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 AMERICA FIRST LEGAL FOUNDATION 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[1]

Amicus curiae America First Legal Foundation is a nonprofit organization dedicated to promoting the rule of law in the United States and defending individual rights and the separation of powers guaranteed under the Constitution. America First Legal has a substantial interest in this case because the ruling in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), subverts the presi-

1. No counsel for a party authored any part of this brief. And no one other than the amicus curiae, its members, or its counsel financed the preparation or submission of this brief.

dent's authority to execute the laws. They are also incompatible with the presidential-removal prerogatives established by this Court in *Myers v. United States*, 272 U.S. 52 (1926)—and reaffirmed in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010), *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020), and *Collins v. Yellen*, 594 U.S. 220 (2021). It is long past time to overrule that derelict decision.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. II, § 1 provides, in relevant part:

> The executive Power shall be vested in a President of the United States of America.

U.S. Const. art. II, § 3 provides, in relevant part:

> [The President] shall take Care that the Laws be faithfully executed.

15 U.S.C. § 41 provides, in relevant part:

> 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. . . . Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

SUMMARY OF ARGUMENT

The ruling in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), has been on a collision course with *Myers v. United States*, 272 U.S. 52 (1926), since the day it was decided. *Myers* holds that Article II gives the president a categorical prerogative to remove "executive officers" of the United States that are appointed by the president with the Senate's advice and consent. And *Myers* forbids Congress to limit the president's removal powers over these "executive officers" in any way.

But this Court abruptly changed course in *Humphrey's Executor*, holding that the president *lacks* constitutional authority to remove members of the Federal Trade Commission in the teeth of a statute protecting them from at-will removal. The Court reached this conclusion for two reasons. First, the Court held that FTC commissioners do not wield "executive power" and therefore do not qualify as "executive officers" subject to at-will presidential removal. *See Humphrey's Executor*, 295 U.S. at 627–28; *see also id.* at 630 (describing the FTC as "wholly disconnected from the executive department"). Second, the Court ruled that *Myers* extends no further than the particular facts of that case, and anything in *Myers* that purports to confer an at-will presidential-removal prerogative over any officer other than postmasters of the first class is dicta and non-precedential. *See id.* at 626 ("[T]he narrow point actually decided [in *Myers*] was only that the President had power to remove a postmaster of the first class, without the advice and consent of the Senate as required by act of Congress. In the course of the opinion of the court, expressions occur which tend to sustain the government's contention, but these are beyond the point involved and, therefore, do not come within the rule of stare decisis.").

Humphrey's Executor's claim that FTC commissioners lack "executive power" was indefensible even in 1935. *See Morrison v. Olson*, 487 U.S. 689 n.28 (1988) ("[I]t 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."); Geoffrey P. Miller, *Independent Agencies*, 1986 Sup. Ct. Rev. 41, 94 ("It was nonsense to assert that the FTC did not act in an executive role."). It is even more indefensible today, as Congress has given the FTC additional executive powers that it did not possess at the time of *Humphrey's Executor*. Pet. Br. 25–27.

Worse still, *Humphrey's Executor* declared that "quasi-legislative" powers (whatever that means) could be exercised by administrative agencies rather than by Congress, and that "quasi-judicial" powers (another undefined term) could be vested in agencies rather than Article III courts. *See Humphrey's Executor*, 295 U.S. at 628. The Constitution, however, makes no provision for "quasi-legislative" or "quasi-judicial" powers, and it makes no allowance for independent agencies to wield those powers at the expense of Congress or the federal judiciary. *Humphrey's Executor* also described the FTC as "an agency of the legislative or judicial departments of the government." *Id.* at 628. But the rulings of this Court do not permit the legislative department to participate in the administration of the laws that it enacts, even if this is done through an agent of the legislature. *See INS v. Chadha,* 462 U.S. 919, 930, n.5, 939–940 (1983); *Bowsher v. Synar*, 478 U.S. 714, 721 (1986). Nor does the Constitution permit non-Article III entities to act as agents of the judicial department. "The judicial power of the United States"—*all* of it—must be vested in Article III tribunals and not in administrative agencies.

The opinion in *Humphrey's Executor* is a debacle. It defies the holding of *Myers*, blinks reality by claiming that the FTC wields no executive power, and establishes ill-defined and constitutionally dubious categories of "quasi-legislative" and "quasi-judicial" powers that Congress may purportedly confer on independent and politically unaccountable agencies. The Court should overrule *Humphrey's Executor* for each of these reasons.

ARGUMENT

Stare decisis, as this Court has observed many times, is "not an inexorable command." *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 264 (2022) (citation and internal quotation marks omitted)). This Court does and should overrule precedents that are poorly reasoned,[2] that are incompatible with other rulings of this Court,[3] or that produce doctrines that are unclear or incapable of principled application.[4] *Humphrey's Executor* fits each of these descriptions, making it a suitable candidate for repudiation despite the presumption of correctness that this Court typically accords to its prior decisions.

I. HUMPHREY'S EXECUTOR IS INCOMPATIBLE WITH THE HOLDING OF MYERS, AND IT RESTS ON A TRANSPARENTLY FALSE ASSERTION THAT THE FEDERAL TRADE COMMISSION LACKS EXECUTIVE POWER

Myers's holding is clear and unequivocal: Article II prohibits Congress from limiting the president's removal power over executive officers who were appointed by the president with the Senate's advice and consent. *See Myers*, 272 U.S. at 106. *Humphrey's Executor* is incompatible with *Myers* because it allows Congress to insulate FTC commissioners from presidential removal, even though these officers indisputably wield "executive" pow-

2. *See Dobbs*, 597 U.S. at 264 (overruling *Roe v. Wade*, 410 U.S. 113 (1973), because "[i]ts reasoning was exceptionally weak").

3. *See Agostini v. Felton*, 521 U.S. 203, 235–36 (1997) (overruling *Aguilar v. Felton,* 473 U.S. 402 (1985), because it was no longer compatible with other Establishment Clause rulings of this Court).

4. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 407–08 (2024) (overruling *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984), after concluding that its deference framework was "unworkable").

ers. The executive powers of the FTC include the authority to issue cease-and-desist orders, as well as the other law-enforcement prerogatives described in the Solicitor General's brief. Pet. Br. 23–27.

Humphrey's Executor tried to get around *Myers* by insisting that none of the FTC's powers were "executive." *See Humphrey's Executor*, 295 U.S. at 624 ("[I]ts duties are neither political nor executive"); *id.* 628 (claiming that the FTC "cannot in any proper sense be characterized as an arm or an eye of the executive."). But that assertion was false in 1935—and it remains false today. *See Morrison v. Olson*, 487 U.S. 689 n.28 (1988) ("[I]t 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."); Geoffrey P. Miller, *Independent Agencies*, 1986 Sup. Ct. Rev. 41, 94 ("It was nonsense to assert that the FTC did not act in an executive role."). Even the D.C. Circuit panel opinion acknowledges that the FTC exercises "substantial executive power,"[5] and it characterizes *Humphrey's Executor* as "an exception to the general rule that the President enjoys unrestricted removal power over executive officers." Pet. App. 5a. Ms. Slaughter did not deny that the FTC wields executive power in her brief opposing the Solicitor General's application for a stay, and neither did Justice Kagan in her opinion dissenting from the stay that this Court issued on September 22, 2025. *See Trump v. Slaughter*, 2025 WL 2692050, *1 (Kagan, J., dissenting from the grant of the application for stay).

5. Pet App. 2a.

So *Humphrey's Executor*'s attempt to distinguish *Myers* by denying that the FTC holds "executive" powers was transparently bogus—and not even Ms. Slaughter appears willing to defend *Humphrey's Executor* on that ground. So the Court must choose whether to follow the holding of *Myers* or the holding of *Humphrey's Executor*. If the Constitution gives the president an at-will removal prerogative over those who wield "executive" powers, as *Myers* holds, then the president has no less authority to remove an FTC Commissioner than he had to remove the postmaster in *Myers*, who merely oversaw a local post office in and had nothing approaching the present-day executive powers of the FTC. But if the Constitution allows Congress to limit the president's removal powers over the FTC Commissioners, then the Court cannot simultaneously insist that the President enjoys a constitutional right to remove a mere postmaster, who holds far less executive power (and far less significant executive power) than an FTC commissioner.

The constitutional jurisprudence of this Court must be based on principled and reasoned distinctions. *See Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (plurality opinion) ("Laws promulgated by the Legislative Branch can be inconsistent, illogical, and ad hoc; law pronounced by the courts must be principled, rational, and based upon reasoned distinctions."). It is not only nonsensical but backward for this Court to continue insisting that Article II's vesting clause empowers the president to remove a postmaster but not an FTC commissioner who wields far more extensive executive power.

Worse, the decision in *Humphrey's Executor* was made possible only by pretending that the FTC had no executive powers, even though the FTC had been empowered to bring enforcement actions against alleged wrongdoers even in 1935. *See Humphrey's Executor*, 295 U.S. at 628 (claiming that the FTC "exercises no part of the executive power vested by the Constitution in the President."). Rulings and opinions of this sort bring the Court into disrepute, as no one seriously believes that the FTC lacks executive power, especially today. *See* Daniel A. Crane, *Debunking* Humphrey's Executor, 83 Geo. Wash. L. Rev. 1835, 1847 (2015). The Court should acknowledge the obvious and hold that FTC commissioners wield executive powers — and that they therefore fall under the rule of at-will presidential removal established in *Myers*.

II. THE COURT SHOULD DISAVOW HUMPHREY'S EXECUTOR'S ATTEMPT TO ESTABLISH CATEGORIES OF "QUASI-LEGISLATIVE" AND "QUASI-JUDICIAL" POWERS

Humphrey's Executor should be overruled for an additional reason: Its attempt to recognize categories of so-called quasi-legislative and quasi-judicial powers is incompatible with the separation of powers established by constitutional text. *See Humphrey's Executor*, 295 U.S. at 628 ("[T]he commission acts in part quasi legislatively and in part quasi judicially. . . . To the extent that it exercises any executive function, as distinguished from executive power in the constitutional sense, it does so in the discharge and effectuation of its quasi legislative or quasi judicial powers . . . .").

Under the Constitution, there are three — and only three — categories of powers wielded by the federal government: legislative, executive, and judicial. The legislative powers enumerated in Article I are vested entirely in Congress. *See* U.S. Const. art. I § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States"). The executive power is vested entirely in the president. *See* U.S. Const. art. II § 1 ("The executive Power shall be vested in a President of the United States of America."). And the judicial power of the United States is vested entirely in the Supreme Court and the Article III courts established by Congress. *See* U.S. Const. art. III § 1 ("The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."). The notion of a federal agency exercising "quasi-legislative" or "quasi-judicial" powers is foreign to the Constitution. *See Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197, 278 n.7 (2020) (Kagan, J., concurring in the judgment with respect to severability and dissenting in part) ("The majority is quite right that today we view *all* the activities of administrative agencies as exercises of 'the executive Power.'" (citation and some internal quotation marks omitted)).

Humphrey's Executor also fails to define the scope of these "quasi-legislative" and "quasi-judicial" powers that would allow Congress to insulate officers from at-will presidential removal. Does agency rulemaking qualify as "quasi-legislative," or is it purely executive? Is any type of agency adjudication an exercise "quasi-judicial" power? Under the Administrative Procedure Act, which did not exist at the time of *Humphrey's Executor*, all agency action is now classified as either rulemaking or adjudication. *See* 5 U.S.C. § 551. So does *Humphrey's Executor* mean that every agency official can now be shielded from at-will presidential removal on the ground that each of his actions must be categorized either as rulemaking (quasi-legislative) or adjudication (quasi-judicial)? No one seems to know the answer to these questions, and this Court has never attempted to define the contours of these so-called "quasi-legislative" and "quasi-judicial" categories.[6]

Instead, this Court has cabined the scope of *Humphrey's Executor* by claiming that it allows Congress to establish independent agencies only when they are "led by a *group* of principal officers" rather than a single individual. *See Seila Law*, 591 U.S. at 204; *see also id.* ("In *Humphrey's Executor*, we held that Congress could create expert agencies led by a *group* of principal officers removable by the President only for good cause."). But

6. Indeed, the Court appears to have abandoned the "quasi-legislative" and "quasi-judicial" categories in its recent separation-of-powers cases. *See, e.g.*, *Morrison v. Olson*, 487 U.S. 654, 689 (1988) ("We undoubtedly did rely on the terms 'quasi-legislative' and 'quasi-judicial' to distinguish the officials involved in *Humphrey's Executor* and *Wiener* from those in *Myers*, but our present considered view is that the determination of whether the Constitution allows Congress to impose a 'good cause'-type restriction on the President's power to remove an official cannot be made to turn on whether or not that official is classified as 'purely executive.'"); *Seila Law*, 591 U.S. at 217 (observing that *Morrison* "[b]ack[ed] away from the reliance in *Humphrey's Executor* on the concepts of 'quasi-legislative' and 'quasi-judicial' power" and instead "viewed the ultimate question as whether a removal restriction is of 'such a nature that [it] impede[s] the President's ability to perform his constitutional duty.'" (citation omitted)).

there is nothing in the Constitution that even remotely suggests that the president's removal power depends on whether an agency or department is led by a single person rather than a multimember body. And nothing in *Humphrey's Executor* indicates that its holding or analysis was affected in any way by the FTC's status as a multimember commission, as opposed to an agency headed by a single individual. More importantly, as Justice Kagan convincingly explained in *Seila Law*, there is no basis in reason or logic for the president's removal power to depend on whether an agency is led by a single person or a muti-person committee. *See Seila Law*, 591 U.S. at 288–96 (Kagan, J., concurring in the judgment with respect to severability and dissenting in part). The distinction is entirely contrived — and it serves no purpose other than to provide a way for *Seila Law* to disapprove the for-cause removal protections for the director of the Consumer Financial Protection Bureau without overruling *Humphrey's Executor* at that time. But *Seila Law*'s attempt to distinguish single-person from multi-headed agency leadership is as vacuous as *Humphrey Executor's* effort to distinguish "purely executive" power from "quasi-legislative" and "quasi-judicial" acts. The president's removal power should depend on whether an agency official exercises executive power or is part of the executive branch, and there is no question that the FTC commissioners satisfy this test.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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