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.,

Respondents.

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

BRIEF OF CHRISTIAN EMPLOYERS ALLIANCE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Officers of the United States cannot exercise substantial executive power without supervision from the President. If an official oversteps, he must answer to the President. The President's dependence on the people provides agency accountability, but only if the agency is accountable to the President. Agencies need that accountability.

Amicus Christian Employers Alliance and its members have felt firsthand agencies wielding executive power without political accountability. CEA is a nonprofit organization that advances its members' freedom to conduct their businesses consistent with their religious beliefs. Twice in two years, it has been forced to sue the Equal Employment Opportunity Commission for improperly broadening federal statutes.

In the first case, CEA successfully challenged EEOC's expansion of Title VII to require employers to provide insurance coverage for gender transitions. *Christian Emps. All.* v. *EEOC*, 719 F. Supp. 3d 912, 928 (D.N.D. 2024) (*CEA* v. *EEOC I*).

In the second—which remains pending—CEA is challenging EEOC's attempt to recast Title VII and the Pregnant Workers Fairness Act. This time, EEOC forced employers to use employees' self-selected pronouns, allow males in female-only private spaces (like restrooms and locker rooms), and facilitate elective abortions. See Complaint for Injunctive &

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Declaratory Relief ¶¶ 37–75, *Christian Emps. All.* v. *EEOC*, No. 1:25-cv-00007 (D.N.D. Jan. 15, 2025), Dkt. No. 1 (*CEA* v. *EEOC II* Compl.).

In short, EEOC has wielded executive power to make monumental policy decisions on hotly contested issues, including gender transitions, pronoun use, female-only restrooms, and abortion. And as a so-called independent agency, EEOC has done so without political accountability. That is inconsistent with the Constitution.

"Independent" agencies violate Article II's vesting of *the* executive power in the President. Indeed, that is one of CEA's claims in its ongoing case against EEOC. *CEA* v. *EEOC II* Compl. ¶¶ 291–301. And that is why CEA has moved to intervene in *Samuels* v. *Trump*, where a onetime EEOC Commissioner similarly claims the President unlawfully removed her. Proposed Intervenor-Defendants Choices Pregnancy Centers of Greater Phoenix, Inc. and Christian Employers Alliance's Motion to Intervene, *Samuels* v. *Trump*, No. 1:25-cv-01069-TSC (D.D.C. April 24, 2025), Dkt. No. 6. Likewise, CEA has an interest in this Court clarifying that the Constitution does not permit independence for agencies that wield substantial executive power.

CEA is also interested here because CEA's members are regulated by the Federal Trade Commission. The FTC's powers touch most of the American economy, and so does CEA's membership. For example, the FTC enforces the Magnuson-Moss Warranty Act, which governs warranties on consumer goods, and CEA has members that manufacture and sell consumer goods. The FTC enforces privacy laws, and CEA has members that operate online platforms,

apps, and services, including some covered by the FTC's Children's Online Privacy Protection Rule. The FTC enforces the Clayton Act and other antitrust laws, which affect many CEA members' businesses. Finally, the FTC has broad enforcement authority over consumer protection laws, truth-in-advertising regulations, and other statutes prohibiting misleading or deceptive trade practices—regulatory functions that impact nearly every CEA member.

Accordingly, CEA urges the Court to rein in so-called "independent" agencies and return their supervision to the President. Doing so is the only way that rogue agencies can be held accountable to the President—and therefore to the people themselves.

SUMMARY OF THE ARGUMENT

This case is about whether a federal court can divert the President's executive power to someone not of the President's choosing—worse, someone from whom the President has deliberately withdrawn delegated power. This Court has emphasized that the President may "remove without cause executive officers who exercise [the executive] power on his behalf, subject to narrow exceptions." *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025) (per curiam). There is only one such exception for principal officers—this Court's 1935 decision in *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935). And this Court has repeatedly narrowed it. See *Seila Law LLC* v. *CFPB*, 591 U.S. 197 (2020). Yet under the guise of *Humphrey's Executor*, the lower courts have allowed so-called independent agencies to wield executive power without political accountability. That arrangement violates the Constitution.

The FTC exercises substantial executive power. Full stop. Whatever its role in 1935, it now investigates alleged violations of many consumer protection and antitrust statutes, brings enforcement actions and seeks civil penalties against private persons, and issues regulations with the force of law. These are core executive functions. As this Court said in *Seila Law*, the "conclusion that the FTC [does] not exercise substantial executive power has not stood the test of time." *Seila Law,* 591 U.S. at 216 n.2. This means FTC Commissioners must be accountable to the President and thus to the people.

It is time to put the final nail in the coffin and expressly overrule *Humphrey's Executor*. If the President cannot exercise his constitutional duty to supervise and remove officers in "independent" agencies like the FTC, there is no democratic accountability when these officials stray from the will of the people. Officers wielding such substantial executive power are accountable to the President, and he is accountable to us. The buck stops with him—not with unelected bureaucrats.

Even under *Humphrey's Executor*, this Court should reverse the lower court's reinstatement of Slaughter. Her ultra vires claim lacks merit because Congress specifically designated a path for lawsuits alleging a breach of "any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1); see 28 U.S.C. § 1346(a)(2). Nor is Slaughter entitled to the equitable remedy of reinstatement because there is an adequate remedy at law—monetary damages for the loss of her job.

This Court should reverse.

ARGUMENT

This Court should reverse for two reasons. *First*, *Humphrey's Executor*'s narrow exception does not apply to the FTC today, and even if it did, *Humphrey's Executor* was wrongly decided. This Court has recognized as much, and stare decisis principles do not "counsel[its] continued acceptance." *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 263 (2022). *Second*, Slaughter has no viable cause of action, and reinstatement is not an appropriate remedy.

I. Statutory removal protections for FTC Commissioners violate the separation of powers.

The Constitution vests the President with control over executive-branch officials. This means the President may remove an officer for any reason or no reason at all—that is "the rule, not the exception." *Seila Law*, 591 U.S. at 228; see *Myers* v. *United States*, 272 U.S. 52 (1926) (holding Congress could not require the President to seek advice and consent from the Senate before removing a postmaster). That principle flows from the very structure of the Constitution and is reflected in the historical record. In *Seila Law*, this Court explained that the exercise of substantial executive power must be subject to presidential control. 591 U.S. at 224. *Humphrey's Executor* is at odds with that principle and should be overruled.

A. The President must be able to remove officers wielding substantial executive power—including FTC Commissioners.

1. Article II places executive power in the President: "The executive Power shall be vested in a President of the United States of America." U.S. Const. art. II, § 1, cl.1. It allows for no exceptions. The "'executive Power'—all of it—is 'vested in a President.'" *Seila Law*, 591 U.S. at 203 (quoting U.S. Const. art. II, § 1, cl. 1). And he alone is instructed by the Constitution to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3.

Of course, the President relies on "subordinate officers" for help. *Seila Law*, 591 U.S. at 204; accord *Collins* v. *Yellen*, 594 U.S. 220, 252 (2021). But those officers cannot exercise executive power apart from the President. He must be able to "supervise" those "who wield executive power on his behalf." *Seila Law*, 591 U.S. at 204; see also *PHH Corp.* v. *CFPB*, 881 F.3d 75, 164 (D.C. Cir. 2018) (Kavanaugh, J., dissenting) ("To carry out the executive power and be accountable for the exercise of that power, the President must be able to supervise and direct those subordinate officers."). The President must directly or indirectly "by chain of command" control all officers wielding his executive power. *Morrison* v. *Olson*, 487 U.S. 654, 721 (1988) (Scalia, J., dissenting).

Under Article II's plain language, the "buck stops with the President." *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 493 (2010). Otherwise, the "entire 'executive Power' [would not] belong[ ] to the President alone." *Seila Law*, 591 U.S. at 213. And he would be unable to ensure the laws are faithfully executed. "The President cannot 'take Care

that the Laws be faithfully executed' if he cannot oversee the faithfulness of the officers who execute them." *Free Enter. Fund*, 561 U.S. at 484. To do that, the President must be able to "hold[ ] [his] subordinates accountable for their conduct." *Id.* at 496. Officers "must fear and, in the performance of their functions, obey," only "the authority that can remove" them from office. *Seila Law*, 591 U.S. at 213–14 (citation modified). That is why the "removal power helps the President maintain a degree of control over the subordinates he needs to carry out his duties as the head of the Executive Branch." *Collins*, 594 U.S. at 252.

This understanding is reflected in history. "[T]he Framers thought it necessary to secure the authority of the Executive so that he could carry out his unique responsibilities." *Seila Law*, 591 U.S. at 223. The "weakness of the executive" needed to "be fortified." *Ibid.* (quoting The Federalist No. 51, at 350 (James Madison) (J. Cooke ed., 1961)). So the Framers thought it "essential" to create "an energetic executive"—one not bogged "down with the 'habitual feebleness and dilatoriness' that comes with a 'diversity of views and opinions.'" *Id.* at 223–24 (quoting The Federalist No. 70, *supra*, at 471 (Alexander Hamilton)). Instead, the executive would have "the '[d]ecision, activity, secrecy, and dispatch' that 'characterise the proceedings of one man.'" *Id.* at 224 (alteration in original) (quoting The Federalist No. 70, *supra*, at 472).

For that system to work, lesser officers wielding executive authority had to remain "subject to the ongoing supervision and control of the elected President." *Seila Law*, 591 U.S. at 224. The executive officials were to "assist the supreme Magistrate in

discharging the duties of his trust." *Id.* at 213 (quoting 30 *Writings of George Washington* 334 (J. Fitzpatrick ed., 1939)). They could not exercise executive power apart from the President: "'the lowest officers, the middle grade, and the highest' all 'depend, as they ought, on the President, and the President on the community.'" *Id.* at 224 (quoting 1 Annals of Cong. 499 (1789) (James Madison)).

Indeed, the Framers expressly recognized that the President's executive power included supervising his subordinates. Madison was clear on that: if "any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws." *Seila Law*, 591 U.S. at 213 (quoting 1 Annals of Cong. 463 (1789)). And he was not alone.

As Publius, Hamilton wrote that executive officers "ought to be considered as the assistants or deputies of the Chief Magistrate" who are "subject to his superintendence." Aditya Bamzai & Saikrishna Bangalore Prakash, *The Executive Power of Removal*, 136 Harv. L. Rev. 1756, 1773 (2023) (quoting The Federalist No. 72, *supra*, at 434 (Alexander Hamilton)).

Likewise, William Maclaine "spoke of the Chief Executive being responsible for the orders he gave to revenue 'deputies.'" *Ibid.* (citation modified). And antifederalists agreed that one man could better "superintend the execution of laws with discernment and decision, with promptitude and uniformity"—implying the man would direct others under him. *Ibid.* (citation modified). In short, the Framers widely believed that the President would oversee those exercising executive power.

Congress debated the removal of executive officers "extensively" in the summer of 1789. *Free Enter. Fund*, 561 U.S. at 492. The House at first settled on including language in a bill saying that the President could remove the Secretary of Foreign Affairs. Bamzai & Prakash, *supra*, at 1774. But representatives worried that the "language might be misread as a legislative grant of removal authority when, in fact, a House majority believed that the President had a constitutional power to remove." *Ibid.* So the House changed the language to note that the President could remove without implying a congressional grant of authority: "'Whenever the [officer] shall be removed by the President,' … the chief clerk shall have custody of papers." *Ibid.* (quoting 2 Cong. Rec. 3 (1789)). And the Senate approved the bill after rejecting amendments to the removal language. *Ibid.*

The decision of 1789 thus confirmed the President's power to remove. As Madison later explained, the prevailing Founding-era view tracked the Constitution's text and provided "the requisite responsibility and harmony in the Executive Department." *Free Enter. Fund*, 561 U.S. at 492 (citation modified). That view reflected the widely held understanding that the "executive power included a power to oversee executive officers through removal." *Ibid.*

Presidential removal authority is also a democratic safeguard. Unlike agency officials, the President is elected. That's why his control "is essential to subject Executive Branch actions to a degree of electoral accountability." *Collins*, 594 U.S. at 252. The President is "the most democratic and politically accountable official in Government," being elected by the entire Nation. *Seila Law*, 591 U.S. at 224.

And the "solitary nature of the Executive Branch" offers "a single object for the jealousy and watchfulness of the people." *Ibid.* (quoting The Federalist No. 51, *supra*, at 479). Our system depends on the people holding the President accountable for executive action. But they cannot do so for so-called "independent" agencies. That's a constitutional problem.

2. Now consider the FTC. *Humphrey's Executor* concluded that the agency could not "be characterized as an arm or an eye of the executive." 295 U.S. at 628. Instead, the Court said, the agency acted only "quasi legislatively" and "quasi judicially." *Ibid.* So, as this Court explained in *Seila Law*, "*Humphrey's Executor* allowed Congress to give for-cause removal protections to a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions and *was said not to exercise any executive power*." 591 U.S. at 216 (emphasis added).

Whatever was true about the FTC in 1935, there is no debate that today's FTC exercises *substantial* executive power. It regularly investigates statutory violations and brings enforcement actions against private parties. And it issues numerous rules and regulations. These are all core executive functions. So the holding of *Humphrey's Executor* no longer covers the FTC Act's removal protections.

First, FTC has investigative powers, and if it finds a violation, it can adjudicate enforcement action within the agency. Its powers go far beyond "submitting recommended dispositions to an Article III court," *Seila Law*, 591 U.S. at 218–19—the function described as "quasi judicial" in *Humphrey's*

Executor, 295 U.S. at 628 (discussing FTC Act § 7 (codified at 15 U.S.C. § 47 (1914))). "Every year the FTC brings hundreds of cases against individuals and companies for violating consumer protection and competition laws that the agency enforces," and it does so on behalf of the United States. *Legal Library: Cases and Proceedings*, FTC, https://perma.cc/3A7V-YVBH.

During administrative enforcement proceedings, the FTC may issue cease-and-desist orders and seek monetary penalties and damages for violations. 15 U.S.C. §§ 21, 45, 57; cf. *Seila Law*, 591 U.S. at 219 (agency head "may unilaterally issue final decisions awarding legal and equitable relief in administrative adjudications"). The FTC can also initiate civil enforcement actions in federal court. 15 U.S.C. §§ 13(b), 53(b). The FTC is thus empowered "to seek daunting monetary penalties against private parties on behalf of the United States in federal court—a quintessentially executive power." *Seila Law*, 591 U.S. at 219.

Investigating violations of the law and bringing enforcement actions are "quintessentially executive function[s]." *Trump* v. *United States*, 603 U.S. 593, 620–21 (2024) (discussing "investigation and prosecution of crimes" (citation modified)); accord *Morrison*, 487 U.S. at 691 ("law enforcement functions" traditionally are executive); *id.* at 706 (Scalia, J., dissenting) ("[I]nvestigation and prosecution of crimes is a quintessentially executive function."). Those powers take today's FTC beyond the reach of *Humphrey's Executor*.

Second, the FTC can issue regulations with the force of law. It is not limited to "making investigations and reports thereon for the information of Congress." *Humphrey's Executor*, 295 U.S. at 628 (describing FTC Act § 6 (codified at 15 U.S.C. § 46 (1914))). To the contrary, the FTC "possesses the authority to promulgate binding rules" implementing a jaw-dropping number of federal statutes. *Seila Law*, 591 U.S. at 218.

The FTC has jurisdiction over more than 70 laws, including the Identity Theft Act, Fair Credit Reporting Act, and Clayton Act. *What the FTC Does*, FTC, https://perma.cc/AS76-HMH4. Its regulations govern market participants throughout the economy. For example, the FTC issued and enforces the Telemarketing Sales Rule, 16 C.F.R. §§ 310.1–.9 (2010), the Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312.1–.13 (2013), and the Health Breach Notification Rule, 16 C.F.R. §§ 318.1–.9 (2024). "Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law." *Bowsher* v. *Synar*, 478 U.S. 714, 733 (1986). This function, too, goes beyond what the Court addressed in *Humphrey's Executor*.

In sum, the FTC "may … issue final regulations, oversee adjudications, set enforcement priorities, initiate prosecutions, and determine what penalties to impose on private parties." *Seila Law*, 591 U.S. at 225. That is the very definition of taking care that the laws be faithfully executed. *Humphrey's Executor*'s 1935 view does not control the FTC's modern, expansive authority. Otherwise, FTC Commissioners who wield unmistakable executive power would act without answering to the President.

B. Stare decisis principles favor overruling *Humphrey's Executor*.

If the FTC Act's removal protections are permissible under *Humphrey's Executor*, this Court should overrule it.

Traditional stare decisis principles favor overruling *Humphrey's Executor*. As the Court has long recognized, "*stare decisis* is not an inexorable command, and it is at its weakest when [the Court] interprets the Constitution." *Dobbs*, 597 U.S. at 264 (citation modified). When the Court considers a constitutional question, it is often more important to have the matter "settled right" than to have it simply settled. *Ibid*. *Humphrey's Executor* has transgressed the separation of powers for nearly a century; it is time to have the matter "settled right."

1. *Humphrey's Executor* is egregiously wrong.

The Court erred in allowing the FTC's for-cause removal protections to stand. For reasons discussed above, *Humphrey's Executor* was dead wrong as a matter of constitutional interpretation. Although constitutional errors are "always important, … some are more damaging than others." *Dobbs*, 597 U.S. at 268. For nearly a century, so-called independent agencies have been allowed to hide behind the removal protections of *Humphrey's Executor* and wield an ever-increasing swath of executive powers without political accountability.

Humphrey's Executor has been a frequent target of criticism. It "was considered by many at the time the product of an activist, anti-New Deal Court bent on reducing the power of President Franklin

Roosevelt." *Morrison*, 487 U.S. at 724 (Scalia, J. dissenting). These political motivations could explain the decision's incompatibility with the Court's earlier decision in *Myers*. But putting the decision's questionable inception aside, recent FTC actions make clear that the agency today wields significant executive power to impact the daily lives of Americans.

For instance, after *Dobbs*, the FTC declared its "commit[ment] to fully enforcing the law against illegal use and sharing of … information related to personal reproductive matters." Kristin Cohen, *Location, Health, and Other Sensitive Information: FTC Committed to Fully Enforcing the Law Against Illegal Use and Sharing of Highly Sensitive Data* (July 11, 2022), https://perma.cc/2P6N-QFUV. This includes the regulation of "products that track women's periods, monitor their fertility, oversee their contraceptive use, or even target women considering abortion." *Ibid.* The FTC lauded the Massachusetts Attorney General for pursuing consumer-protection charges against a pro-life organization that directed advertisements about alternatives to abortion to mobile devices located near abortion facilities, declaring this a "misuse of mobile location and health information. *Ibid.* And the agency pursued its own enforcement action in that vein. Press Release, FTC Sues Kochava for Selling Data that Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations (Aug. 29, 2022), https://perma.cc/E67R-SZ5B.

The FTC Commissioners' aim was to bolster the abortion industry while interfering with pro-life speech that advocates for unborn children and informs women about alternatives. President Biden

touted the FTC's enforcement actions in a 2024 "Reproductive Rights Task Force" statement. White House, FACT SHEET: White House Task Force on Reproductive Healthcare Access Announces New Actions and Marks the 51st Anniversary of Roe v. Wade (Jan. 22, 2024), https://perma.cc/3KC7-D4PD. The agency committed itself "to enforcing the law against illegal use and sharing of highly sensitive data, including information related to reproductive health care," the White House proclaimed. *Ibid.*

Yet Slaughter argues that President Trump is powerless to remove the agency heads that spearheaded partisan enforcement actions like these. If that rule stands, FTC Commissioners will be authorized to use executive power to drive their personal partisan agendas against the wishes of the President, in whom all of "[t]he executive Power" is supposed to "be vested." U.S. Const. art. II, § 1, cl.1.

To put it in practical political terms, if "independent" FTC Commissioners take actions that contradict the President's agenda—as well as the majoritarian will of the people the President represents—there is no political recourse. The people cannot refuse to re-elect FTC Commissioners, who are not elected in the first place. They cannot exert pressure on the President, who lacks control over the agency and its commissioners. The Framers ensured political accountability over executive power *through the President*, not in spite of him. *Humphrey's Executor* must yield to the Constitution and be overruled.

2. The reasoning in *Humphrey's Executor* is weak and unworkable.

The Court's reasoning in *Humphrey's Executor* was weak. The concept of an executive-branch agency that cannot "be characterized as an arm or an eye of the executive," *Humphrey's Executor*, 295 U.S. at 628, is untenable. The decision drew a line between functions that are "purely executive" and "quasi legislative" or "quasi judicial." *Ibid.* That line is "not a clear one or even a rational one." *Morrison*, 487 U.S. at 725 (Scalia, J. dissenting). Though the landmark decision curbed presidential removal powers, the Court did not address constitutional structure, like Article II's vesting clause, in the opinion. It is a bedrock principle of administrative law that "[t]he buck stops with the President" when it comes to executing the laws. *Free Enter. Fund.*, 561 U.S. at 493. But under *Humphrey's Executor*, the President cannot remove those who are intended to assist him in that responsibility. The buck seemingly "stop[s] somewhere else." *Id.* at 514.

As a result, *Humphrey's Executor* is not capable of being "applied in a consistent and predictable manner." *Dobbs*, 597 U.S. at 281. Lower courts have struggled for nearly a century to apply it while respecting other separation of powers doctrines. Compare *Consumers' Rsch.* v. *Consumer Prod. Safety Comm'n*, 98 F.4th 646, 647–50 (5th Cir. 2024) (Willett, J., concurring in the denial of rehearing en banc), with *id.* at 650–57 (Oldham, J., dissenting from same); compare *Consumers' Rsch.* v. *Consumer Prod. Safety Comm'n*, 91 F.4th 342, 352–356 (5th Cir. 2024), with *id.* at 356–358 (Jones, J., concurring in part and dissenting in part).

Humphrey's Executor asks lower courts to examine the constitutionality of agencies that "everyone agrees [are] structurally identical to the one in *Humprey's Executor*" even though courts "no longer indulge the fiction that the FTC wields merely quasi-legislative and quasi-judicial power." *Consumers' Rsch.*, 98 F.4th at 648 (Willet, J. concurring in the denial of rehearing en banc). That is a problem.

Both factual and legal developments since 1935 weigh in favor of overruling *Humphrey's Executor*. As noted above, the FTC's reach and scope has only increased. Today's FTC unquestionably wields substantial economic power. This Court's case law has also moved on, leaving *Humphrey's Executor* a jurisprudential anomaly and a vestige of a bygone era. As the Court has explained, it is "hard to dispute" that the FTC's powers, even at the time of *Humphrey's Executor*, would now "be considered executive, at least to some degree." *Morrison*, 487 U.S. at 689 n.28 (citation modified).

These factual and legal developments have "substantially eroded" *Humphrey's Executor*. *Harris* v. *Bessent*, No. 25-5037, 2025 WL 1021435, at *3 (D.C. Cir. Apr. 7, 2025) (Rao, J. dissenting from denial of a stay). In fact, the Court already treats *Humphrey's Executor* "like a benched quarterback watching *Myers* (and the original meaning of the Constitution) from the sideline." *Harris* v. *Bessent*, No. 25-5037, 2025 WL 980278, at *13 (D.C. Cir. Mar. 28, 2025) (Walker, J. concurring in grant of a stay). But the lower courts are left without clear guidance. The quarterback remains on the team, and some lower courts have attempted to rehabilitate him, leading to flagrant constitutional violations.

3. There is no substantial reliance interest that would justify retaining *Humphrey's Executor*.

Because *Humphrey's Executor* has already been whittled to a nub, no substantial reliance interests are at risk from correcting the doctrine.

Any concern that overruling the decision would cause chaos in the administrative state is unfounded. Recognizing that restrictions on the President's removal power are unlawful would not impact the validity of sitting FTC Commissioners' appointments. See *Collins*, 594 U.S. at 257–58. This means that orders in prior enforcement actions and rules would remain valid. See *ibid.*; *Seila Law*, 591 U.S. at 236–37 (observing that previous actions by an unaccountable agency head could be ratified by one accountable to the President). And Congress may change the FTC's duties if it wishes the agency to be independent from the President. Cf. *Seila Law*, 591 U.S. at 237 ("Our severability analysis does not foreclose Congress from pursuing alternative responses to the problem.").

Nor does overruling *Humphrey's Executor* mean the end of independent monetary policy. It has long been understood that monetary policy can, consistent with the Constitution, be carried out through a private entity. See Aditya Bamzai & Aaron L. Nielson, *Article II and the Federal Reserve*, 109 Corn. L. Rev. 843, 851 (2024). Setting monetary policy is not a core executive function that must be subject to presidential control. See *id.* at 894–906. The federal government "la[id] down its sovereignty" in chartering the First and Second Bank of the United States. *Id.* at 899 (quoting *Bank of U.S. v. Planters' Bank of*

Ga., 22 U.S. (9 Wheat.) 904, 908 (1824)). As this Court recognized recently, "[t]he Federal Reserve is a uniquely structured, quasi-private entity that follows in th[is] distinct historical tradition." *Wilcox*, 145 S. Ct. at 1415.

Recognizing the President's removal power over agencies that exercise substantial executive power in no way threatens disruption to government operations. The administrative state would continue to function like it does now—only with political accountability.

II. The lower courts erred in reinstating Slaughter.

The lower courts erred in reinstating Slaughter to her position for two independent reasons. *First,* Slaughter does not have a valid cause of action. *Second,* equitable relief is not available.

A. Slaughter lacks a viable cause of action.

Slaughter has not raised a meritorious cause of action. Her primary claim is that the President violated the FTC Act, and thus acted ultra vires, when he removed her from office without citing any cause. J.A. 19. She alternatively alleges the President violated "the separation of powers." J.A. 21. But the FTC Act does not give her a cause of action for wrongful removal, and causes of action to enforce the Constitution's structural requirements must be created by Congress. See *Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325–26 (2015).

Since Slaughter has no express cause of action, she relies on an equitable cause of action "to prevent public officials from acting unconstitutionally" or in violation of statute. J.A. 22 (citing *Free Enter. Fund*, 561 U.S. at 491 n.2); see also J.A. 19 (alleging the President's actions are "*ultra vires* and a clear violation of law"). As this Court recently emphasized, such claims are improper where there is "an alternative path to judicial review." *Nuclear Reg. Comm'n* v. *Texas*, 605 U.S. 665, 682 (2025); see also *Board of Governors of Fed. Rsrv. Sys.* v. *MCorp Fin., Inc.*, 502 U.S. 32, 43–44 (1991).

The Civil Services Reform Act of 1978 ("CSRA") establishes a comprehensive "framework for evaluating adverse personnel actions against federal employees." *United States v. Fausto*, 484 U.S. 439, 443 (1988) (citation modified). Yet Congress expressly withheld CSRA remedies for certain categories of employees, including individuals appointed "by the President." 5 U.S.C. § 7511(b)(3). In *Fausto*, this Court held that Congress's express denial of remedies to certain employees within the CSRA's comprehensive scheme foreclosed claims outside the CSRA, too. See 484 U.S. at 447. The Government argues that precludes any remedy—either equitable or legal—for Slaughter. Gov't Br. at 45–47.

And even if not, Slaughter would still be unable to bring her equitable cause of action. The Tucker Act provides an avenue for a suit alleging the breach of "any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1); see 28 U.S.C. § 1346(a)(2). And that is how removal-power cases, like *Myers*, *Humphrey's Executor*, and *Wiener* v. *United States*, 357 U.S. 349 (1958), have come to this Court.

To be sure, the Court of Federal Claims generally "cannot entertain claims for injunctive relief." *Kanemoto* v. *Reno*, 41 F.3d 641, 644–45 (Fed. Cir. 1994). Still, the fact that a successful Tucker Act claim would permit a different remedy does not render it inadequate. It is still an alternative means for judicial review—the difference in remedies does not change that. Cf. *Alexander* v. *Sandoval*, 532 U.S. 275, 290 (2001) (the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others"); *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 74 (1996) ("Where Congress has created a remedial scheme for the enforcement of a particular federal right, we have … refused to supplement that scheme with one created by the judiciary."). And as the Government explains (at 44–45), Congress knows how to authorize judicial review when it wants to. That Slaughter prefers an equitable remedy does not give federal courts the authority to ignore "implied statutory limitations." *Armstrong*, 575 U.S. at 327.

B. Injunctive relief is not available.

The district court could not properly reinstate Slaughter as an FTC Commissioner in any event.

1. Reinstatement is an equitable remedy, *West* v. *Gibson*, 527 U.S. 212, 217 (1999), and equitable relief is available only when there is no adequate remedy at law, *Bessent* v. *Dellinger*, 145 S. Ct. 515, 517 (2025) (Gorsuch, J., dissenting from order holding application in abeyance) ("[A] court of equity will not entertain a case for relief where the complainant has an adequate legal remedy.") (citation modified); accord *O'Shea v. Littleton*, 414 U.S. 488, 499 (1974)

("[C]ourts of equity should not act … when the moving party has an adequate remedy at law.").

The lack of a legal remedy is the "main prerequisite to obtaining injunctive relief." 11A Wright & Miller's Federal Practice and Procedure § 2942 (3d ed. September 2025). That is because the "strong arm of equity [ ] never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages." *Id.* at n.14 (quoting *Bonaparte* v. *Camden & A.R. Co.*, 3 F. Cas. 821, 827 (C.C.D.N.J. 1830) (No. 1,617)).

Monetary damages for lost wages would compensate Slaughter for the loss of her job. That is one reason specific performance is generally unavailable for breach of a contract for personal services. See 25 *Williston on Contracts* § 67:106 (4th ed. May 2025 update). That renders the equitable remedy of reinstatement unavailable here. *See Sampson* v. *Murray*, 415 U.S. 61, 91–92 (1974) (holding a fired federal official could not establish irreparable harm even with "a satisfactory showing of loss of income and … that her reputation would be damaged as a result of the challenged agency action."). And if her position's exclusion from the CSRA's remedial scheme means Congress meant to preclude back pay and any other remedy, as the Government argues (at 45–47), an injunction is all the more inappropriate. See *Seminole Tribe*, 517 U.S. at 74.

To the extent Slaughter seeks something more than compensation—like the opportunity to exercise executive power in opposition to the President's policies—that claim also fails. Slaughter "has no

private right to the powers of an FTC commissioner's office," as Judge Rao explained in dissent below. J.A. 129; see *id.* 129–131.

2. Moreover, an injunction requiring FTC officials to "provide Ms. Slaughter with access to any government facilities, resources, and equipment necessary for her to perform her lawful duties," J.A. 91, cannot make her a presidentially appointed FTC Commissioner and does not give her actions legal weight. The district court lacked equitable power to *make her an FTC Commissioner* by nullifying the President's action removing Slaughter from office, or otherwise. See *Corner Post, Inc.* v. *Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 838 (2024) (Kavanaugh, J., concurring) (contrasting equity with judicial review under the APA).

The district court's injunction against "subordinate officials" fails for the same reason: such an injunction cannot vest Slaughter with executive power. J.A. 79.

Unless the injunction ran against the President, it could not endow Slaughter with executive power. That's because all "'executive Power' is 'vested in a President.'" U.S. Const. art. II, § 1, cl. 1. Yet, as the district court recognized, it could not properly "enjoin[ ] the President to make a formal" reinstatement returning Slaughter to office. J.A. 79 (quoting *Severino* v. *Biden*, 71 F.4th 1038, 1042 (D.C. Cir. 2023)). Ordering the FTC defendants—as distinct from the President—to act *as if* Slaughter is an FTC Commissioner does not make her one. As this Court recently affirmed, injunctive relief runs against specific parties, not the world at large. *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2552 (2025).

CONCLUSION

The Court should overrule *Humphrey's Executor* and reverse.

Respectfully submitted,

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