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 MAUD MARON AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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INTERESTS OF AMICUS CURIAE[1]

Maud Maron is a candidate for Manhattan District Attorney and a former president of New York City Community Education Council District 2. In April 2024, the NYC Department of Education removed Maron as council president because of her political speech. In September 2024, a federal court preliminarily enjoined Maron's removal and reinstated her through the end of her term as council president. *See Alexander v. Sutton*, 747 F. Supp. 3d 520 (E.D.N.Y. 2024).

Maron files this amicus brief to urge the Court to hold that federal courts have the authority under Section 1983 and the All Writs Act to prevent a state or federal official's removal from public office, through both legal and equitable relief, when that removal violates a federal right. At the very least, the second question's scope is too broad and carries too many implications to be fully addressed in the narrow context of this case. Maron takes no position as to the other question presented and thus supports neither party.

This case matters to Maron because unless federal courts have the authority to grant comprehensive judicial relief, governments would be free to violate her rights and the rights of public officials like her, overriding the will of the voters who elected them precisely because of their political views.

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1. Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certify that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amicus curiae* or its counsel have made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

A wide array of controversies unlike the one before the Court implicates the Judicial Branch's remedial powers with respect to the removal of public officers. Defining the scope of these powers is unnecessary to the decision of this case, which can be resolved on the first question presented. This Court should avoid deciding the question of remedial powers, to give time to fully scrutinize the relevant constitutional, historical, and jurisprudential issues, and carefully consider the implications of broad pronouncements in this sensitive and important area.

Should this Court address the second question presented, it should hold that federal courts can grant relief in removal cases through various remedies, including writs of mandamus, writs of quo warranto, and injunctions. Courts in England and America have used such remedies for centuries, as this Court's precedents demonstrate. Unnecessarily constraining the remedial power of the federal courts would depart from longstanding judicial practices and enable the violation of fundamental constitutional rights.

ARGUMENT

I. Federal courts possess the authority to prevent removal from public office.

A. For two centuries, courts of law have adjudicated the removal of officials and issued a variety of remedies addressing removal.

1. Since before the founding, courts of law have possessed "[t]he jurisdiction to determine the title to a

public office" and "exercised [that jurisdiction] either by certiorari, error or appeal, or by mandamus, prohibition, quo warranto, or information in the nature of a writ of quo warranto, according to the circumstances of the case, and the mode of procedure established by the common law or by statute." *In re Sawyer*, 124 U.S. 200, 212 (1888). Courts of law have jurisdiction over "removal of public officers, whether the power of removal is vested . . . in executive or administrative boards or officers, or is entrusted to a judicial tribunal." *Id.*

Frequently, courts have adjudicated removal cases under writs of mandamus or writs of quo warranto. North Carolina's highest court, for instance, described the nineteenth-century pattern in this way: "[w]hen a plaintiff sues for an office occupied by another, quo warranto is the proper remedy, . . . but when the office is vacant by reason of amotion, the remedy is mandamus." *Lyon v. Comm'rs of Granville Cty.*, 120 N.C. 237, 242, 249-50 (1897) (citing mid-nineteenth century cases and treatises); *see also Knight v. Ferris*, 11 Del. 283, 313-14 (1881) (distinguishing when mandamus versus quo warranto is the proper remedy). A writ of quo warranto was necessary to remove an incumbent who unlawfully occupied a public office so that the correct official could be installed. Otherwise, mandamus sufficed.

2. Admittedly, many courts of equity have refused to enjoin the removal of a public official—instead, requiring that plaintiffs seek quo warranto, mandamus, or a similar legal writ. *See*, *e.g.*, *In re Sawyer*, 124 U.S. at 212-14 (collecting cases). This is hardly surprising, given the well-established principle that a "court of equity will not entertain a case for relief where the complainant has an

adequate legal remedy." *Case v. Beauregard*, 101 U. S. 688, 690 (1880). When a legal writ supplied all the required relief, courts rightly declined to invoke equity.

In an early New York case, for instance, Chancellor Kent refused to enjoin officials who were unlawfully operating an unlicensed bank, because the plaintiff had "a complete and adequate remedy at law, either by the common-law writ of quo warranto, or by an information in the nature of such writ" so "the proper forum for the determination of th[is] question is a court of law." *Attorney-General v. Utica Ins. Co.*, 2 Johns. Ch. 371, 376 (N.Y. 1817); *cf. Updegraff v. Crans*, 47 Pa. 103, 105-06 (1864) ("Quo warranto is the specific statutory remedy for such a [public office] case. . . . This specific remedy at law, ousts the equitable jurisdiction of the case."). But Kent was not opposed to all injunctive relief in such cases. Instead, Kent suggested that the plaintiff could seek an injunction "merely auxiliary to a proceeding at law" (that is, a preliminary injunction) but could not obtain an injunction as "[t]he entire and final remedy." *Utica Ins. Co.*, 2 Johns. Ch. at 376.

Likewise, Chief Justice Waite warned that "[t]here may be cases, in my opinion, when the tardy remedies of quo warranto, certiorari, and other like writs will be entirely inadequate" because a public office's unlawful "removal, even for a short period, would be productive of irremediable mischief." *In re Sawyer*, 124 U.S. at 223 (Waite, J., dissenting). In these cases, Waite stressed that even a court of equity could "issue in its discretion a temporary restraining order" until such time that the case could be fully litigated and remedied at law. *Id.*

3. The unwillingness of courts of equity to permanently enjoin the removal of public officials does not indicate that courts lacked the power to prevent removal. Rather, this unwillingness demonstrates that courts of law had jurisdiction to remedy these claims. *Cf. Harris v. Bessent*, 775 F. Supp. 3d 164, 182 (D.D.C. 2025) ("To the extent that English equity courts declined to issue injunctions reinstating officials to their positions, they likely did so because the King's Bench, a court of law, would readily issue mandamus instead."). It was only because adequate legal remedies already existed that equitable remedies were foreclosed.

"Equity will not be barred from issuing an injunction . . . if the alternative remedy of quo warranto is inadequate." *Andrade v. Lauer*, 729 F.2d 1475, 1498 (1984). Thus, as one appellate court emphasized, federal courts "should avoid an interpretation . . . that would likely make it impossible for [] plaintiffs to bring their assumedly substantial constitutional claim and would render legal norms concerning appointment and eligibility to hold office unenforceable." *Id.* (remanding on whether plaintiffs satisfied the requirements for injunctive relief).

Mandamus and quo warranto are the favored remedies to combat unlawful removals. But when these remedies an inadequate, alternative equitable remedies are appropriate.

B. Federal courts have repeatedly prevented unlawful removals, using both legal and equitable remedies.

1. Just like state courts, federal courts have long adjudicated the removal of public officials through remedies such as the writ of mandamus and the writ of quo warranto. The All Writs Act, originally part of the Judiciary Act of 1789, grants federal courts the ability to issue any of the common law writs when "necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. Mandamus and quo warranto are both "commonly requested writs under the All Writs Act." *In re Levin*, No. 22-10698-E, 2022 U.S. App. LEXIS 23436, at *3 (11th Cir. Aug. 22, 2022).

Since 1902, the Code of the District of Columbia has governed quo warranto actions in federal court, determining what claimant has title to a public office. *See*, *e.g.*, *Newman v. United States*, 238 U.S. 537, 544-46 (1915); *Andrade*, 729 F.2d at 1498. Likewise, a section of the Enforcement Act of 1870—subsequently repealed—empowered United States attorneys to proceed against former Confederate officials, disqualified by Section III of the Fourteenth Amendment, "by writ of quo warranto, returnable to the circuit or district court of the United States in such district, and to prosecute the same to the removal of such person from office." Gerard N. Magliocca, *Amnesty and Section Three of the Fourteenth Amendment*, 36 Const. Commentary 87, 109 & n.144 (2021). Quo warranto was a well-established remedy in cases about federal public offices.

2. Similarly, federal courts have addressed removal cases under mandamus. *See*, *e.g.*, *Kalbfus v. Siddons*, 42 App. D.C. 310, 319-21 (D.C. Cir. 1914) (collecting cases); *Harris*, 775 F. Supp. 3d at 182. Indeed, this Court itself has granted mandamus when a state disqualified a person from holding an appointed "public office" because that person exercised his First Amendment freedoms. *Torcaso v. Watkins*, 367 U.S. 488, 489, 496 (1961); *see also Alejandrino v. Quezon*, 271 U.S. 528, 535 (1926) (presuming that an unlawfully removed legislator could sue "the proper executive officer or committee by way of mandamus").

And, in many cases, federal courts have granted injunctions restoring an unlawfully removed public official to office. *See*, *e.g.*, *Severino v. Biden*, 71 F.4th 1038, 1042-43 (D.C. Cir. 2023); *Swan v. Clinton*, 100 F.3d 973, 976-81 (D.C. Cir. 1996); *Johnson v. Bergland*, 586 F.2d 993, 996 (4th Cir. 1978); *Paroczay v. Hodges*, 219 F. Supp. 89, 95 (D.D.C. 1963). Section 1983, enacted in 1871, just a year following the Enforcement Act, permits citizens deprived "of any rights, privileges, or immunities secured by the Constitution and laws" to seek relief "in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983. Congress was aware of the range of traditional remedies and writs, and authorized courts to apply them all in appropriate cases.

Federal courts are not impotent to prevent the illegal or unconstitutional removal from office of public officials. They have the authority to grant a range of remedies to prevent such removals, according to the circumstances and procedural posture of the specific case.

II. First Amendment cases, including amicus's case, demonstrate the necessity of broad judicial power to redress unlawful removals.

1. Retrospective legal remedies such as back pay are sufficient to redress many forms of unlawful removal. But this Court's own precedents demonstrate that when a government targets a public official for removal due to that official's exercise of First Amendment rights, an injunction—either preliminarily or permanently—is often necessary.

Consider, for example, the injury to Georgia state representative Julian Bond. *Bond v. Floyd*, 385 U.S. 116 (1966). Bond, a pacifist and a member of the Student Nonviolent Coordinating Committee, *id.* at 118, 121, gave a radio interview in which he opposed all wars and agreed with SNCC's formal statement condemning the Vietnam War as an obstacle to racial justice, *id.* at 121-22. Because of this political speech, the Georgia House of Representatives voted to disqualify Bond from being seated as a state legislator. *Id.* at 123, 125. Bond sued for an injunction and declaratory relief stating that the Georgia House violated his First Amendment rights. *Id.* at 126. This Court unanimously granted this equitable relief, *id.* at 137, so that Bond received his seat three weeks before the end of the legislative session, *see Powell v. McCormack*, 395 U.S. 486, 500 (1969).

A retrospective remedy like back pay could not have remedied Bond's injury. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14, 19 (2020). Although Bond also sought

back pay, his primary injury was that he had been forced to either recant his political speech or lose his elected office. *See Bond*, 385 U.S. at 128 & n.4; *see also Powell*, 395 U.S. at 499 (referring to Bond's requested equitable relief as "primary" and his request for back pay as "secondary").

Because Bond refused to recant, his seat went vacant for nearly the entire legislative session, and no one represented the interests of the voters who had elected him. *Bond*, 385 U.S. at 128. Moreover, the "loss of such widely sought positions, with their power and perquisites, is inherently coercive," and "compelled forfeiture of these posts diminishes [the plaintiff's] general reputation in his community." *Lefkowitz v. Cunningham*, 431 U.S. 801, 807 (1977). An award of back pay just before the end of his term would not have enabled Bond, for instance, to vote on the various bills that came before the Georgia House during that session or to participate in the various legislative committee meetings that he had missed. Only an injunction—such as this Court granted—could remedy Bond's injury.

2. A similar problem arises with the removal of executive (rather than elected) officials, as this Court's political patronage cases demonstrate. Those cases held that the partisan practice of newly elected officeholders replacing government employees of the opposing party with employees of their own party violates the First Amendment. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality). The standard remedy in patronage cases is "the entry of an injunction against termination," rather than legal relief. *Branti v. Finkel*, 445 U.S. 507, 520 (1980). "Injunctive relief is clearly appropriate in these cases,"

because there is no "adequate remedy at law" given the irreparable First Amendment harm. *Id.* (cleaned up).

Although the *Elrod* plaintiffs were low level employees, rather than public officials, *see* 427 U.S. at 350-51, this Court later made clear that its patronage precedents apply to some public offices as well. "[P]arty affiliation is not necessarily relevant to every policymaking or confidential position." *Branti*, 445 U.S. at 518. As a result, "the question [in patronage cases] is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the *public office* involved." *Id.* (emphasis added). If party affiliation is not relevant to the public office, a federal court should enjoin the unconstitutional removal.

Likewise, this Court declared that "[t]he government may not enact a regulation providing that no Republican shall be appointed to *federal office*," and "what the First Amendment precludes the government from commanding directly, it also precludes the government from accomplishing indirectly" through partisan dismissals and similar practices. *Rutan v. Republican Party*, 497 U.S. 62, 77-78 (1990) (cleaned up) (emphasis added); *cf. Torcaso*, 367 U.S. at 489, 496 (1961) (granting mandamus in "public office" disqualification case).

This Court, therefore, has already held that federal courts can grant both legal and equitable relief to prevent unlawful removals from public office—at least, in cases endangering First Amendment rights.

3. Amicus's case illustrates the threat to First Amendment rights which would arise if federal courts

lacked the power to timely grant prospective relief. In February 2024, the *New York Post* quoted amicus's statement denouncing an anonymous editorial in a student newspaper as "coward[ly]" "factually inaccurate bile" that repeated "revolting Hamas propaganda" and "Jew hatred." *Alexander v. Sutton*, 747 F. Supp. 3d 520, 530, 539-40 (E.D.N.Y. 2024). Amicus spoke as a citizen to a reporter on a matter of public concern. Yet the New York City Department of Education found that her newspaper quotation constituted "derogatory or offensive comments about a student" and, in August 2024, removed her from her elected office as President of Community Education Council 2 accordingly. *Id.* at 530, 540.

At the time of amicus's removal, the district court already had before it amicus's motion to preliminarily enjoin the DOE's speech code. DOE's removal of amicus in the face of that pending motion doubled down on its commitment to censoring amicus's viewpoints. Amicus requested reinstatement as part of her relief, and the court obliged, agreeing that the DOE likely violated the First Amendment when it removed her from office. *Id.* at 550, 557.[2]

If the federal court had lacked the power to preliminarily enjoin her removal, amicus would have been out of office for the last ten months of her term, unable to represent the voters who elected her because DOE officials objected to her viewpoints. By the time final

2. Amicus's term ended on June 30, 2025, *see id.* at 530, 540, and she no longer serves on the education council. Her case remains pending.

judgment issued, amicus's term would have ended, mooting her request for reinstatement. Moreover, amicus's elected position was unpaid, so she could not even have sued for back pay.

Absent injunctive relief, the DOE could have violated amicus's constitutional rights and achieved exactly what it wanted—amicus's removal from office for the remainder of her term—for the price of nominal damages and attorney fees, a cost DOE might be comfortable paying as it would ultimately be borne by amicus's taxpaying constituents. The fear of one day having to pay nominal damages to an especially persistent plaintiff is unlikely to deter powerful people from silencing officials whose speech angers them. Indeed, such censorship grows increasingly common. *See, e.g.*, *Libby v. Fecteau*, 145 S. Ct. 1378, 1378 (2025); *Libby v. Fecteau*, 784 F. Supp. 3d 272 (D. Me. 2025).

III. This Court should resolve this case on the first question presented, without reaching the scope of the federal courts' remedial powers.

The scope of the federal courts' powers to reinstate unlawfully removed public officers, both at law and at equity, presents "an important and complex question that would benefit from further percolation in the lower courts prior to this Court's intervention." *Baker v. City of McKinney*, 145 S. Ct. 11, 13 (2024) (Sotomayor, J., concurring); *see also Labrador v. Poe*, 144 S. Ct. 921, 934 (2024) (Kavanaugh, J., concurring) (warning against rapid decisions that "hamper percolation across other lower courts on the underlying merits question."). This Court should only demarcate the exact scope of the

judiciary's remedial powers when a thoroughly briefed case unavoidably presents this issue.

Here, the Court can fully resolve this case on the first question presented. And even if it chooses to uphold the statutory removal protections for FTC members, the Court need only decide if federal courts can enjoin the President from removing a federal officer without cause—a far smaller topic than all that the second question encompasses, including the removal of state officials for exercising their fundamental First Amendment rights. This Court need not and should not decide the momentous question of all legal and equitable remedies for removal now.

The scope of federal remedial powers implicates a wide array of disparate constitutional and statutory areas. It concerns, for instance, the interpretation both of the "judicial power" in Article III and of foundational statutes such as Section 1983 and the Judiciary Act of 1789. It requires examining the political theories and historical practices of courts of law and of equity, both in England and America, both at the time of the founding and of the ratification of the Fourteenth Amendment. And, as discussed above, strictly demarcating remedial powers could transform how courts have long handled First Amendment disputes and other civil rights cases.

The power of federal courts to grant relief binding against both state and federal governments intertwines with separation of powers, federalism, and complex issues of state public law to which *Erie* doctrine and abstention doctrine may apply. This Court would need to define what a "public office" is, whether the placement of that office

within the legislative, executive, or judicial branch affects remedies, and whether the officer/employee distinction appearing in the Court's Appointments Clause cases also applies to the states. *Cf. Lucia v. SEC*, 585 U.S. 237, 244-45 (2018) (developing a test for distinguishing *federal* officers from employees for the sake of the Appointments Clause). As to state officials, even defining an office as legislative, executive, or judicial would be inappropriate, because "[w]hether the legislative, executive and judicial powers of a State shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another department of government, is for the determination of the State. And its determination one way or the other cannot be an element in the inquiry whether the due process of law prescribed by the Fourteenth Amendment has been respected." *Sweezy v. New Hampshire*, 354 U.S. 234, 256 (1957) (citation omitted); *cf.* Pet.Br.43 (conceding that federal courts can grant mandamus to prevent the removal of judicial officials).

Moreover, this Court would be addressing such a vast question on a condensed briefing schedule, despite minimal consideration from the courts below. *See Trump v. Slaughter*, No. 25A264 (25-332), 2025 U.S. LEXIS 2794, at *1 (Sep. 22, 2025). The decisions below focused on the administrative law issues in the first question presented and only briefly touched on the scope of federal remedial power. *See Slaughter v. Trump*, Civil Action No. 25—909 (LLA), 2025 U.S. Dist. LEXIS 136631, at *48 (D.D.C. July 17, 2025); *Slaughter v. Trump*, No. 25-5261, 2025 U.S. App. LEXIS 22628, at *26 (D.C. Cir. Sep. 2, 2025) (Rao, J., dissenting). Petitioners' own brief only discusses

the first question presented and the narrower question of whether courts can grant relief when the President removes federal executive officers without cause. *See* Pet. Br.37-47. The deep historical and theoretical research necessary to delineate the full scope of federal judicial power has not been done.

Federal courts "adhere to a basic constitutional obligation by avoiding unnecessary decision of constitutional questions . . . if there is also present some other ground upon which the case may be disposed of." *Morse v. Frederick*, 551 U.S. 393, 428 (2007). "If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 348 (2022) (Roberts, C.J., concurring in the judgment).

The scope of federal remedial powers is exactly the sort of major and unnecessary constitutional question that this Court should avoid resolving if it can.

CONCLUSION

If this Court is constrained to reach the second question presented, it should be careful not to prevent federal courts from granting a range of equitable and legal remedies to prevent removals that violate fundamental First Amendment rights.

Respectfully submitted,

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