

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 THE CATO INSTITUTE AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONERS**

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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.

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INTEREST OF *AMICUS CURIAE*¹

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Toward that end, Cato's Robert A. Levy Center for Constitutional Studies publishes books and studies about legal issues, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs in constitutional law cases.

This case interests Cato because the Framers carefully crafted a tripartite federal government of separated powers to preserve liberty. Removal protections for principal executive officers, like the members of the Federal Trade Commission, undermine the Framers' scheme and unlawfully expand the power of unelected government officials. This case thus implicates not only the proper separation of powers, but also the preservation of liberty itself. When executive power is divided and diffused beyond electoral control, individual rights are endangered.

¹ Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

One of the Constitution’s chief protections for liberty is the separation of powers. The Framers had witnessed the failure of blurred powers under the Articles of Confederation and believed that liberty depends on keeping the legislative, executive, and judicial branches independent of one another. *Myers v. United States*, 272 U.S. 52, 116 (1926); *Bowsher v. Synar*, 478 U.S. 714, 730 (1986). And presidential control over the use of executive power by federal officials is indispensable to the good government that is liberty’s everyday safeguard.

The Constitution vests “the executive Power” solely in the President, who must “take Care that the Laws be faithfully executed.” U.S. CONST. art. II, §§ 1, 3. From that vesting flows the President’s authority to remove those who exercise executive power on his behalf. This Court has recognized only two exceptions to this removal authority: “one for multimember expert agencies that do not wield substantial executive power, and one for inferior officers with limited duties and no policymaking or administrative authority” *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 218 (2020).

This Court in *Humphrey’s Executor* held that Congress could restrict the President’s removal of FTC commissioners because, in 1935, the Commission performed “quasi-judicial and quasi-legislative” functions, rather than executive ones. *Humphrey’s*

Ex'r v. United States, 295 U.S. 602, 624 (1935).² On the back of this flawed decision, “independent” federal agencies have accumulated substantial executive power, including the power to impose severe financial penalties on Americans and their businesses. Some agencies grew their powers unilaterally and piecemeal, while others received broad new powers from Congress. Notably, the growth of this shadowy “fourth branch” of government—which possesses the power to investigate, adjudicate, and enforce financial penalties against parties for regulatory violations—accelerated around 1970. See William Yeatman & Keelyn Gallagher, *The Rise of Monetary Sanctions in Federal Agency Adjudication*, PAC. LEGAL FOUND., at 25 (Rsch. Paper No. 202401) (2024).³

This Court has since acknowledged the deficiencies in *Humphrey's Executor's* reasoning and sharply narrowed its application.⁴ Under *Seila Law*, the *Humphrey's Executor* exception can only apply to agencies “that do not wield substantial executive power” 591 U.S. at 218. A straightforward reading of this test would exclude virtually any modern expert

² Even *Humphrey's Executor* conceded that the President has “illimitable power” to remove “executive officers.” 295 U.S. at 627–28, 631.

³ Available at <https://tinyurl.com/4xnb3f8w>.

⁴ See *Seila Law*, 591 U.S. at 218–19 & n.4 (interpreting *Humphrey's Executor* to involve an agency acting as a “mere legislative or judicial aid” and not possessing “broad[] rulemaking, enforcement, and adjudicatory powers”).

agency, including the FTC itself, from *Humphrey's Executor* protection. See Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, and Future*, 2020 SUP. CT. REV. 83, 85 (2021). Yet although this Court has “repudiated almost every aspect of *Humphrey's Executor*,” *Seila Law*, 591 U.S. at 239 (Thomas, J., concurring in part and dissenting in part), this Court has not yet overruled it. See *id.* at 228 (majority opinion); *accord Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 483 (2010). And until this Court overrules *Humphrey's Executor*, lower courts will continue to shield unaccountable officers from presidential control.

In March 2025, President Donald J. Trump notified FTC Commissioner Rebecca Kelly Slaughter that he was removing her from office. The Federal Trade Commission Act permits removal of Commissioners only “for inefficiency, neglect of duty, or malfeasance in office.” See 15 U.S.C. § 41. President Trump did not invoke any of these grounds. Slaughter sued for a declaratory and injunctive relief and, relying on *Humphrey's Executor*, the district court ordered her reinstated. The D.C. Circuit denied the government’s request for a stay, holding that *Humphrey's Executor* directly controls and remains binding precedent. This Court granted certiorari to decide whether the FTC’s removal protections violate Article II and whether *Humphrey's Executor* should be overturned.

FTC commissioners are principal officers exercising substantial executive authority. Thus, the

for-cause removal restriction in the Federal Trade Commission Act violates the Constitution. The 50-year “leakage” of executive power to unelected, difficult-to-remove government officials must be abated to preserve the separation of powers scheme that the Framers designed. The Court should hold that the Constitution forbids such removal restrictions and overrule *Humphrey’s Executor*.

ARGUMENT

I. THE PRESIDENT MUST HAVE REMOVAL AUTHORITY OVER OFFICERS WHO POSSESS SUBSTANTIAL EXECUTIVE POWER.

The Constitution begins with an unequivocal command: “The executive Power shall be vested in a President of the United States of America.” U.S. CONST. art. II, § 1, cl. 1. Thus, Article II vests the whole of the executive power in one officer—the President—and in no one else. *See Seila Law*, 591 U.S. at 203, 213; Gary Lawson, *Command and Control: Operationalizing the Unitary Executive*, 92 FORDHAM L. REV. 441, 443 (2023). Subordinate executive officials may exercise only the authority the President delegates to them. *See id.* at 444–45. Further, that vesting necessarily includes the power to direct and, when necessary, remove subordinate officers who execute the law in the President’s stead.

Indeed, “The President’s removal power has long been confirmed by history and precedent.” *Seila Law*, 591 U.S. at 214. In the 1789 debates about the

president’s removal power, James Madison stressed during the First Congress that the central aim of the Constitution was to separate legislative, executive, and judicial powers—and that nowhere was the separation of legislative and executive more vital than in matters of “officers and offices.” 1 Annals of Cong. 604 (Joseph Gales ed., 1834). He explained that Article II’s vesting of “the executive Power” necessarily included both appointment and removal of executive officers. *Myers*, 272 U.S. at 115. “[I]f any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws.” 1 ANNALS OF CONG. 481 (Madison) (Joseph Gales ed., 1834). Madison’s view prevailed in those 1789 debates. *Free Enter. Fund*, 561 U.S. at 492.

As a result, this Court has long recognized that the president’s duty to “take Care that the Laws be faithfully executed” implies control over executive officers. *Id.* at 483; *Myers*, 272 U.S. at 122. The President has both the power and the duty to personally oversee and supervise his subordinates. *See* GARY LAWSON & GUY SEIDMAN, A GREAT POWER OF ATTORNEY: UNDERSTANDING THE FIDUCIARY CONSTITUTION 128 (2017). As this Court has explained, the President “cannot delegate ultimate responsibility or the active obligation to supervise that goes with it.” *Free Enter. Fund*, 561 U.S. at 496 (quoting *Clinton v. Jones*, 520 U.S. 681, 712–13 (1997) (Breyer, J., concurring in judgment)). This duty requires the President to act “if the President determines that the

officer is neglecting his duties or discharging them improperly.” *Id.* at 484. After all, “It is *his* [the President’s] responsibility to take care that the laws be faithfully executed. The buck stops with” him. *Id.* at 493.

This responsibility requires the President to have the power to remove at least principal subordinates who exercise “policymaking or significant administrative authority.” *Seila Law*, 591 U.S. at 218 (quoting *Morrison v. Olson*, 487 U.S. 654, 691 (1988)). The President simply cannot “take Care that the Laws be faithfully executed” if those wielding executive authority are insulated from his control. *See Free Enter. Fund*, 561 U.S. at 484. And the fundamental means of ensuring such control has always been his authority to remove them. *See Seila Law*, 591 U.S. at 213–14.

When an agency exercises executive power, its officers wield authority vested by the Constitution in the President alone. For that exercise to be constitutionally valid, the President must retain ultimate control over its use. As James Madison observed, “If the President should possess alone the power of removal from office, those who are employed in the execution of the law will be in their proper situation” 1 ANNALS OF CONG. 518 (Joseph Gales ed., 1834). Without this removal power, the executive power exists partly outside his control—resting instead with agency heads unaccountable to the

people. Such a system has no place in our constitutional structure.

Vesting the President with a general removal power was deemed necessary by the Framers to secure a separation of powers. While in 1776 the 13 American colonies fought the Revolutionary War largely because of an out-of-control executive,⁵ by 1787 the Framers faced a different problem: weak state executives. Several state governments had provided very short terms for governors and vested the appointment power entirely in the legislature. *See* STEVEN GOW CALABRESI & GARY LAWSON, *THE U.S. CONSTITUTION: CREATION, RECONSTRUCTION, THE PROGRESSIVES, AND THE MODERN ERA* 28 (1st ed. 2020). Thomas Jefferson, for instance, lamented that his one-year term as Virginia’s governor left him unable to govern effectively. *See id.* Weak executives meant that appointments of executive officials were hamstrung by factionalism and logrolling. *See id.*

The Framers, therefore, believed 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. According to Madison, while “the weight of the legislative authority requires that it should be

⁵ *See* THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (declaring that the Colonies have a right and duty to “throw off” the British government because the British King committed “repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States”).

. . . divided, the weakness of the executive may require . . . that it should be fortified.” THE FEDERALIST NO. 51 (James Madison). As Alexander Hamilton warned, “[a] feeble executive implies a feeble execution of the government.” THE FEDERALIST NO. 70 (Alexander Hamilton). To prevent such paralysis, the Framers created a “vigorous executive” by vesting all the executive power “in a single magistrate.” THE FEDERALIST NOS. 69, 70 (Alexander Hamilton).

But “[t]his unity may be destroyed . . . by vesting the [executive] power . . . ostensibly in one man, subject, in whole or in part, to the control and cooperation of others.” THE FEDERALIST NO. 70. The unitary executive was designed to prevent differences of opinion from obstructing executive action, threatening national security, and destroying responsibility. *See id.* As this Court summed up in *Myers*, Madison and others argued that the Constitution did not give Congress “the means of thwarting the Executive . . . by fastening upon him, as subordinate executive officer” those who differed with him in policy, thereby “mak[ing] his taking care that the laws be faithfully executed most difficult or impossible.” *See Myers*, 272 U.S. at 131.

Officers exercising substantial executive authority must remain accountable to the President, who alone possesses and is answerable for “the executive Power.” The removal power is not an ancillary privilege but an essential means by which the President ensures faithful execution of the laws and maintains political

responsibility for executive action. Any statutory constraint that prevents the President from discharging those who exercise executive power on his behalf undermines that constitutional structure and diffuses accountability.

II. THE MODERN FTC EXERCISES VAST EXECUTIVE POWER.

Whatever might have been said of the 1935 FTC, today's Commission clearly exercises substantial executive power. The modern FTC is no mere "legislative or judicial aid." *Seila Law*, 591 U.S. at 218. It is a powerful agency with a wide array of coercive authorities that are quintessentially executive in nature.

The FTC "acts primarily as an executive law enforcement agency."⁶ It initiates enforcement actions through both administrative proceedings and suits filed in federal court, seeking injunctions, equitable relief, and civil penalties.⁷ It prosecutes violations of its rules and orders, often obtaining millions of dollars

⁶ Daniel A. Crane, *FTC Independence After Seila Law* (Geo. Mason Univ. Ctr. for the Study of the Admin. State, Working Paper, 22–02), <https://tinyurl.com/y9pcm2kn>.

⁷ See 15 U.S.C. §§ 45, 53(b); 6 C.F.R. § 1.98 (2024); *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority*, FED. TRADE COMM'N (July 2025), <https://tinyurl.com/yzefzuee> (referring to section entitled "Enforcement Authority").

in penalties against private parties.⁸ To wield the government’s prosecutorial machinery in this way is to exercise executive power in its purest form. *See Seila Law*, 591 U.S. at 219.

The modern FTC even operates on the international stage, entering into cooperation agreements with foreign competition authorities and assisting in cross-border investigations. *See* 15 U.S.C. § 46(j)(2); *e.g.*, U.S.–E.U. Agreement on the Application of Competition Laws, 23 I.L.M. 1186 (1994). Foreign-affairs functions of this kind fall squarely within the President’s Article II responsibility for dealing with other sovereigns. *See United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) (describing the President as “the sole organ of the federal government in the field of international relations”) (citation omitted).

This accumulation of executive authority cannot be reconciled with *Humphrey’s Executor’s* premise that the FTC performs only “quasi-legislative” or “quasi-judicial” functions. The Commission today exercises the very powers—prosecution, enforcement, and foreign affairs negotiations—that define the executive branch. To the extent *Humphrey’s Executor* ever

⁸ *See, e.g., AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67 (2021); Press Release, Fed. Trade Comm’n, Dun & Bradstreet Agrees to Pay \$5.7 Million to Resolve Alleged Violations of FTC Order (Sept. 29, 2025), <https://tinyurl.com/8hp52v3s>.

described an earlier, non-executive FTC, that description no longer matches reality.

III. *HUMPHREY'S EXECUTOR* WAS WRONGLY DECIDED AND CANNOT BE RECONCILED WITH THE CONSTITUTION.

Less than a decade after *Myers*, the Court in *Humphrey's Executor* held that removal restrictions for FTC Commissioners were constitutional. 295 U.S. at 631–32. The Court distinguished *Myers* on the basis that *Myers* involved a “purely executive officer[],” while *Humphrey's Executor* involved an officer “who occupies no place in the executive department and who exercises no part of the executive power.” *Id.* at 627–28. According to the Court in *Humphrey's Executor*, the FTC's powers in 1935 were “predominantly quasi-judicial and quasi-legislative,” *id.* at 624.

By creating this “fourth” category, *Humphrey's Executor* departed from the Constitution's original design.⁹ See *Seila Law*, 591 U.S. at 247 (Thomas, J., concurring in part and dissenting in part). The Framers divided all power into three categories:

⁹ Some lower courts have shown sympathy for the idea that administrative agencies are not exercising executive power when engaging in rulemaking and adjudication. See Daniel A. Crane, *Debunking Humphrey's Executor*, 83 GEO. WASH. L. REV. 1835, 1844 (2015). But agency rulemaking and adjudication “are exercises of—indeed, under our constitutional structure they *must be* exercises of—the ‘executive Power.’” *City of Arlington v. FCC*, 569 U.S. 290, 304 n.4 (2013) (quoting U.S. CONST. art. II, § 1, cl. 1).

legislative, executive, and judicial. They did not authorize Congress to create a fourth, hybrid branch of government whose officers wield executive authority but are shielded from presidential oversight.

As Justice Scalia observed, *Humphrey's Executor* “gutted” *Myers* in “six quick pages devoid of textual or historical precedent.” *Morrison*, 487 U.S. at 726 (Scalia, J., dissenting). And as then-Judge Kavanaugh noted, it left the President “lack[ing] day-to-day control over large swaths of regulatory policy and enforcement in the Executive Branch,” allowing independent agencies with “huge policymaking and enforcement authority” to restrict “the lives and liberties of the American people.” *In re Aiken County*, 645 F.3d 428, 442 (D.C. Cir. 2011).

The Court has “repudiated almost every aspect” of *Humphrey's Executor*. *Seila Law*, 591 U.S. at 239 (Thomas, J., concurring in part and dissenting in part). It candidly acknowledged in *Seila Law* that its 1935 conclusion in *Humphrey's Executor*—that the FTC did not exercise executive power—“has not stood the test of time.” *Id.* at 216 n.2. Likewise, in *Morrison* this Court admitted that “it is hard to dispute that the powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered ‘executive,’ at least to some degree.” 487 U.S. at 690 n.28. “In other words, *Humphrey's Executor* does not even satisfy its

own exception.” *Seila Law*, 591 U.S. at 250 (Thomas, J., concurring in part and dissenting in part).

“[W]hen convinced of former error, [this Court] has never felt constrained to follow precedent.” *Smith v. Allwright*, 321 U.S. 649, 665 (1944). When dealing with matters of constitutional law, it “freely exercise[s] its power to reexamine” decisions, *id.*, and “places a high value on” getting the matter right. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 264 (2022). The *Humphrey’s Executor* Court created a fourth, hybrid category of power incompatible with the Constitution. The separation of powers lies “at the heart” of the governmental structure created by the Constitution. *Buckley v. Valeo*, 424 U.S. 1, 119 (1976). And *Humphrey’s Executor* threatens that structure, eroding political accountability and endangering liberty. Insulating agency heads from presidential control undermines the people’s control over those who wield executive power in their name.

The remaining “foundation for *Humphrey’s Executor* is not just shaky. It is nonexistent.” *Seila Law*, 591 U.S. at 248 (Thomas, J., concurring in part and dissenting in part). *Humphrey’s Executor* introduced confusion, encouraged the proliferation of unaccountable agencies, and continues to distort the separation of powers. Based on now-discredited

assumptions and incompatible with modern precedent, it cannot be squared with Article II.

CONCLUSION

“It remains one of the most vital functions of this Court to police with care the separation of the governing powers.” *Pub. Citizen v. U.S. Dep’t of Just.*, 491 U.S. 440, 468 (1989) (Kennedy, J., concurring). This Court should hold that the President may remove FTC commissioners at will and overrule *Humphrey’s Executor*.

Respectfully submitted,

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