No. 25-332

In the Supreme Court of the United States

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

v.

REBECCA KELLY SLAUGHTER, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONERS

D. JOHN SAUER
Solicitor General
Counsel of Record
BRETT A. SHUMATE
Assistant Attorney General
SARAH M. HARRIS
Deputy Solicitor General
ERIC D. MCARTHUR
Deputy Assistant Attorney General
VIVEK SURI
Assistant to the Solicitor General
MARK R. FREEMAN
MICHAEL S. RAAB
DANIEL AGUILAR
LAURA E. MYRON
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

LUCAS CROSLOW
General Counsel
ALEX POTAPOV
Deputy General Counsel
Federal Trade Commission
Washington, D.C. 20580

QUESTIONS PRESENTED

1. Whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), should be overruled.

2. Whether a federal court may prevent a person's removal from public office, either through relief at equity or at law.

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are Donald J. Trump, President of the United States; Andrew N. Ferguson, Chairman, Federal Trade Commission; Melissa Holyoak, Commissioner, Federal Trade Commission; and David B. Robbins, Executive Director, Federal Trade Commission.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Slaughter v. *Trump*, No. 25-cv-909 (July 17, 2025)

United States Court of Appeals (D.C. Cir.):

Slaughter v. *Trump*, No. 25-5261 (pending)

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OPINIONS BELOW

The court of appeals' order denying a stay (J.A. 102-137) is available at 2025 WL 2551247. The district court's order denying a stay (J.A. 92-99) and memorandum opinion (J.A. 41-89) are available at 2025 WL 2145665 and 2025 WL 1984396.

JURISDICTION

The district court entered final judgment on July 17, 2025. Petitioners filed a notice of appeal the same day. The court of appeals' jurisdiction rests on 28 U.S.C. 1291. Petitioners applied to this Court for a stay on September 4, 2025. On September 22, 2025, the Court treated the application as a petition for a writ of certiorari before judgment and granted the petition. The Court's jurisdiction rests on 28 U.S.C. 1254(1) and 2101(e).

STATUTORY PROVISION INVOLVED

The pertinent statutory provision is reproduced in the appendix. App., *infra*, 1a.

INTRODUCTION

This case raises constitutional questions of surpassing importance. Can the President, in whom the Constitution vests all executive power, remove agency heads who exercise the executive power on his behalf? Or may Congress insulate those agency heads from presidential control by barring the President from removing them at will—and may courts grant relief to prevent their removal, so that they continue to wield executive power against the President's will?

The answer to these questions is clear. "Under our Constitution, the 'executive Power'—all of it—is 'vested in a President,' who must 'take Care that the Laws be faithfully executed.'" *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 203 (2020) (quoting U.S. Const. Art. II, § 1, Cl. 1). Removal is the President's indispensable tool of control. "Without such power, the President could not be held fully accountable for discharging his own responsibilities." *Ibid.* (citation omitted). Thus, the President's "exclusive power of removal in executive agencies" ranks among his "conclusive and preclusive" powers. *Trump* v. *United States*, 603 U.S. 593, 609 (2024). And when the President removes executive officers, courts cannot reinstate them and authorize them to wield executive power against the President's will.

Here, these questions arise because President Trump removed respondent Rebecca Slaughter as a Commissioner of the Federal Trade Commission (FTC), only for lower courts to reinstate her after determining that Congress permissibly restricted the President to removing Commissioners for "inefficiency, neglect of

duty, or malfeasance in office." 15 U.S.C. 41. The same cycle of presidential removal and judicial reinstatement had already unfolded for members of the National Labor Relations Board, Merit Systems Protection Board, and Consumer Product Safety Commission, prompting this Court to grant interim relief so that removed agency heads would remain removed. See 25A264, slip op. 1 (Sept. 22, 2025); *Trump* v. *Boyle*, 145 S. Ct. 2653 (2025); *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025).

In truth, these questions have been percolating since the Court upheld the FTC's removal protections in *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935). *Humphrey's Executor* acknowledged that, by vesting the executive power in the President alone, Article II grants him "illimitable" authority to remove officers who exert any "part of the executive power." *Id.* at 628. Yet it found that rule inapplicable to the 1935 FTC because it viewed the FTC as a "quasi-legislative," "quasi-judicial" body that was "wholly disconnected from the executive department" and whose heads needed tenure protection to "maintain an attitude of independence against the [President's] will." *Id.* at 629-630.

"The Court's conclusion that the FTC did not exercise executive power has not withstood the test of time." *Seila Law*, 591 U.S. at 216 n.2. Since *Humphrey's Executor*, the Court has held many times that, "even though the activities of administrative agencies take legislative and judicial forms, they are exercises of—indeed, under our constitutional structure they *must* be exercises of—the 'executive Power.'" *Ibid.* (quotation marks omitted). And the FTC has accumulated executive powers that *Humphrey's Executor* never considered.

Meanwhile, Congress took *Humphrey's Executor* and ran with it, creating more independent agencies

that exercise executive power even as removal protections keep them outside the President's control. Such agencies regulate innumerable aspects of modern life, including lending terms, union recognition, nuclear waste, furniture anchoring, telemarketing calls, and employment disputes—among many others. They issue binding rules, adjudicate claims that businesses and individuals have violated the law, investigate wrongdoing, and bring civil suits seeking substantial fines.

Today, everyone agrees those powers are executive. Yet statutory removal restrictions stop the President from superintending agency heads who wield those powers. No matter how sharply they disagree with the President's agenda—no matter how vigorously the President disagrees with their exercise of his executive power—the President remains saddled with subordinate officers who prevent him from "tak[ing] Care that the Laws [are] faithfully executed." *Seila Law*, 591 U.S. at 203 (quoting U.S. Const. Art. II, § 1, Cl. 1).

That transfer of executive power to a "headless Fourth Branch" unravels the constitutional design. *FCC* v. *Consumers' Research*, 145 S. Ct. 2482, 2517 (2025) (Kavanaugh, J., concurring). Article II concentrates "the executive Power" in one person—an elected President. U.S. Const. Art. II, § 1, Cl. 1. By vesting the President with all "executive Power," Article II authorizes him to oversee those who execute federal law—including by removing them. The First Congress recognized the President's plenary removal power in 1789. This Court confirmed that "unrestricted" power in *Myers* v. *United States*, 272 U.S. 52, 176 (1926). And the Court has reaffirmed that power time and again. *Trump*, 603 U.S. 593; *Collins* v. *Yellen*, 594 U.S. 220

(2021); *Seila Law*, 591 U.S. 197; *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477 (2010).

The modern-day FTC, like its many independent-agency counterparts and its 1935 predecessor, exercises executive power—indeed, quite a bit of it. That brings those agencies within the President's removal power even under the reasoning of *Humphrey's Executor* itself, which "at least had the decency formally to observe the constitutional principle that the President had to be the repository of *all* executive power." *Morrison* v. *Olson*, 487 U.S. 654, 726 (1988) (Scalia, J., dissenting). If *Humphrey's Executor* is not already a dead letter, this Court should overrule it and end independent agencies' "serious, ongoing threat to our Government's design." *Seila Law*, 591 U.S. at 251 (Thomas, J., concurring in part and dissenting in part).

Finally, this Court should hold that courts cannot reinstate executive officers removed by the President. Flawed as *Humphrey's Executor* was, it involved only back pay; it did not compel the President to entrust executive power to someone he had already removed. Article II, history, traditional remedial principles, and applicable modern-day statutes all establish that courts may not issue any remedy, legal or equitable, to prevent an executive officer's removal—especially where, as here, the officer was appointed by the President.

Under our Constitution, the "buck stops with the President" in no small part because he can "remove those who assist him in carrying out his duties." *Free Enterprise Fund*, 561 U.S. at 493. Congress and the courts cannot divert accountability "somewhere else" by empowering unelected agency heads to wield executive power walled off from presidential control and electoral accountability. *Id.* at 514.

STATEMENT

1. In 1914, Congress passed and President Wilson signed the Federal Trade Commission Act, ch. 311, 38 Stat. 717 (15 U.S.C. 41 *et seq.*). The Act establishes the Federal Trade Commission, an agency composed of five members appointed by the President with the Senate's advice and consent. See 15 U.S.C. 41. Members serve staggered seven-year terms, and no more than three members may belong to the same political party. See *ibid.* The Act provides that a Commissioner "may be removed by the President for inefficiency, neglect of duty, or malfeasance in office." *Ibid.*

In 1914, the FTC Act empowered the FTC to prevent unfair methods of competition. See 15 U.S.C. 45(a)(1). In 1938, Congress also empowered the FTC to prevent unfair or deceptive acts or practices against consumers. See *ibid.* Congress has granted the FTC further powers since. Today, the FTC enforces or administers more than 80 statutes, including the FTC Act; Sherman Act, 15 U.S.C. 1 *et seq.*; Clayton Act, 15 U.S.C. 12 *et seq.*; Elder Abuse Prevention and Prosecution Act, 34 U.S.C. 21711; Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*; Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*; Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 *et seq.*; Lanham Act, 15 U.S.C. 1051 *et seq.*; Military Lending Act, 10 U.S.C. 987; and Muhammad Ali Boxing Reform Act, 15 U.S.C. 6301 *et seq.* See FTC, *Legal Library: Statutes* (*FTC Statutes*), https://ftc.gov/legal-library/browse/statutes.

Originally, the FTC's core power was issuing cease-and-desist orders that courts could then enforce. See FTC Act § 5, 38 Stat. 719. The FTC could also conduct investigations, submit reports to Congress, and make recommendations to courts as a master in chancery.

See §§ 6(f), 7, 9, 38 Stat. 721-722. The agency possessed some rulemaking power in 1935, see § 6(g), 38 Stat. 722, but its scope remains contested, see Thomas W. Merrill & Kathryn Tongue Watts, *Agency Rules with the Force of Law*, 116 Harv. L. Rev. 467, 549-552 (2002).

Since 1935, the FTC's powers have swelled. Today, the FTC may file civil suits seeking monetary penalties, injunctions, and other relief. See 15 U.S.C. 45(m)(1)(A), 53(b), 57b. The FTC may make substantive rules, including rules defining unfair or deceptive acts and practices. See 15 U.S.C. 57a. Its orders may take effect without judicial enforcement, see 15 U.S.C. 45(g) and (*l*), and its investigative powers have expanded, see, *e.g.*, 15 U.S.C. 18a. The FTC may even negotiate agreements with foreign law-enforcement agencies and assist their investigations. See 15 U.S.C. 46(j).

2. In 2018, President Trump, with the Senate's advice and consent, appointed respondent Rebecca Slaughter to the FTC, for a term ending in 2025. J.A. 11. In 2024, President Biden, with the Senate's advice and consent, reappointed respondent, this time for a term ending in 2029. *Ibid.*

In March 2025, respondent received a letter from President Trump stating: "I am writing to inform you that you have been removed from the Federal Trade Commission, effective immediately. * * * Your continued service on the FTC is inconsistent with my Administration's priorities. Accordingly, I am removing you from office pursuant to my authority under Article II of the Constitution." J.A. 26-28.

3. Respondent sued the President, the FTC's Chairman, another Commissioner, and the FTC's Executive Director in the U.S. District Court for the District of Columbia. J.A. 4. She claimed her removal violated the

FTC Act because the President did not assert "inefficiency, neglect of duty, or malfeasance in office," 15 U.S.C. 41. J.A. 19. Alvaro Bedoya, another Commissioner removed without a qualifying cause, joined the suit. J.A. 4. But he later submitted a resignation letter that eliminated any remaining claim to office, and the court dismissed his claim as moot. J.A. 48-51.

The district court granted summary judgment to respondent, holding that *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), established the constitutionality of the FTC's removal protections. J.A. 41-89. The court issued a declaration that respondent's removal was "unlawful" and "without legal effect" and that respondent "remains a rightful member" of the FTC. J.A. 90. The court also enjoined the defendants other than the President from "interfering with" respondent's "right to perform her lawful duties as an FTC Commissioner." J.A. 91. The court rejected the argument that courts may not issue such relief restoring removed executive officers. J.A. 77-80.

4. The government appealed to the D.C. Circuit. J.A. 93. The district court denied a stay pending appeal. J.A. 92-99. After granting an administrative stay, J.A. 100-101, the court of appeals ultimately denied a stay pending appeal, J.A. 102-137. It concluded that "*Humphrey's Executor* controls," that the government is unlikely to succeed on the merits, and that the equities favor respondent. J.A. 106; see J.A. 105-121. Judge Rao dissented; she would have granted a stay based on this Court's orders staying the reinstatement of other removed independent-agency heads in *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025), and *Trump* v. *Boyle*, 145 S. Ct. 2653 (2025). J.A. 122-137.

This Court granted the government's application for a stay, treated the application as a petition for a writ of certiorari before judgment, and granted the petition. See No. 25A264, slip op. 1 (Sept. 22, 2025). Justice Kagan, joined by two other Justices, dissented from the stay. See *id.* at 1-3.

SUMMARY OF ARGUMENT

I. The FTC's statutory removal protections, which preclude the President from removing Commissioners at will, violate the separation of powers.

Article II vests all "[t]he executive Power" in the President and requires him to "take Care that the Laws be faithfully executed." U.S. Const. Art. II, § 1, Cl. 1; § 3. Article II thereby grants the President "general administrative control of those executing the laws." *Myers* v. *United States*, 272 U.S. 52, 164 (1926). That power to control executive officers includes the ability to remove them at will, "for it is 'only the authority that can remove' such officials that they 'must fear and, in the performance of their functions, obey.'" *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 213-214 (2020) (brackets omitted). The First Congress recognized the President's plenary removal power in 1789, and this Court has repeatedly reaffirmed it in *Myers* and many other landmark cases. Just two Terms ago, the Court reiterated that the President's "conclusive and preclusive" "power to remove 'executive officers of the United States whom he has appointed' may not be regulated by Congress or reviewed by the courts." *Trump* v. *United States*, 603 U.S. 593, 620-621 (2024).

That conclusive and preclusive removal power includes the authority to remove at will the presidentially appointed heads of multimember administrative agencies, such as the FTC. Such agencies exercise executive

power by filing civil enforcement suits, promulgating binding rules, issuing final orders in agency adjudications, and investigating potential violations. Article II requires that the President control all executive power —especially the authority wielded by agency heads, who are "the most important" of the President's subordinates and who "must be the President's *alter ego*[*s*]" in their agencies. *Myers*, 272 U.S. at 133.

Humphrey's Executor v. *United States*, 295 U.S. 602 (1935), does not dictate a contrary conclusion. That case recognized the President's "illimitable" authority to remove "executive officers," yet upheld a statutory provision permitting the President to remove FTC Commissioners only for "inefficiency, neglect, or malfeasance in office." *Id.* at 620, 631. The decision rested on the conclusion that the FTC exercised "no part of the executive power" because it purportedly had only "quasi-legislative or quasi-judicial powers," "as distinguished from executive power." *Id.* at 628.

This Court has since repudiated the notion that the powers exercised by the 1935 FTC were anything but executive. See, *e.g.*, *Seila Law*, 591 U.S. at 216 n.2. The Court has also cabined *Humphrey's Executor* to "the set of powers the Court considered as the basis for its decision." *Id.* at 219 n.4. And the executive power that the FTC and other agencies now exercise vastly exceeds the authority that *Humphrey's Executor* attributed to the 1935 FTC. Like other modern administrative agencies, today's FTC can bring civil enforcement suits against private parties, promulgate binding rules, issue final orders in administrative adjudications, and investigate potential violations of the law—all executive powers, and all powers that *Humphrey's Executor* never discussed. Even under the logic of *Humphrey's*

Executor, the President must be able to remove the heads of those agencies at will because Article II grants the President "illimitable" authority over officers wielding executive power. 295 U.S. at 631.

This Court should overrule anything that remains of *Humphrey's Executor*. That decision was "egregiously wrong from the start," both legally and factually. *Dobbs* v. *Jackson Womean's Health Organization*, 597 U.S. 215, 231 (2022). It conflicts with Article II's text, history, and the Court's earlier and later decisions on the removal power. The notion that some agencies that exercise executive power can be sequestered from presidential control seriously offends the Constitution's structure and the liberties that the separation of powers protects. Moreover, because *Humphrey's Executor* was poorly reasoned, this Court has repeatedly whittled its foundations away—to the point where, in the last few months, nearly every lower court that has decided a removal-power case has offered a different understanding of the decision's scope today. If anything of *Humphrey's Executor* is left, overruling it now would comport with principles of *stare decisis*.

II. This Court should additionally hold that courts may not prevent the removal or order the reinstatement of an executive officer.

Even if Congress could in some circumstances restrict the President's removal power, Article II prohibits a court from issuing relief, whether legal or equitable, countermanding the removal of an executive officer. Such an order imposes a distinct constitutional harm, over and above the *ex ante* removal restriction, by forcing the President to entrust executive power to someone he has already determined is unfit to exert it. Consistent with that constitutional concern, executive offic-

ers have historically contested their removals by seeking back pay, not by demanding reinstatement.

Traditional remedial principles, too, preclude courts from blocking removals of executive officers. Under longstanding equitable principles, "a court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee." *White* v. *Berry*, 171 U.S. 366, 377 (1898). Because courts must "grant or withhold declaratory relief on the basis of traditional equitable principles," *Samuels* v. *Mackell*, 401 U.S. 66, 70 (1971), courts likewise may not issue declaratory judgments blocking removals. And because courts must respect separation-of-powers principles when issuing writs of mandamus, courts also may not use mandamus to reinstate a removed executive officer.

At a minimum, Congress must speak clearly to authorize judicial reinstatement of removed FTC Commissioners. But Congress instead clearly foreclosed reinstatement (and even backpay) for such officers in the Civil Service Reform Act of 1978, 5 U.S.C. 1101 *et seq.* That statute establishes the exclusive avenue through which federal employees (including officers) may challenge personnel actions such as firings—and, if they prevail, obtain reinstatement and back pay. The statute specifically withholds those remedies from presidential appointees, such as the FTC Commissioner here—so respondent's remedial claim necessarily fails.

ARGUMENT

I. THE FTC'S STATUTORY REMOVAL PROTECTIONS VIOLATE THE SEPARATION OF POWERS

Article II vests the President with all executive power and the responsibility to supervise all executive officers who wield it—including through removal, his most important tool of control. The President's plenary

removal power includes unrestricted authority to remove heads of the FTC and other multimember administrative agencies. *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), upheld FTC Commissioners' removal protections under the belief that the FTC's "duties are neither political nor executive." *Id.* at 624. That conception of the FTC was wrong then and is even more wrong today. The FTC has always exercised executive power, and it certainly exercises immense executive power now, not least because dozens of later statutes have expanded its bailiwick. If anything remains of *Humphrey's Executor*, the Court should overrule it. "The President cannot 'take Care that the Laws be faithfully executed' if he cannot oversee the faithfulness of the officers who execute them." *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477, 484 (2010).

A. Article II Grants The President Conclusive and Preclusive Power To Remove Executive Officers

In general, Article II empowers the President to remove "those who wield executive power on his behalf." *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 204 (2020). That power "follows from the text of Article II," "was settled by the First Congress," and has been "confirmed" in a long line of cases. *Ibid.*

1. Article II provides that "[t]he executive Power shall be vested in a President," who "shall take Care that the Laws be faithfully executed." U.S. Const. Art. II, § 1, Cl. 1; § 3. "The entire 'executive Power' belongs to the President alone." *Seila Law*, 591 U.S. at 213.

"Because no single person could fulfill that responsibility alone, the Framers expected that the President would rely on subordinate officers for assistance." *Seila Law*, 591 U.S. at 203-204. Article II contemplates that "executive Departments," U.S. Const. Art. II, § 2, Cl. 1,

will "assist the supreme Magistrate," *Free Enterprise Fund*, 561 U.S. at 483 (quoting 30 *Writings of George Washington* 334 (John C. Fitzpatrick ed. 1939)). Those departments are controlled by "Officers of the United States," Art. II, § 2, Cl. 2—principal officers supervised by the President, plus inferior officers supervised by principal officers. See *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 13 (2021). Such 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).

"These lesser officers must remain accountable to the President, whose authority they wield." *Seila Law*, 591 U.S. at 213. "If any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws." *Ibid.* (quoting 1 Annals of Cong. 463 (1789) (James Madison)). "The people do not vote for the 'Officers of the United States,'" but "instead look to the President"—the sole, elected Executive—"to guide the 'assistants or deputies subject to his superintendence.'" *Free Enterprise Fund*, 561 U.S. at 498 (quoting *The Federalist* No. 72, at 487) (ellipsis omitted)).

As a "general rule," the President's power to control the Executive Branch thus includes "'the authority to remove those who assist him.'" *Seila Law*, 591 U.S. at 215. Removal is the essential "tool [of] control," for "[o]nce an officer is appointed, it is only the authority that can remove him" whom "he must fear and, in the performance of his functions, obey." *Kennedy* v. *Braidwood Management, Inc.*, 145 S. Ct. 2427, 2443 (2025). Without the removal power, "the President could not be held fully accountable for discharging his own responsi-

bilities; the buck would stop somewhere else." *Free Enterprise Fund*, 561 U.S. at 514.

2. "The President's removal power has long been confirmed by history and precedent." *Seila Law*, 591 U.S. at 214. From the start, the Framers recognized that, so long as the President possesses the "power to oversee executive officers through removal," "'those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community.'" *Free Enterprise Fund*, 561 U.S. at 492, 498 (quoting 1 Annals of Cong. 499 (1789) (James Madison)).

The First Congress discussed the removal power "extensively" when creating the first executive departments (Foreign Affairs, Treasury, and War) in 1789. *Free Enterprise Fund*, 561 U.S. at 492. "The view that 'prevailed, as most consonant to the text of the Constitution' and 'to the requisite responsibility and harmony in the Executive Department,' was that the executive power included a power to oversee executive officers through removal.'" *Ibid.* (quoting Letter from James Madison to Thomas Jefferson (June 30, 1789), *in* 16 *Documentary History of the First Federal Congress of the United States of America* 893 (Charlene Bangs Bickford et al. eds., 1992)). As Madison put it, the Constitution grants the President a removal power that Congress "has no right to diminish or modify." *Id.* at 500 (quoting 1 Annals of Cong. 463).

The Decision of 1789 supplies "contemporaneous and weighty evidence of the Constitution's meaning," and it soon became the "settled and well understood construction of the Constitution." *Free Enterprise Fund*, 561

U.S. at 492 (quoting *Bowsher* v. *Synar*, 478 U.S. 714, 723-724 (1986), and *Ex parte Hennen*, 13 Pet. 230, 259 (1839)). Congress "followed and enforced" that decision "in a number of acts" spanning decades. *Myers* v. *United States*, 272 U.S. 52, 145 (1926); see *Seila Law*, 591 U.S. at 242 (Thomas, J., concurring in part and dissenting in part). The "universal practice of the Government" conformed to it, and statesmen and jurists accepted its "correctness." *Parsons* v. *United States*, 167 U.S. 324, 330 (1897).

Consistent with Article II's original meaning, this Court has repeatedly invalidated statutes infringing the President's removal power. *Myers* held unconstitutional a statute requiring the President to obtain the Senate's consent to remove a postmaster, a Senate-confirmed inferior officer. See 272 U.S. at 176. *Free Enterprise Fund* held that the President may not "be restricted in his ability to remove a principal officer, who is in turn restricted in his ability to remove an inferior officer." 561 U.S. at 484. *Seila Law* invalidated a statute making the Director of the Consumer Financial Protection Bureau removable only for inefficiency, neglect of duty, or malfeasance in office. See 591 U.S. at 220. *Collins* v. *Yellen*, 594 U.S. 220 (2021), invalidated a statute making the Director of the Federal Housing Finance Agency removable only for cause. See *id.* at 250. And *Trump* v. *United States*, 603 U.S. 593 (2024), reaffirmed that the removal power is "conclusive and preclusive," "disabling the Congress from acting upon the subject." *Id.* at 608 (quoting *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 637-638 (1952) (R. Jackson, J., concurring)).

3. Dissenting Justices have opined that Congress's Article I power to "organize the Executive Branch" en-

ables it to restrict removals of executive officers. *Seila Law*, 591 U.S. at 266 (opinion of Kagan, J.). But this Court has soundly rejected that theory. See *id.* at 231 (majority opinion); *Free Enterprise Fund*, 561 U.S. at 500; *Myers*, 272 U.S. at 127. "The powers relative to offices are partly Legislative and partly Executive. The Legislature creates the office, defines the powers, limits its duration and annexes a compensation. This done, the Legislative power ceases." *Myers*, 272 U.S. at 128 (quoting 1 Annals of Cong. 581 (James Madison)). Because "the power of removal is of an Executive nature," "it is beyond the reach of the Legislative body." *Seila Law*, 591 U.S. at 227 n.10 (quoting 1 Annals of Cong. 464 (James Madison)). Congress's authority "to structure the Executive Branch," *id.* at 261 (opinion of Kagan, J.), enables it to establish and organize executive departments underneath the President—not to establish a Fourth Branch that siphons executive power away from the Chief Executive's control.

A contrary reading "provides a blueprint for the extensive expansion of the legislative power" at the President's expense. *Free Enterprise Fund*, 561 U.S. at 500. "In a system of checks and balances, 'power abhors a vacuum,' and one branch's handicap is another's strength." *Ibid.* (brackets omitted). "Congress has plenary control over the salary, duties, and even existence of executive offices. Only Presidential oversight can counter its influence." *Ibid.* Congress's power over offices makes presidential oversight "*more* critical" for maintaining the balance struck by the Constitution. *Seila Law*, 591 U.S. at 231.

Dissenting Justices have also contended that the President can use "other tools" "to exert influence" over independent agencies. *Seila Law*, 591 U.S. at 296 (opin-

ion of Kagan, J.). But this Court has rejected that theory too, explaining that "the various 'bureaucratic minutiae' a President might use to corral agency personnel" do not "substitute for at will removal." *Id.* at 231 (majority opinion). Article II requires "'a clear and effective chain of command' down from the President, on whom all the people vote." *Arthrex*, 594 U.S. at 11.

Finally, dissenting Justices have questioned whether "the fabled Decision of 1789" really did establish the President's preclusive removal power. *Seila Law*, 591 U.S. at 295 (opinion of Kagan, J.). The Court has not entertained "the slightest doubt" that it did. *Myers*, 272 U.S. at 114; see *Seila Law*, 591 U.S. at 204 (majority opinion); *Free Enterprise Fund*, 561 U.S. at 492. Early commentators similarly understood that it "expressed the sense of the [First Congress] that the power of removal by the executive could not be abridged by the legislature." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1531, at 390 n.1 (1833). Even those few commentators who disagreed with "the decision of Congress in 1789" acknowledged that it "had settled the question beyond any power of alteration." *Parsons*, 167 U.S. at 330.

B. The Removal Power Extends To Heads Of Multimember Administrative Agencies Such As The FTC

1. This Court has held that the President's "'unrestricted power of removal' with respect to 'executive officers of the United States whom he has appointed'" stands among the President's "core constitutional powers." *Trump*, 603 U.S. at 606, 609 (quoting *Myers*, 272 U.S. at 106, 176). The power to remove department heads lies at the very center of that preclusive authority. Department heads are "the most important of [the President's] subordinates," and their duties are "the

most important in the whole field of executive action." *Myers*, 272 U.S. at 134. They exert immense power on their own, and they can appoint, oversee, and remove inferior officers who themselves possess "significant authority pursuant to the laws." *Buckley* v. *Valeo*, 424 U.S. 1, 126 (1976) (per curiam). A department head therefore "must be the President's *alter ego* in the matters of that department." *Myers*, 272 U.S. at 133.

Unquestionably, then, the President's removal power extends to heads of multimember administrative agencies, such as the FTC, the National Labor Relations Board, the Consumer Product Safety Commission, and the Merit Systems Protection Board. Those agencies typically may bring enforcement actions, promulgate rules implementing statutes, issue final orders in adjudications, and investigate potential violations of the law. Those are all executive powers—and significant ones at that. See *Seila Law*, 591 U.S. at 218-219. Moreover, this Court's Appointments Clause cases establish that agencies like the FTC are "'Department[s]'"—"freestanding component[s] of the Executive Branch"—and that Congress may empower their heads to appoint inferior executive officers. *Free Enterprise Fund*, 561 U.S. at 511 (brackets omitted). Those agency heads must be subject to the President's "general administrative control of those executing the laws." *Myers*, 272 U.S. at 164.

The FTC perfectly illustrates the point. The FTC executes more than 80 federal laws, including major laws like the FTC Act and narrow ones like the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385. The FTC regulates matters ranging from meat products, see 7 U.S.C. 227(b); to contact lenses, see 15 U.S.C. 7607; to credit cards, see 15 U.S.C. 1607(c); to movie

tickets, see 15 U.S.C. 45c; to horseracing, see 15 U.S.C. 3053; and crab fishing, see 16 U.S.C. 1862(j)(6). Because the people do not elect FTC Commissioners, accountability for the exercise of that vast power depends on "oversight by an elected President." *Free Enterprise Fund*, 561 U.S. at 499. Without such oversight, the Executive Branch "may slip from the Executive's control, and thus from that of the people." *Ibid.* If the President cannot remove FTC Commissioners at will, "[w]hom do the people blame and hold responsible for a bad decision or policy adopted by [the FTC]?" *FCC* v. *Consumers' Research*, 145 S. Ct. 2482, 2517-2518 (2025) (Kavanaugh, J., concurring).

Upholding tenure protections for agency heads like FTC Commissioners would also invert this Court's removal jurisprudence regarding other types of officers. While recognizing a "general rule" of "unrestricted removal" for executive officers, this Court's cases have carved out an "exceptio[n]" for certain inferior officers who are appointed by department heads or courts, perform "limited duties," and have "no policymaking or administrative authority." *Seila Law*, 591 U.S. at 215, 218. That narrow exception—which is dubious but not directly at issue here—represents the "outermost constitutional limi[t] of permissible congressional restrictions" on the removal of inferior officers. *Id.* at 218. It would make little sense for the removal power to extend to inferior officers with even minor "policymaking or administrative authority," *ibid.*, yet not encompass FTC Commissioners and other agency heads, who are among the most powerful executive officers in the government.

C. *Humphrey's Executor* Does Not Justify The FTC's Removal Restrictions Today

Some 90 years ago, the Court upheld the FTC's removal protections in *Humphrey's Executor*. The Court recognized the President's "illimitable" authority to remove "executive officers," but distinguished FTC Commissioners on the ground that the FTC exercised "no part of the executive power." 295 U.S. at 628, 631. That characterization was wrong in 1935—as this Court has already recognized—and is even more clearly wrong today. The modern FTC, like other multimember agencies, indisputably wields executive power. Even under the reasoning of *Humphrey's Executor* itself, the President must be able to remove executive officers at will.

1. *Humphrey's Executor* arose after President Franklin D. Roosevelt removed William Humphrey, an FTC Commissioner appointed by President Hoover, based on disagreement over policy and a belief that the Administration's aims would be "carried out most effectively with personnel of [the President's] own selection." 295 U.S. at 618. Humphrey died soon after his removal. See *ibid.* The Court sustained his executor's back-pay claim and upheld the FTC's removal protections. See *id.* at 626-632.

To reach that holding, *Humphrey's Executor* first reasoned that the President's "illimitable power of removal" extends to "executive officer[s]," but does not "include an officer who occupies no place in the executive department and who exercises no part of the executive power." 295 U.S. at 627-628. According to the Court's "reading of the [First Congress's] debates," the Decision of 1789 concerned only "executive officers." *Id.* at 631. The Court similarly described *Myers* as involving "the power of executive removal," *id.* at 626, and

"an executive officer restricted to the performance of executive functions," *id.* at 627. Because a postmaster is "merely one of the units in the executive department," the Court stated, he falls within the "exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aid he is." *Ibid.*; see *Free Enterprise Fund*, 561 U.S. at 493.

Then came the critical step: *Humphrey's Executor* concluded that, unlike a postmaster, the FTC "cannot in any proper sense be characterized as an arm or an eye of the executive." 295 U.S. at 628. The Court stated that the FTC was "independent of executive authority," *id.* at 625, and "wholly disconnected from the executive department," *id.* at 630. The Court added that Congress created the FTC "as a means of carrying into operation legislative and judicial powers, and as an agency of the legislative and judicial departments." *Ibid.*; see *Seila Law*, 591 U.S. at 215.

Specifically, *Humphrey's Executor* stated that the FTC acted as a "legislative" "aid" by conducting "investigations" and publishing "reports" "for the information of Congress," and as a "judicial aid" or "master in chancery" by making recommendations to courts. 295 U.S. at 628. The Court also stated that the FTC "act[ed] in part quasi-legislatively and in part quasi-judicially" in "filling in and administering" the unfair-competition standard through judicially enforceable cease-and-desist orders. *Ibid.*; see *id.* at 621. The Court concluded: "To the extent that [the FTC] exercises any executive function—as distinguished from the executive power in the constitutional sense—it does so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers, or as an agency of the legislative or judicial departments of the government." *Id.* at 628; see *Seila*

Law, 591 U.S. at 215-216; *Free Enterprise Fund*, 561 U.S. at 493.

Humphrey's Executor, in sum, involved "a multi-member body of experts, balanced along partisan lines," that performed what the Court in 1935 deemed "legislative and judicial functions" and that "was said not to exercise any executive power." *Seila Law*, 591 U.S. at 216. Because the Court thought the FTC was "an agency of the legislative and judicial departments," "wholly disconnected from the executive department," it held that the President could not remove Commissioners at will. *Humphrey's Executor*, 295 U.S. at 630. Precisely because the Court viewed the FTC as exercising quasi-legislative and quasi-judicial power, it feared that empowering the President to remove Commissioners at will would violate the separation-of-powers "principle" that one branch cannot "impos[e] [its] control in the house of another who is master there." *Ibid.*

Humphrey's Executor thus "did not abandon *Myers*"; it "distinguished *Myers*" on the ground that "the FTC exercised 'quasi-legislative' and 'quasi-judicial' power that is not part of 'the executive power.'" *Seila Law*, 591 U.S. at 245 n.2 (Thomas, J., concurring in part and dissenting in part).

2. No one disputes that "the President's illimitable power of removal" extends only to "executive officers," *Humphrey's Executor*, 295 U.S. at 631, and excludes truly non-executive appointees, such as D.C. Court of Appeals judges, see D.C. Code §§ 11-1501, 11-1502; *Palmore* v. *United States*, 411 U.S. 389, 397-404 (1973). But *Humphrey's Executor* erred both legally and factually in holding that the FTC, even in 1935, exercised "no part of the executive power." 295 U.S. at 628. To put it mildly, the "conclusion that the FTC did not exercise

executive power has not withstood the test of time." *Seila Law*, 591 U.S. at 216 n.2.

Most fundamentally, *Humphrey's Executor* misclassified the powers it considered as "quasi-legislative or quasi-judicial," "as distinguished from executive." 295 U.S. at 628; see *id.* at 624, 628, 629 (describing powers as "quasi-legislative" or "quasi-judicial" five times). Articles I, II, and III establish three branches and grant them distinct types of power: legislative, executive, or judicial. See U.S. Const. Art. I, § 1; Art. II, § 1, Cl. 1; Art. III, § 1. Mixed quasi-powers are alien to our constitutional structure. See *Seila Law*, 591 U.S. at 239-241 (Thomas, J., concurring in part and dissenting in part).

Humphrey's Executor also misapprehended specific powers of the 1935 FTC, prompting a later Court to find it "hard to dispute that the powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered 'executive.'" *Morrison* v. *Olson*, 487 U.S. 654, 689 n.28 (1988). For example, the power to issue cease-and-desist orders is plainly executive—not, as *Humphrey's Executor* would have it, "in part quasi-legislativ[e] and in part quasi-judicia[l]." 295 U.S. at 628. "Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law." *Bowsher*, 478 U.S. at 733; see *City of Arlington* v. *FCC*, 569 U.S. 290, 305 n.4 (2013) (agency adjudications "are exercises of—indeed, under our constitutional structure they *must be* exercises of—the 'executive Power'"); *Arthrex*, 594 U.S. at 17 (even when an adjudicator's duties "'partake of a Judiciary quality as well as Executive,'" he is "still exercising executive power and must remain 'dependent on the President'") (quoting 1 Annals of Cong. 611-612 (James Madison)). Indeed, cease-and-desist orders were the 1935 FTC's

principal means of enforcing the FTC Act; other tools, such as civil penalties, came later. See p. 25, *infra*.

In a similar vein, *Humphrey's Executor* misunderstood other powers in ways that obscured their executive nature, for instance suggesting that the FTC conducted investigations only "for the information of Congress." 295 U.S. at 628. In reality, the FTC could investigate potential violations to decide whether to pursue enforcement action—a core executive power. See FTC Act § 6(a), 38 Stat. 721; see also *Trump*, 603 U.S. at 620; *Seila Law*, 591 U.S. at 206.

Humphrey's Executor itself limited its holding "to officers of the kind here under consideration," 295 U.S. at 632, and *Seila Law* explained that it extended only to "the set of powers the Court considered as the basis for its decision," 591 U.S. at 219 n.24. Those powers, properly understood, are all executive—and all executive power ultimately is vested in the President.

3. The FTC's removal restrictions are even less defensible today because Congress has granted the FTC new powers that *Humphrey's Executor* did not consider at all. Those powers, too, are indisputably executive.

First, post-1935 statutes authorize the FTC to file civil suits seeking relief from private parties. Unlike in 1935, today's FTC may seek injunctions preventing violations of the laws it enforces, see 15 U.S.C. 53(b); civil penalties for violations of certain rules and orders, see 15 U.S.C. 45(m); and relief "necessary to redress injury to consumers," including the "refund of money or return of property," 15 U.S.C. 57b(b). The power to seek such remedies on behalf of the United States is a "quintessentially executive power not considered in *Humphrey's Executor*." *Seila Law*, 591 U.S. at 219. "A lawsuit is the ultimate remedy for a breach of the law, and it is to the

President * * * that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.'" *Buckley*, 424 U.S. at 138. Indeed, the ability to file enforcement actions is "the primary threat to individual liberty posed by executive power," making it vital that those who wield that authority be accountable for how they use it. *PHH Corp.* v. *CFPB*, 881 F.3d 75, 174 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting).

The modern FTC also exercises broad power to issue substantive rules. For example, it may issue "rules which define with specificity acts or practices which are unfair or deceptive acts or practices" under the FTC Act. 15 U.S.C. 57a(a)(1)(B). It also makes rules under a host of statutes enacted since *Humphrey's Executor*, such as the Fur Products Labeling Act, 15 U.S.C. 69f(b); the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a; the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6502(b)(1); and the Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3053; see generally *FTC Statutes*.

Again, that authority to issue "binding rules" implementing statutes is "executive power." *Seila Law*, 591 U.S. at 218, 220. And again, *Humphrey's Executor* did not consider such power. The "quasi-legislative" powers it mentioned "were not substantive rulemaking powers, which the [FTC] itself did not assert it possessed until 1962," "but rather the responsibility to conduct investigations for the purpose of recommending legislation to Congress." *Synar* v. *United States*, 626 F. Supp. 1374, 1397 n.24 (D.D.C. 1986) (Scalia, Johnson, & Gasch, J.J.). Though post-1935 statutes unambiguously empower the FTC to issue substantive rules, see, *e.g.*, 15 U.S.C. 57a(1)(B), it remains contested whether the rulemaking authority originally conferred by Section 6(g) of

the FTC Act extended beyond internal procedural rules, see *Ryan, LLC* v. *FTC*, 746 F. Supp. 3d 369, 384 (N.D. Tex. 2024).

The modern FTC's adjudicatory authority is also broader. The 1935 FTC's cease-and-desist orders lacked binding effect until courts granted injunctions enforcing them, see *Humphrey's Executor*, 295 U.S. at 620-621—so they functioned as little more than "recommended dispositions," *Seila Law*, 591 U.S. at 218. But under post-1935 amendments, FTC orders can become final and enforceable without judicial intervention. See 15 U.S.C. 45(g) and (*l*). Statutes enacted since 1935 also empower the FTC to issue other remedies, including lifetime bans from horseracing, see 15 U.S.C. 3057(d), 3058(b), and civil penalties for violating certain rules, see 42 U.S.C. 6303(a). Authority to "unilaterally issue final decisions" in "administrative adjudications" is yet another "executive power" unaddressed in *Humphrey's Executor*. *Seila Law*, 591 U.S. at 219.

Further, Congress has broadened the FTC's investigative powers. For instance, a 1976 statute empowers the FTC to review mergers and acquisitions before their consummation, so that it can sue to block them if it thinks they violate the antitrust laws. See 15 U.S.C. 18a. A 2003 statute similarly authorizes the FTC to review certain agreements among pharmaceutical companies, so that it can pursue enforcement action when it finds antitrust violations. See Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, § 1112, 117 Stat. 2461. The power to investigate potential lawbreakers for the purpose of determining whether to pursue enforcement action falls within "the special province of the Executive Branch." *Trump*, 603 U.S. at 620.

Finally, unlike most independent agencies, the FTC conducts foreign relations. A 2006 statute empowers it to provide investigative "assistance" to a "foreign law enforcement agency," and, with the Secretary of State's approval, to "negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance" from other countries. 15 U.S.C. 46(j)(1) and (4). The "conduct of foreign negotiations" "falls peculiarly within the province of the executive department." *The Federalist* No. 72, at 486. By any measure, the FTC today exercises wide-ranging executive power.

Especially given those powers, this case is straightforward. *Humphrey's Executor* reaffirmed the President's "illimitable power" to remove "executive officers." 295 U.S. at 631. Members of the modern FTC and other administrative agencies are executive officers. The characterization of the 1935 FTC as non-executive has already been repudiated by *Morrison* and *Seila Law*, see pp. 23-25, *supra*, and has in any event been overtaken by later statutes, see pp. 25-28, *supra*. The FTC's removal protections violate Article II.

4. Respondent misinterprets *Humphrey's Executor* as creating a gaping hole in Article II for "multimember boards." Stay Opp. 34; see J.A. 61. That interpretation not only subverts bedrock Article II principles and misreads *Humphrey's Executor* itself, but also lacks any limiting principle. On that view, Congress could wrest the entire Executive Branch from the President by converting every department into a multimember agency. The Department of State could become a multimember Foreign Affairs Commission, the Department of the Treasury could become a Finance and Taxation Board, the Department of Health and Human Services could

become the Federal Health Authority, and so on. Article II does not countenance sidelining the President as a spectator in an Executive Branch of multimember agencies that exercise his executive power outside his control. See *PHH*, 881 F.3d at 155-157 (Henderson, J., dissenting).

Respondent invokes history, noting (Stay Opp. 15 n.2) that independent multimember agencies began with the Interstate Commerce Commission in 1887. But the Constitution's text trumps contrary practice, see *INS* v. *Chadha*, 462 U.S. 919, 945-959 (1983), and Founding-era practice trumps later practice, see *Powell* v. *McCormack*, 395 U.S. 486, 541-547 (1969). This Court has therefore refused to subordinate Article II's text and original meaning to late-19th-century statutes requiring Senate consent for removal. See *Myers*, 272 U.S. at 171-176. And *Seila Law* reaffirmed the "general rule" of "unrestricted removal," 591 U.S. at 215, rejecting dissenting Justices' reliance on the practice of creating independent agencies that began in 1887, *id.* at 275 (opinion of Kagan, J.).

Respondent's reliance (Stay Opp. 22) on the removal protections of the Federal Reserve Board of Governors is likewise misplaced. This Court has described the Federal Reserve System as a "uniquely structured, quasi-private entity" that "follows in the distinct historical tradition of the First and Second Banks of the United States." *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025); see *Seila Law*, 591 U.S. at 222 n.8. If a historical exception to the removal power exists for the Federal Reserve Board—a question the Court need not decide—it would be an agency-specific "anomaly" based on the Federal Reserve System's history and "unique function" "with respect to monetary policy." *PHH*, 881 F.3d

at 192 n.17 (Kavanaugh, J., concurring). The Federal Reserve System is "not a model or precedent" for "a vast independent regulatory state." *Ibid.*

D. This Court Should Overrule Anything That Remains Of *Humphrey's Executor*

If anything remains of *Humphrey's Executor*, this Court should overrule it. While the Court ordinarily adheres to precedent, *stare decisis* is not an "inexorable command" and is "at its weakest" in constitutional cases. *Ramos* v. *Louisiana*, 590 U.S. 83, 105 (2020). In that context, the Court considers the nature of the error, the decision's harmful real-world and jurisprudential consequences, and reliance interests. See, *e.g.*, *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215, 268 (2022); *Ramos*, 590 U.S. at 121-122 (Kavanaugh, J., concurring in part). By those metrics, if *Humphrey's Executor* is read to limit the President's power to remove executive officers, it should be overruled so that lower courts cease relying on its "long ago abandoned" reasoning. Cf. *Kennedy* v. *Bremerton School District*, 597 U.S. 507, 534 (2022) (recognizing the "long ago" demise of *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971), despite lower courts' misapprehensions).[1]

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[1] *Wiener* v. *United States*, 357 U.S. 349 (1958), applied the "philosophy of *Humphrey's Executor*" to hold that the President could not remove, at will, a member of the War Claims Commission, even though the applicable statute lacked an express removal restriction. *Id.* at 356. *Seila Law* treated *Wiener* as an "appli[cation]" of *Humphrey's Executor*, not a freestanding exception to the removal power. 591 U.S. at 216. Yet the en banc D.C. Circuit has suggested that *Wiener* independently justifies tenure protections for the NLRB and MSPB. See *Harris* v. *Bessent*, No. 25-5037, 2025 WL 1021435, at *2 (Apr. 7, 2025). To avoid confusion, the Court should clarify that, to the extent *Wiener* suggests Congress may restrict the removal of executive officers, it, too, no longer remains good law. In-

1. *Humphrey's Executor* grievously erred in holding that the President could not remove FTC Commissioners at will. It broke from text, history, and precedent, and misapprehended the FTC's powers to boot. Thus, in four cases over the last 15 years—*Free Enterprise Fund*, *Seila Law*, *Collins*, and *Trump*—the Court has reaffirmed *Myers* and confined *Humphrey's Executor* to its facts. Those decisions now leave no doubt that "Congress lacks authority to control the President's 'unrestricted power of removal' with respect to 'executive officers of the United States whom he has appointed.'" *Trump*, 603 U.S. at 608-609. *Humphrey's Executor* has become a "doctrinal dinosaur," justifying a "depart[ure] from *stare decisis*." *Kimble* v. *Marvel Entertainment, LLC*, 576 U.S. 446, 458 (2015); see *Franchise Tax Board* v. *Hyatt*, 587 U.S. 230, 248 (2019).

The poor quality of its reasoning weighs further against retaining *Humphrey's Executor*. The decision rests on the erroneous and now-repudiated premise that the 1935 FTC exercised only "quasi-legislative or quasi-judicial powers," "as distinguished from executive power." 295 U.S. at 628. Its "six quick pages," which are "devoid of textual [support] or historical precedent for th[at] novel principle," starkly contrast with Chief Justice Taft's "carefully researched and reasoned 70-page opinion" in *Myers*. *Morrison*, 487 U.S. at 726 (Scalia, J., dissenting). And the Court has recognized that "the powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered 'executive'" and that a removal restriction's constitutionality "can-

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deed, the Court has already effectively abrogated *Wiener* by holding that "Congress must use 'very clear and explicit language'" "to 'take away' the power of at-will removal from an appointing officer." *Braidwood*, 145 S. Ct. at 2448.

not be made to turn" on "the terms 'quasi-legislative' and 'quasi-judicial.'" *Id.* at 689 & n.28 (majority opinion).

Scholars have likewise criticized the decision as "one of the more egregious opinions" in the Court's history. Geoffrey P. Miller, *Independent Agencies*, 1986 Sup. Ct. Rev. 41, 93. Even scholars who have defended FTC removal restrictions have noted the "widespread view that the case was a bizarre and unfounded exercise in constitutional innovation." Cass R. Sunstein & Lawrence Lessig, *The President and the Administration*, 94 Colum. L. Rev. 1, 101 (1994).

Likewise, those Justices who have defended the decision's result have abandoned its rationale, accepting that "today we view *all* the activities of administrative agencies as exercises of" executive power. *Seila Law*, 591 U.S. at 278 n.7 (opinion of Kagan, J.). They have rationalized *Humphrey's Executor* on a ground the opinion never invokes—that Article I leaves decisions about removal to Congress, "so long as the President retains the ability to carry out his constitutional duties." *Id.* at 264. But when a precedent's "underlying reasoning has become so discredited" that retaining it requires inventing "new and different justifications to shore up the original mistake," the better course is to overrule it, not reinvent it. *Citizens United* v. *FEC*, 558 U.S. 310, 379 (2010) (Roberts, C.J., concurring); see *Montejo* v. *Louisiana*, 556 U.S. 778, 792 (2009). That is especially true where, as here, this Court has already rejected the new theory—*i.e.*, that removal restrictions are valid unless they go "too far," *Seila Law*, 591 U.S. at 275 n.6 (opinion of Kagan, J.). See, *e.g.*, *id.* at 228 n.11 (majority opinion).

2. "An erroneous interpretation of the Constitution is always important, but some are more damaging than others." *Dobbs*, 597 U.S. at 268. By upholding the FTC's

removal restrictions and spawning decades of misapprehensions about other multimember agencies, *Humphrey's Executor* has been uniquely "destructive of the structure of the Constitution." *Mistretta* v. *United States*, 488 U.S. 361, 424 (1989) (Scalia, J., dissenting). The myth of independent agencies has operated as a "direct threat to our constitutional structure," *Seila Law*, 591 U.S. at 239 (Thomas, J., concurring in part and dissenting in part), and a "significant threat to individual liberty and to the constitutional system of separation of powers," *PHH*, 881 F.3d at 165 (Kavanaugh, J., dissenting). "Few things could be more perilous to liberty than some 'fourth branch' that does not answer even to the one executive official who *is* accountable to the body politic." *Collins*, 594 U.S. at 278-279 (Gorsuch, J., concurring in part).

The Framers understood the danger to liberty posed by unaccountable officers, having fought a war in part because the King had "erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance." Declaration of Independence ¶ 12. So they subjected officers to oversight by an elected President and secured the Executive Branch's "due dependence on the people." *The Federalist* No. 70 (Alexander Hamilton), at 472; see *Collins*, 594 U.S. at 252 (removal power ensures "electoral accountability" for "Executive Branch actions"). But independent agencies mean independence from presidential oversight and insulation from democratic accountability. "[W]hen Congress delegates authority to an independent agency, no democratically elected official is accountable." *Consumers' Research*, 145 S. Ct. at 2517 (Kavanaugh, J., concurring).

The growth of the administrative state since 1935 only heightens those concerns. Justice Robert Jackson, President Roosevelt's Attorney General, colorfully described *Humphrey's Executor* as "that damn little case," reflecting its relative insignificance. Eugene C. Gerhart, *America's Advocate* 99 (1958). Even by the 1950s, independent agencies had only just "begun to have important consequences on personal rights." *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 487 (1952) (R. Jackson, J., dissenting). Today, however, their power extends "into every nook and cranny of daily life." *Arlington*, 569 U.S. at 315 (Roberts, C.J., dissenting). The "expansion of that bureaucracy into new territories the Framers [and the *Humphrey's* Court] could scarcely have imagined only sharpens [this Court's] duty to ensure that the Executive Branch is overseen by a President accountable to the people." *Seila Law*, 591 U.S. at 231-232.

3. *Humphrey's Executor* has also proved unworkable. See *Dobbs*, 597 U.S. at 280-281. It distinguished "quasi-legislative or quasi-judicial powers" from "executive power," *Humphrey's Executor*, 295 U.S. at 628, but *Morrison* repudiated that approach due to the "difficulty of defining such categories," 487 U.S. at 690 n.28. *Morrison* substituted another test, whether the statute "impermissibly interferes" with the President's constitutional functions, *id.* at 685, but *Seila Law* rejected that "reimagined" test as a "gloss added by a later Court in dicta," 591 U.S. at 219. Rather than reviving the illusory distinction between executive power and quasi-legislative or quasi-judicial powers, *Seila Law* declined to extend *Humphrey's Executor* to agencies that exercise "significant executive power," *id.* at 204, and just a year later, *Collins* clarified that the "breadth of an agency's authority is not dispositive," 594 U.S. at 251.

In short, this Court has already limited *Humphrey's Executor* to the facts set out in the opinion. Since those facts did not actually exist for the FTC in 1935 or any other agency then or later, keeping the precedent on the books serves no purpose. Cf. *Edwards* v. *Vannoy*, 593 U.S. 255, 272 (2021) (declining to retain "a theoretical exception that never actually applies in practice").

Moreover, because the decision's flaws have repeatedly prompted the Court to limit its scope, judges have struggled to decipher its meaning. In just the last two years, judges have variously concluded that the *Humphrey's Executor* exception encompasses:

- All multimember agencies. See *Wilcox* v. *Trump*, 775 F. Supp. 3d 215, 234 (D.D.C. 2025).
- Multimember agencies with statutory partisan-balance requirements (such as the CPSC, but not the NLRB). See *Consumers' Research* v. *CPSC*, 91 F.4th 342, 352-356 (5th Cir.), cert. denied, 145 S. Ct. 414 (2024); *Space Exploration Technologies Corp.* v. *NLRB*, No. 24-50627, 2025 WL 2396748 (5th Cir. Aug. 19, 2025).
- Multimember agencies with "'quasi-legislative or quasi-judicial' (not 'purely executive') functions." *Wilcox*, 145 S. Ct. at 1418 (Kagan, J., dissenting).
- Multimember "adjudicatory bodies." *Harris* v. *Bessent*, No. 25-5037, 2025 WL 1021435, at *1 (D.C. Cir. Apr. 7, 2025) (en banc).
- Multimember agencies whose executive power is not "substantial." *Harris* v. *Bessent*, 775 F. Supp. 3d 164, 177 (D.D.C. 2025).
- Multimember agencies that are "identical twin[s] of the 1935 FTC (as *Humphrey's Executor* under-

stood the 1935 FTC)." *Harris* v. *Bessent*, No. 25-5037, 2025 WL 980278, at *13 (D.C. Cir. Mar. 25, 2025) (Walker, J., concurring).

- The FTC, "the exact same agency" addressed in *Humphrey's Executor*. J.A. 116.

Because *Humphrey's Executor* was "indeterminate" from the start, and because later efforts "to clarify" the decision have "only added to [its] unworkability," the decision now "undermine[s] the very 'rule of law' values that *stare decisis* exists to secure." *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369, 409, 411 (2024).

4. Reliance interests cannot save removal protections for multimember agencies, since those agencies will continue operating even after their removal restrictions are invalidated. The FTC Act and many other independent-agency statutes include severability clauses, see, *e.g.*, 15 U.S.C. 57 (FTC); 15 U.S.C. 2051 note (CPSC); 29 U.S.C. 166 (NLRB), and"[e]ven in the absence of a severability clause," the normal remedy for a removal defect is severing "the removal provision," *Seila Law*, 591 U.S. at 234; see, *e.g.*, *Free Enterprise Fund*, 561 U.S. at 509. Nor would remedies include reopening past agency decisions. In many cases, the six-year statute of limitations, 28 U.S.C. 2401(a), has expired. And an agency's unconstitutional tenure protection does not automatically make its actions void. See *Collins*, 594 U.S. at 259.

Congress's creation of independent agencies since *Humphrey's Executor* does not justify retaining the decision. Because *Humphrey's Executor* was limited to agencies that exercise "no part of the executive power," 295 U.S. at 628, statutes granting tenure protection to agencies that execute the law go beyond what the decision on its face allows. That Congress has repeated the

violation is no saving grace, as other separation-of-powers precedents illustrate. *Myers* affirmed the President's unrestricted removal power, see 272 U.S. at 176, even though, in the preceding six decades, Congress had enacted statutes requiring Senate consent for the removal of "the great majority" of inferior officers, *id.* at 243-244 (Brandeis, J., dissenting). And *Chadha* struck down the legislative veto, see 462 U.S. at 959, even though, in the preceding half century, Congress had included such a veto "in nearly 200 statutes," *id.* at 968 (White, J., dissenting).

Rather, the more sustained the disregard for the separation of powers, the more important its restoration becomes. This Court should uphold "the judgment of the wise men who constructed our system, and of the people who approved it, and of two centuries of history that have shown it to be sound." *Morrison*, 487 U.S. at 734 (Scalia, J., dissenting). "[T]hat judgment says, quite plainly, that 'the executive Power shall be vested in a President of the United States.'" *Ibid.* (brackets omitted).

II. COURTS MAY NOT PREVENT THE REMOVAL OF EXECUTIVE OFFICERS

In addition to reversing the district court's judgment on the merits, this Court should exercise its discretion to address the lawfulness of remedies preventing the removal of executive officers. See, *e.g.*, *Howes* v. *Fields*, 565 U.S. 499, 505-517 (2012) (alternative holdings on merits and habeas corpus); *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 735 (2011) (alternative holdings on merits and qualified immunity); *Munaf* v. *Geren*, 553 U.S. 674, 689-705 (2008) (alternative holdings on merits and preliminary injunction). Here, the district court erroneously granted injunctive and declaratory relief blocking respondent's

removal and effectively reinstating her. J.A. 100-101. Lower courts have improperly granted similar relief in cases involving various types of officers.[2] Whether a court may prevent an officer's removal is also at issue in *Cook* v. *Trump*, No. 25A312 (filed Sept. 18, 2025), which involves for-cause removal of a Federal Reserve Governor. This Court should hold that courts may not issue any remedy, legal or equitable, to prevent the removal of an executive officer—especially where, as here, the officer was appointed by the President. Such relief violates Article II, traditional remedial principles, and applicable statutes.

A. Judicial Orders Blocking The Removal Of Executive Officers Violate Article II

Even if Congress could restrict some removals of executive officers, a court may not issue an order blocking such a removal. An order preventing a removal *ex post* raises separation-of-powers concerns beyond those presented by *ex ante* removal restrictions. Such an order "deeply intrudes into the core concerns of the executive branch" by forcing the President, after he has determined that an officer should not exercise executive power, to reverse course and entrust executive power to someone he has removed. *Dellinger* v. *Bessent*, No. 25-

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[2] See, *e.g.*, *Harper* v. *Bessent*, No. 25-cv-1294, 2025 WL 2049207, at *13 (D.D.C. July 22, 2025) (multimember-agency heads); *United States Institute of Peace* v. *Jackson*, 783 F. Supp. 3d 316, 376-383 (D.D.C. 2025) (same); *Dellinger* v. *Bessent*, 768 F. Supp. 3d 33, 75 (D.D.C. 2025) (single agency head); *Perlmutter* v. *Blanche*, No. 25-5285, 2025 WL 2627965, at *1 (D.C. Cir. Sept. 10, 2025) (inferior officer); *Abramowitz* v. *Lake*, No. 25-cv-887, 2025 WL 2480354, at *11 (D.D.C. Aug. 28, 2025) (same); *Aviel* v. *Gor*, 780 F. Supp. 3d 1, 16 (D.D.C. 2025) (same).

5028, 2025 WL 559669, at *14 (D.C. Cir. Feb. 15, 2025) (Katsas, J., dissenting).

That understanding of the constitutional problems with undoing a removal after the fact—even where the President's grounds for removal might be questioned—dates to the Founding. Many members of the First Congress opposed requiring Senate consent for removals precisely because of the danger that such a procedure would force the President to retain someone he had tried to remove. Representative Benson noted that, if the Senate "were to acquit the officer," "the President would then have a man forced on him whom he considered as unfaithful." 1 Annals of Cong. 507. Representative Boudinot argued: "But suppose they shall decide in favor of the officer, what a situation is the President then in," "having officers imposed upon him who do not meet his approbation?" *Id.* at 469. And Representative Sedgwick asked, "Shall a man under these circumstances be saddled upon the President, who has been appointed for no other purpose but to aid the President in performing certain duties?" *Id.* at 522-523. The First Congress thus understood that "no person can be forced upon [the President] as an assistant by any other branch." *Id.* at 395 (James Madison).

History also cuts against the district court's remedies. "[T]hroughout the Nation's history," executive officers often "have contested their removal." *Bessent* v. *Dellinger*, 145 S. Ct. 515, 517 (2025) (Gorsuch, J., dissenting). Secretary of War Edwin Stanton barricaded himself in his office after his removal by President Andrew Johnson; Myers disputed his removal by President Wilson; Humphrey disputed his removal by President Roosevelt; two members of the Board of General Appraisers disputed their removal by President Taft;

and so on. See, *e.g.*, Aditya Bamzai, *Taft, Frankfurter, and the First Presidential For-Cause Removal*, 52 U. Rich. L. Rev. 691, 737-738 (2018). Yet none obtained a judicial reinstatement order, and most did not even try.

Indeed, until the current Administration, no court appears to have ever restrained the President's removal of *any* presidentially appointed executive officer. At most, a district court in 1983 enjoined the removal of members of the U.S. Commission on Civil Rights because the court believed that the Commission functioned as a "legislative agency" whose "'only purpose'" was "to find facts which [could] subsequently be used as a basis for legislative or executive action." *Berry* v. *Reagan*, No. 83-cv-3182, 1983 WL 538, at *2 (D.D.C. Nov. 14, 1983).

Instead of seeking reinstatement, all sorts of executive officers, including presidential appointees, historically contested their removal by invoking the political process, see *Myers*, 272 U.S. at 150-169, or by seeking back pay, see *Dellinger*, 145 S. Ct. at 517 (Gorsuch, J., dissenting). Thus, most of this Court's removal-power cases, including *Humphrey's Executor*, involved back-pay claims by removed officers or their estates. See *Wiener* v. *United States*, 357 U.S. 349, 350 (1958); *Humphrey's Executor*, 295 U.S. at 612; *Myers*, 272 U.S. at 106; *Shurtleff* v. *United States*, 189 U.S. 311, 318 (1903); *Parsons*, 167 U.S. at 327; *United States* v. *Perkins*, 116 U.S. 483, 483 (1866). A back-pay order, where available under applicable statutes, compensates the removed officer for any loss of salary due to an allegedly improper removal. But such orders avoid the problems that arise when courts force the President "to recognize and work with an agency head whom he has already removed." *Dellinger*, 2025 WL 559669, at *16 (Katsas, J., dissenting).

B. Judicial Orders Blocking The Removal Of Executive Officers Violate Traditional Remedial Principles

Even setting aside constitutional concerns, traditional principles of equity and law preclude courts from issuing orders—whether injunctions, declaratory judgments, or writs of mandamus—blocking removals of executive officers.

Injunctions. Courts may not enjoin removals of executive officers. Federal courts' power to issue injunctions derives from the Judiciary Act of 1789, ch. 20, 1 Stat. 73. See *Trump* v. *CASA, Inc.*, 606 U.S. 831, 841 (2025); *Grupo Mexicano de Desarrollo, S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999). Courts must exercise that power in accordance with "traditional principles of equity," *Grupo*, 527 U.S. at 319, as understood "at the time" of "the enactment of the original Judiciary Act," *CASA*, 606 U.S. at 841-842.

One particularly well-settled principle of equity is that a court may not enjoin the removal of an executive officer. Thus, in *White* v. *Berry*, 171 U.S. 366 (1898), the Court determined that a court could not enjoin an inferior officer's allegedly unlawful removal because "a court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee." *Id.* at 377. *In re Sawyer*, 124 U.S. 200 (1888), similarly determined that a federal court could not enjoin a state officer's allegedly unlawful removal because it is "well settled that a court of equity has no jurisdiction over the appointment and removal of public officers." *Id.* at 212. Other decisions reaffirm that rule. See *Baker* v. *Carr*, 369 U.S. 186, 231 (1962); *Walton* v. *House of Representatives*, 265 U.S. 487, 490 (1924); *Harkrader* v. *Wadley*, 172 U.S. 148, 165 (1898).

That equitable principle has deep roots. "No English case has been found of a bill for an injunction to restrain the appointment or removal" of an officer. *Sawyer*, 124 U.S. at 212. American state courts have "denied" the "power of a court of equity to restrain" a "removal" in "many well considered cases." *Ibid.*; see *id.* at 212-214 (collecting cases). And commentators explained that "[n]o principle of the law of injunctions, and perhaps no doctrine of equity jurisprudence, is more definitely fixed or more clearly established than that courts of equity will not interfere by injunction to determine questions concerning the appointment of public officers or their title to office." 2 James L. High, *Treatise on the Law of Injunctions* § 1312, at 863 (2d ed. 1880).

That rule also makes sense. Reinstatement orders can cause "the utmost confusion in the management of executive affairs," *White*, 171 U.S. at 378, for instance by subjecting the government to "the disruptive effect of the repeated removal and reinstatement of officers during the pendency of litigation," *Wilcox*, 145 S. Ct. at 1415. By contrast, removals do not irreparably harm removed officers, who have no judicially cognizable private interest in continuing to exercise "political power." *Raines* v. *Byrd*, 521 U.S. 811, 821 (1997).

Declaratory judgments. Courts also may not issue declarations blocking removals of executive officers. A suit under the Declaratory Judgment Act, 28 U.S.C. 2201, is "essentially an equitable" action. *Samuels* v. *Mackell*, 401 U.S. 66, 70 (1971). Declarations are "analogous" to equitable remedies such as "decree[s] quieting title." *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293, 300 (1943). Because a court may enforce a declaration through "[f]urther necessary or proper relief," 28 U.S.C. 2202, a declaration can "serve as the

basis for a subsequent injunction," *Samuels*, 401 U.S. at 72. And "even if the declaratory judgment is not used as a basis for actually issuing an injunction, the declaratory relief alone has virtually the same practical impact as a formal injunction would." *Ibid.*

Thus, "the same equitable principles relevant to the propriety of an injunction must be taken into consideration" "in determining whether to issue a declaratory judgment." *Samuels*, 401 U.S. at 73; see *Macauley* v. *Waterman S.S. Corp.*, 327 U.S. 540, 545 & n.4 (1946); *Huffman*, 319 U.S. at 300. Because a court of equity may "not, by injunction, restrain an executive officer from making a wrongful removal," *White*, 171 U.S. at 376, courts lack the power to issue declarations against such removals. The Declaratory Judgment Act incorporates, not abrogates, that longstanding limitation.

Mandamus. While mandamus is a proper mechanism for trying the title to *judicial* offices, see *Marbury* v. *Madison*, 1 Cranch 137, 167-173 (1803) (justice of the peace); *Hennen*, 13 Pet. at 256 (court clerk), courts may not use it to restore *executive* officers. Mandamus must comport with separation-of-powers principles, see *Cheney* v. *U.S. District Court*, 542 U.S. 367, 381 (2004), and those principles preclude courts from blocking the removal of an executive officer, see pp. 38-40, *supra*. Mandamus directed to the President would also violate the bedrock principle that a court may not restrain the President "in the performance of his official duties." *Mississippi* v. *Johnson*, 4 Wall. 475, 501 (1867). Before this Administration, no federal court appears to have ever issued mandamus to prevent the President's removal of an executive officer. See *Harris*, 2025 WL 1021435, at *6 (Rao, J., dissenting).

Further, while parties can obtain preliminary injunctions upon showing a likelihood of success and can obtain declaratory judgments upon prevailing on the merits, anyone seeking mandamus must establish a "clear and indisputable" right to relief. *United States* v. *Duell*, 172 U.S. 576, 582 (1899). Respondent cannot satisfy that standard here. Respondent has not made a clear and indisputable showing that she should prevail on the merits or that Article II allows courts to reinstate removed executive officers.

C. Congress Has Foreclosed Judicial Orders Reinstating Presidentially Appointed Officers

1. At a minimum, if Congress wishes to authorize courts to block removals, it must say so expressly. This Court's precedents require "an express statement by Congress" to authorize remedies that could burden the President's Article II powers. *Franklin* v. *Massachusetts*, 505 U.S. 788, 801 (1992); see *Nixon* v. *Fitzgerald*, 457 U.S. 731, 748 n.27 (1982). The Court has also required "clear and explicit language" before interpreting statutes to burden the President's removal power; "inference or implication" does not suffice. *Braidwood*, 145 S. Ct. at 2448; see *Collins*, 594 U.S. at 248; *Shurtleff*, 189 U.S. at 315. And the Court usually presumes that, if Congress intends "a drastic departure from the traditions of equity practice," it makes "an unequivocal statement." *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944).

Congress knows how to speak clearly in authorizing reinstatement of removed officers. The independent-counsel statute in *Morrison* stated that an "independent counsel removed from office may obtain judicial review of the removal in a civil action" and "may be reinstated" by court order. Independent Counsel Reau-

thorization Act of 1987, Pub. L. No. 100-191, § 596, 101 Stat. 1305. The FTC Act includes no such language.

2. Far from clearly authorizing relief that would prevent removals of FTC Commissioners, Congress instead clearly *barred* them from seeking reinstatement (or even back pay) as a remedy for statutory violations. The Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. 1101 *et seq.*, establishes a comprehensive "framework for evaluating adverse personnel actions against federal employees," *United States* v. *Fausto*, 484 U.S. 439, 443 (1988) (brackets omitted), including officers of the United States, see 5 U.S.C. 7511. That statute replaced the earlier "patchwork system" of remedies for various types of government officers and employees with an "integrated scheme" that delineates who may obtain relief; what actions they may challenge; how, when, and where they may do so; and what relief they may obtain. *Fausto*, 484 U.S. at 445. The Back Pay Act of 1966, 5 U.S.C. 5596, though enacted before the CSRA, now operates as part of that scheme. See *Fausto*, 484 U.S. at 454. For federal employees, "what you get under the CSRA is what you get." *Fornaro* v. *James*, 416 F.3d 63, 67 (D.C. Cir. 2005) (Roberts, J.).

For employees covered by the CSRA, challenges to firings and other employment actions generally get channeled to the MSPB—which may award reinstatement and back pay—with review in the Federal Circuit. See *Elgin* v. *Department of the Treasury*, 567 U.S. 1, 6 (2012). That "integrated scheme of administrative and judicial review" "balance[s] the legitimate interests of the various categories of federal employees with the needs of sound and efficient administration." *Fausto*, 484 U.S. at 445. The CSRA's review scheme is "exclusive." *Elgin*, 567 U.S. at 13. Employees covered by the

CSRA generally must proceed to the MSPB and cannot obtain relief in district court. *Id.* at 10-15.

The CSRA also expressly withholds remedies from some categories of "employees"—including presidential appointees like FTC Commissioners. Specifically, the CSRA's remedial provisions "d[o] not apply" to those appointed "by and with the advice and consent of the Senate" or "by the President," or those "whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character." 5 U.S.C. 7511(b)(1), (2), and (3). Congress thus elected not to allow removed FTC Commissioners to seek relief, whether reinstatement or back pay.

For such individuals, the CSRA's exclusive scheme precludes statutory claims in the MSPB or anywhere else. For instance, *Fausto* held that certain employees in the "excepted service," with no path to judicial review under the CSRA, may not bring back-pay claims outside the CSRA. See 484 U.S. at 447. As *Fausto* illustrates, "the 'failure to include' any relief 'within the remedial scheme of so comprehensive a piece of legislation reflects a congressional intent that no judicial relief be available.'" *Fornaro*, 416 F.3d at 67. Thus, even if reinstatement were otherwise available as a remedy for removed officers—which it is not, see pp. 41-44, *supra*—the CSRA would foreclose it for respondent.[3]

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[3] When the CSRA channels a case to another tribunal, it deprives district courts of jurisdiction. See *Elgin*, 567 U.S. at 12; Gov't Appl. for Stay at 7-8, 19-21, *OPM* v. *AFGE*, 145 S. Ct. 1914 (2025) (No. 24A904) (arguing district courts lacked jurisdiction over cases channeled to other forums). The grant of jurisdiction to one tribunal implies the denial of jurisdiction to others. See *Axon Enterprise, Inc.* v. *FTC*, 598 U.S. 175, 185 (2023). Here, however, the CSRA entirely withholds relief from respondent. Such a total exclusion from the CSRA's remedial scheme does not channel jurisdiction to an alter-

As one district court explained after a former Special Counsel attempted to contest his removal: "Because the CSRA is the comprehensive statutory scheme governing federal personnel actions, and because Congress intentionally excluded presidential appointees" from its remedial provisions, it follows that such officers "simply should not have administrative or judicial remedies." *Bloch* v. *Executive Office of the President*, 164 F. Supp. 3d 841, 852 (E.D. Va. 2016). In other words, where a party's "federal service category has no remedies under the CSRA, the absence of such remedies is properly understood as a conscious choice by Congress to afford *no* statutory remedies." *Ibid.*

The separation-of-powers concerns raised by orders reinstating removed presidential appointees, see pp. 38-40, *supra*, support that congressional line-drawing. So does this Court's longstanding recognition that a "public office is not property." *Taylor* v. *Beckham (No. 1)*, 178 U.S. 548, 576 (1900). Especially where, as here, the President removes an agency head, the answer has never been for courts to countermand that decision, leaving her free to wield executive power in the President's name but without his confidence. The answer instead lies with Congress, which has decided against judicial remedies here, and the political process, which continues to unfold.

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nate court; instead, it shows a "congressional intent to deny" relief on the merits to the "excluded employees." *Fausto*, 484 U.S. at 447.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
BRETT A. SHUMATE
Assistant Attorney General
SARAH M. HARRIS
Deputy Solicitor General
ERIC D. MCARTHUR
Deputy Assistant Attorney General
VIVEK SURI
Assistant to the Solicitor General
MARK R. FREEMAN
MICHAEL S. RAAB
DANIEL AGUILAR
LAURA E. MYRON
Attorneys

LUCAS CROSLOW
General Counsel
ALEX POTAPOV
Deputy General Counsel
Federal Trade Commission

OCTOBER 2025

APPENDIX

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APPENDIX

15 U.S.C. 41 provides:

Federal Trade Commission established; membership; vacancies; seal

A commission is created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners shall be members of the same political party. The first Commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from September 26, 1914, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed: *Provided, however*, That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified..[1] The President shall choose a chairman from the Commission's membership. No Commissioner shall engage in any other business, vocation, or employment. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

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[1] So in original.