory officers. Pet. 32–33; *see Margolin v. Nat'l Ass'n of Immigr. Judges*, No. 25A662, 2025 WL 3684278 (2025) (mem.). Federal employees are increasingly routing disputes away from the MSPB and into Article III courts—a development that reflects a rational loss of confidence in the Board's ability to provide neutral adjudication. At the same time, the Board's extraordinary caseload—20,335 initial appeals in FY 2025 alone—strains an institution that was designed to process approximately 5,000 cases per year. The system Congress built is breaking under pressures it was never designed to absorb, and the constitutional question at the root of that breakdown remains unresolved.

D. Slaughter Cannot Resolve This Question.

Trump v. Slaughter, 146 S. Ct. 18 (2025) (mem.), concerns the Federal Trade Commission—a policymaking body whose single Director "possesses the authority to promulgate binding rules," "unilaterally issue final decisions awarding legal and equitable relief in administrative adjudications," and "seek daunting monetary penalties against private parties on behalf of the United States in federal court." *Seila Law*, 591 U.S. at 218-19. Whatever the Court decides in *Slaughter* about the removal protections applicable to policymaking agencies, that decision will not—and should not—resolve whether Congress may insulate members of a purely adjudicatory tribunal that does not make policy, does not bring enforcement actions, and does not initiate investigations.

Petitioner herself urged this distinction in her amicus brief in *Slaughter*, asking the Court not to "invalidate purely 'adjudicatory bod[ies]' that Congress has chosen to house within the executive branch." Br. of Cathy A. Harris as Amicus Curiae at 14–15; *Trump v. Slaughter*, No. 25-332 (U.S. filed Oct. 21, 2025). The Justices' own questions at oral argument suggest receptivity to that distinction. The Chief Justice noted that even if *Humphrey's Executor* "may be the issue" for policymaking agencies, "it doesn't mean that *Wiener* falls with it"—and specifically identified "the Court of Appeals of the Armed Forces or the Tax Court or all those others" as potentially distinct. Pet. 13. Justice Kavanaugh similarly observed that "non-Article III courts" are "different." *Id.*

Amicus respectfully urges the Court to grant the petition and address the constitutionality of for-cause removal protection for adjudicatory officers on its own terms. In the alternative, amicus supports holding the petition pending *Slaughter* and granting, vacating, and remanding in light of that decision—a disposition that would preserve the question for full consideration rather than allowing it to be resolved by the unrebutted D.C. Circuit opinion below.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should hold this petition pending its decision in *Trump v. Slaughter*, No. 25-332, and thereafter grant, vacate, and remand.

Respectfully submitted,

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April 22, 2026