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

BRIEF OF AMICUS CURIAE THE NATIONAL WHISTLEBLOWER CENTER IN SUPPORT OF RESPONDENTS

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November 14, 2025

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IDENTITY AND INTEREST OF THE AMICUS CURIAE[1]

The National Whistleblower Center (NWC) is a nonprofit, nonpartisan, tax-exempt organization founded in 1988, dedicated to the protection of civilian and governmental employee whistleblowers. Beginning in 1990 with *English v. General Electric,* 496 U.S. 72 (1990), NWC has participated as an *amicus curiae* before this and other Courts on cases impacting the rights of employee whistleblowers.[2]

Congress has spent decades building an intricate statutory framework intended to encourage whistleblowers to come forward with evidence of corruption, fraud, waste, and abuse in both the public and private sectors. The success of this endeavor hinges entirely on the establishment of truly independent bodies tasked with investigating claims of fraud, corruption, and whistleblower retaliation. Should these bodies be at the mercy of the President's executive removal power, they cannot possibly effectively protect those whistleblowers – some of whom aim to root out fraud and corruption within the President's own branch of government.

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[1] Pursuant to Supreme Court Rule 37.6, undersigned counsel states that no party's counsel authored this brief in whole or in part and that no person or entity other than the *amicus* contributed money to the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, undersigned counsel further states that counsel of record for all parties have received timely notice of the intention to file this brief.

[2] National Whistleblower Center, *Amicus Curiae Briefs*, https://www.whistleblowers.org/amicus-curiae-briefs/ (last visited Nov. 11, 2025).

NWC is highly interested in ensuring the efficacy of these statutory safeguards and the independence of the agencies mandated to protect federal employee whistleblowers such as its board member, Dr. Tommie G. Savage.

Dr. Savage is a contracting specialist and federal employee whistleblower who uncovered extensive corruption within the U.S. Army's contracting center. After suffering years of workplace harassment and ultimately termination, Dr. Savage filed a whistleblower retaliation complaint with the Merit Systems Protection Board (MSPB) in 2011. In 2015, the Board ruled in her favor, ordering backpay, benefits, and retirement. When Dr. Savage encountered issues with the U.S. Army in enforcing this order, she turned again to the MSPB to resolve the disputes that had arisen. While actively litigating these disputes, the MSPB Chair was fired by President Trump in February 2025. This termination resulted in the loss of the Board's quorum and a halt of its activities. With the MSPB unable to take any action on her case, Dr. Savage's decade plus long fight for restitution is stalled indefinitely.

Dr. Savage's case stands to illustrate NWC's interest in this matter by demonstrating just a sliver of the harms that stem from the use of executive removal power to unilaterally terminate independent, non-executive officers in contravention of legitimate legislative limitations.

SUMMARY OF THE ARGUMENT

The Framers of the Constitution set up a system of checks and balances that allows each branch of the government to curb one another's power when necessary. In the First Congress, James Madison successfully argued that while the power of removal constitutionally rests with the President, Congress retains the authority to regulate the conditions and restrictions under which the power can be executed.[3]

This Court has reaffirmed this principle time and time again. Nonetheless, the case of *Myers v. United States* is widely misread as promoting a unitary executive with unlimited removal power. In actuality, the *Myers* holding narrowly addresses a specific legislative provision that required the advice and consent of the Senate to approve executive removals. In finding this provision improper, *Myers* in no way attacks Congress' broader authority to act as a check on the executive removal power. Instead, *Myers* – along with a century Supreme Court precedent on this issue spanning from *Ex Parte Hennen* in 1839 to *Humphrey's Executor* in 1935 – reaffirms this Congressional power precisely as it was envisioned by Madison and the First Congress.

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[3] *See The Debates in the Several State Conventions on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia in 1787, Vol. IV*, 383 (Johnathan Elliot ed., 2nd ed., 1836) [hereinafter "*The Constitutional Debates*"] (James Madison stating that the decision as to restrictions on the President's removal authority is "made with the most advantage by the legislature itself.").

Under a proper reading of *Myers* and a thorough inspection of the consequences of unchecked executive removal power on whistleblowers – and by extension the public's right to transparency and accountability – there is no justification before this Court to reverse the judgment of the D.C. Circuit nor to overturn *Humphrey's Executor.* Indeed, to overturn *Humphrey's* would be to contravene James Madison's vision that the executive removal power be defined in a manner that reflects the "will of the community" as guided by "the benignant ray of truth."[4]

ARGUMENT

The notion that it is wholly unconstitutional for Congress to place checks on the executive removal power completely misconstrues the position of the Founders – including James Madison – whose driving intent was to check executive power out of fear of replicating the British monarchy they fought so hard to escape. It is unquestionably accepted that while the president holds the power of removal, such power is not illimitable. This principle is supported throughout the First Congress and in the precedent set by this Court, and is especially crucial with respect to independent agencies tasked with rooting out fraud and corruption.

[4] *Id.*

I. The Framers Clearly and Intentionally Vested Congress with the Authority to Place Legislative Limits on the Executive Removal Power

James Madison, during the historic 1789 debate on the creation of the Department of Foreign Affairs during the First Congress, explained precisely why Congress – and only Congress – has the authority to place limits on the President's power to appoint and remove executive agency officials.

As a threshold matter, Madison acknowledged that the Constitution itself was silent on removal authority, noting:

> There is not one government on the face of the earth, so far as I recollect – there is not one in the United States – in which a provision is made for a particular authority to determine the limits of the constitutional division of power between the branches of government.

Id. at 383 (statements of James Madison).

In addressing this silence, Congressman White introduced an amendment to the bill at issue that would have struck the authority of the President to remove, at-will, the Secretary of the Department of Foreign Affairs. Congressman White argued that the Constitution required the Senate to approve any such removal, regardless of persuasive policy arguments to the contrary. His argument was supported by numerous other distinguished members, including forceful statements by a member of the Constitutional

Convention, Congressman Elbridge Gerry. *The Constitutional Debates, supra,* at 360-61. *See also Federalist No. 77* (Alexander Hamilton).

On the other hand, James Madison, another member of the Constitutional Convention, pointed out the counter-policy and constitutional arguments that supported the President's authority to remove without consent from the Senate. *The Constitutional Debates, supra,* at 356, 379 (statements of James Madison). Madison's positions also garnered vigorous support. *See*, e.g., *Id.* at 359 (statements of Elias Boudinot); and 363 (statements of Fisher Ames).

Ultimately, the 1789 debate addressed two questions. First, whether the Constitution *required* as a matter of right the Senate's consent to remove an executive officer. The House and Senate both voted to answer this question in the negative.

However, a second, more fundamental question was also presented to the First Congress. As explained by Madison, without an answer in the Constitution, the ultimate question was which branch of government has the jurisdiction to make decisions concerning the President's removal authority. *Id.* at 383. Madison rejected out of hand the power of the judiciary to decide this issue. *Id.* ("I do not see in what way this question should come before the judges to obtain a fair and solemn decision").

Madison then explained that the decision of who should have removal authority over the head of the Department of Foreign Affairs was not left to the President nor the Senate, but instead to the "whole

legislature." *Id.* After hearing the debate in its entirety and the strength of the arguments on both sides, Madison determined that authority of the executive to remove an official from office was to be decided by the legislative branch – the most democratic entity in the federal government and therefore the most appropriate representative of the "will of the community:

> If it cannot be determined [by the Constitution], there is no resource left but the *will of the community*, to be collected in some mode to be provided by the Constitution, or one dictated by the necessity of the case.
>
> As I think it will be equally constitutional, I cannot imagine it will be less safe, that the exposition should issue from the legislative authority, than any other; and the more so, because it involves in the decision the opinions of both those departments whose powers are supposed to be affected by it.

Id. at 383 (emphasis added).

Following this reasoning, Madison's conclusion is quite straightforward:

> I should suppose, at least while the government is not led by passion, disturbed by faction, or deceived by any discolored medium of sight, but while there is a desire in all to see and be

> guided by the benignant ray of truth, *that the decision may be made with the most advantage by the legislature itself*.

Id. (emphasis added)

Thereafter, the removal authority as it concerned the Secretary of the Department of Foreign Affairs was decided by a vote of Congress. It was Congress that retained the ultimate authority to decide the issue of executive removal, clearly taking into consideration the powerful arguments raised by both sides during the debate regarding the Department of Foreign Affairs. As Congressman Fisher Ames explained at the First Congress, "the power of removal is incident to government; but not being distributed by the Constitution, it will come before the legislature, and, like every omitted case, must be supplied by law." *Id.* at 363 (statements of Fisher Ames).

The legislature has taken precisely the same action in determining by law the contours of the President's removal power in the Federal Trade Commission Act at issue in this case, and no justification is presented for the Court to interfere with that decision, particularly with respect to a bi-partisan board established by Congress. In the democracy established by the Founders, the removal authority of the President must ultimately be decided by the "will of the community", as best implemented by the legislature itself. *Id.*

II. This Court's Precedent Consistently Reaffirms the Legislature's Authority to Define the Contours of the President's Removal Power

Every decision of the Supreme Court through and including *Humphrey's Executor* has affirmed the Framers' understanding of the legislative authority to resolve this issue. Nothing in *Ex Parte Hennen* (1839); *Parsons v. United States* (1897); *Shurtleff v. United States* (1903); *Myers v. United States* (1926); nor *Humphrey's Executor v. United States* (1935) conflicts with this vision of democracy.

In 1839, this Court made it clear that the President's removal power exists "in the absence of Constitutional *or legislative provision* on the subject." *Ex Parte Hennen,* 38 U.S. 230, 261 (1839) (emphasis added). In the years since, this Court has endeavored to find the outer bounds of Congress' settled authority to legislate as to the President's removal authority.

In pursuit of this undertaking, in 1897 the Court determined it would be improper for Congress to effectively dictate that an officer commissioned for a fixed term be untouchable by both the President and the Senate throughout that term. *Parsons v. United States,* 167 U.S. 324, 343 (1897). Though the Court determined that removal power did indeed rest with the President, *Parsons* never called into question that there are circumstances in which the President must exercise this power "in the manner and upon the conditions set forth" in the relevant statutory section, reaffirming Madison's view that this authority ultimately rests with the legislature. *Id.* at 337.

Citing *Parsons* for the proposition that the President may remove an officer "in the absence of constitutional or statutory provision," this Court elaborated in 1903 that such provisions must use "clear and explicit language" to indicate Congressional intent to limit removal power. *Shurtleff v. United States,* 189 U.S. 311, 314-15 (1903). *Shurtleff* found invalid a statutory limitation on the President's removal power that left an officer able to serve an unlimited tenure when the Constitution did not provide for one. *Id* at 318. By finding that "to take away this power of removal…would require very clear and explicit language," *Shurtleff* again reaffirms Congress' power to legislate limits on the executive power of removal. *Id.* at 315.

In *Myers v. United States*, the Court mirrored the decision of the First Congress by finding that the Congressional power to restrict the President's removal power does not extend to a provision requiring the advice and consent of the Senate in order to exercise that power. *Myers v. United States,* 272 U.S. 52, 176 (1926). In outlining this limitation, *Myers* specified that its conclusion does not necessarily render other acts of Congress regulating the removal power constitutionally unsound. In fact, *Myers* specifically notes that many statutes establishing agency commissions contain "provisions for the removal of members for specified causes," and that while "such provisions have been claimed to be inconsistent with the independent power of removal by the President," these arguments are "shown to be unfounded" by established precedent. *Myers*, 272 U.S. at 171 (citing *Shurtleff,* 189 U.S. 311 (1903)).

The Court subsequently applied *Shurtleff's* "plain language" test to evaluate the Trade Commission Act's provisions fixing a definite term for commissioners subject to removal for cause. *Humphrey's Ex'r v. United States*, 295 U.S. 602, 622-23 (1935). *Humphrey's Executor* carefully analyzes the Court's reasoning in *Shurtleff*, noting that the statutory language at issue provided for removal by the president in cases of "inefficiency, neglect of duty, or malfeasance in office," but highlighting that it contained no tenure limitations. *Id.* at 622. *Shurtleff* expressly declined to find that the causes listed in the statute excluded removal for any causes not enumerated. *Shurtleff*, 189 U.S. at 316. However, as this Court explained in *Humphrey's*, this decision rested solely on the fact that – in the absence of a term limit – reading the "for-cause" provision as excluding any other cause for removal would result in unconstitutionally unlimited terms of office in the absence of malfeasance. *Humphrey's*, 295 U.S. at 622. In contrast, the statute at issue in *Humphrey's* did contain an express term limitation provision. With the extreme outcome outlined in *Shurtleff* avoided, *Humphrey's* determined that the for-cause provision in the context at hand was properly read as foreclosing removal for any other reason. *Id.* at 623.

Humphrey's is painstaking in its commitment to consistency with past precedent. It applies the *Shurtleff* "explicit language" test, distinguishing clearly from the core fact that had concerned the Court therein. It ensures it is not in conflict with the *Myers* findings concerning removal of purely executive officers by presenting a lengthy inspection of the role of FTC Commissioners that incorporates

Hennen's distinction between executive and non-executive officers. And it subscribes to the *Parsons* holding that a statutory term provision is a limitation on tenure and not a definite grant. In so doing, *Humphrey's* concluded soundly that "the fixing of a definite term subject to removal for cause, unless there be some countervailing provision or circumstance indicating the contrary, which here we are unable to find, is enough to establish the legislative intent that the term is not to be curtailed in the absence of such causes." *Humphrey's*, 295 U.S. at 623.

Humphrey's Executor is a natural and logical conclusion of the years of precedent before it. Furthermore, the focus on uncovering legislative intent in both *Humphrey's* and *Shurtleff* again reaffirms Madison's conclusion that the decision to regulate executive removal power rests with Congress. Throughout this Court's meticulous molding of this principle, it has never been found that Congress is powerless to set legislative standards and limits on the President's authority to remove. In fact, each limitation placed on Congress' ability to control the President's removal powers merely reinforces the notion established by Madison that such a Congressional authority exists.

To overturn *Humphrey's* would be to upset centuries of well-settled precedent and the intent of the Founders as reflected in both sides of the 1789 debate and the resulting legislative decisions. No reason is presently before the Court that justifies this departure.

III. *Myers* is Grossly Misinterpreted as Promoting a Unitary Executive, When in Fact it Supports the Settled Principle of Strong but Limitable Executive Removal Power

As outlined above, each case in the timeline of executive removal precedent is a logical progression of the one before it, shaping through the judiciary this nation's understanding of executive power and the limits that can properly be legislated on it: precisely the system of checks and balances the Constitution envisioned. Nonetheless, proponents of a unitary executive have cited *Myers v. United States* as indicating that this power is infinite and other precedent imposing limits to it must be overturned. This erroneous conclusion is based on a popular but fundamental misreading of *Myers* and the question addressed in the case.

The specificity of the question presented in *Myers* and the precise and narrow impact of its answer is made clear by the Solicitor General in his oral argument on behalf of the United States:

> It is not necessary in this case to determine the full question as to this power of removal. This Court can say that this particular Act is unconstitutional, without denying to the Congress the power to create legislative standards of public service, which have a legitimate relation to the nature and scope of the office, and the qualifications of the incumbent. I do not concede that a law, which thus subjects the power of

> removal to congressional conditions, is constitutional; but it is not necessary to decide that in this case.

Myers v. United States, 272 U.S. 52, 1926 U.S. LEXIS 35, ****62 (Oct. 25, 1926) (Oral Argument of Solicitor General James M. Beck).

This Court agreed with Mr. Beck, finding that "the 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 an act of Congress." *Humphrey's*, 295 U.S. at 626.

Ultimately, *Myers* expressly finds that the legislation in question was *only* invalid insofar as it attempted to require the advice and consent of the Senate for removal. *Myers*, 272 U.S. at 176. *Myers* plainly does not hold that the statute is invalid because *any regulation* on removal power is invalid, but it is invalid because of the effects of the *specific limitation* created. *Myers* is clear that the question of the extent to which the President's power of removal is subject to Congressional legislation in the absence of an advice and consent requirement is "not before us and we do not decide it." *Id.* at 162. *Humphrey's* – which dealt with a statute that did *not* contain an advice and consent provision – thus presents a fundamentally different question than the one asked in *Myers*, rendering the notion that *Myers* somehow justifies the overrule of *Humphrey's* nonsensical.

Narrowly interpreting *Myers'* assertion that removal must be vested in the President "alone,"

indicates only that the power cannot be shared with Congress in the actual act of its exercise, a conclusion that has no bearing on the *Humphrey's* discussion of Congress' ability to set a good cause threshold for its execution. This difference was explained in oral argument by counsel for *Humphrey's Executor*:

> In limiting this power of removal, Congress has not infringed upon the Constitutional powers of the President. *Here it does not seek to participate in the executive power of removal. The executive act of removal remains in the president. Congress has merely enacted a legislative standard*.

Humphrey's Ex'r, 295 U.S. 602, 1935 U.S. LEXIS 1089, ****12 (May 27, 1935) (emphasis added) (Oral Argument of Mr. Wm. J. Donovan).[5]

Merely regulating a for-cause requirement for removal in the first instance is not an *exercise* of the power but a prescription of how it can be used: a principle wholly supported by Justices Brandeis and Holmes, and one which this Court has not found to be inappropriate.[6]

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[5] *See also Myers,* 272 U.S. at 186 ("Generally, the actual ouster of an officer is executive action; but to prescribe the conditions under which this may be done is legislative.") (McReynolds, J., dissenting).

[6] *Myers*, 272 U.S. at 177 ("The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power.") (Holmes, J., dissenting); and 243 ("In no case has this Court determined that the President's power of removal is beyond control, limitation, or regulation by Congress") (Brandeis, J., dissenting).

To fully appreciate the distinction between *exercise* and *regulation* of removal powers at the heart of the *Myers* holding, it is critical to account for the political context of the legislation in question. The Tenure of Office Act of 1867, determined to have been invalid in *Myers* insofar as it required Senate approval for removals, was passed by Congress over President Johnson's veto during a time of passionate partisan tension between the two houses of Congress and the President following the Civil War. Out of fear that Democratic President Johnson would push reconstruction policies on the Republican held Congress and Confederate states, the legislature began aggressively pushing through efforts to curtail the powers of the President, the most restrictive of which was the Tenure of Office Act. After the Act was passed over Johnson's veto, he refused to comply – maintaining its unconstitutionality – and was subsequently subject to articles of impeachment.

At the time it was passed, the Act was described by a sitting Congressman as an "extreme departure from the long-established usage of the Federal Government" that could "only have grown out of abnormal excitement created by dissentions between the two great departments of the Government." *Myers*, 272 U.S. at 167, *citing* James Gillespie Blaine, *Twenty Years of Congress*, Vol. 2, 273-74. It is in this context that the Court illustrated its chief concern with the Act:

> [The Act] exhibited in a clear degree the paralysis to which a partisan Senate and Congress could subject the executive arm and destroy the principle of executive

> responsibility and separation of the powers, sought for by the framers of our Government, *if the President had no power of removal save by consent of the Senate*.

Myers, 272 U.S. at 167 (emphasis added).

As a result of this *specific* concern, *Myers* finds the advice and consent requirement for removals constitutionally improper, concluding that "to hold otherwise would make it impossible for the President, in case of political or other differences with the Senate or Congress, to take care that the laws be faithfully executed." *Id.* at 164. This reasoning closely tracks the same argument made in the First Congress debates and reaches the same conclusion.

The laser focus on this risk of governmental paralysis through the lens of tense Reconstruction Era politics makes clear that *Myers* holds *narrowly* on the specific issue of Senate advice and consent requirements for removal, and does nothing to erode the legitimacy of other Congressional limitations that merely regulate the conditions of removal but do not involve the Senate in its actual exercise.

Myers cites extensively to Madison's lengthy analysis in the 1789 debates, concluding that its holding subscribes to the "legislative decision of 1789." *Id.* at 173. By concurring with Madison's conclusion in the debates and deferring to the *legislative* decision made therein, *Myers* again supports the authority of Congress to make such a decision within constitutional and reasonable bounds that do not

create the separation of powers issue that arises when the Senate is called upon to approve a removal. While the advice and consent restriction is particularly extreme, the for-cause requirements found in numerous statutes in no way implicate the concerns highlighted in *Myers* and in the 1789 debates.

This Court's unequivocal rejection of a constitutional requirement that the Senate approve removals in no way demands or even suggests automatic acceptance of the executive's illimitable and unchecked power of removal. Because there are certain rights that the government cannot restrict its people from exercising, does it follow that people may do whatever they please with no limits? Certainly not. If this Court has determined that the Constitution does not require the Senate to approve removals, is the President to assume that this power is entirely unlimited? To see the world in such a binary is to defy sound logic and reasoning.

IV. Unchecked Executive Power to Remove Independent Officials At Will Has a Particularly Devastating Impact on Whistleblowers Employed by the Federal Government Seeking to Expose Corruption for the Public Good

Throughout the 1789 debates, powerful arguments on both sides of the removal power question were raised. While Madison pointed out the need for the president to be supported by persons he can rely on in order to effectively implement the law, Congressman Gerry highlighted the threat of the removal power in the hands of a corrupt president. *The Constitutional Debates*, *supra*, at 379 (statements of James

Madison); and *Id.* at 384 (statements of Elbridge Gerry).

Mirroring Congressman Gerry's fears, U.S. Supreme Court Justice Joseph Story's constitutional commentaries warned:

> Indeed, it is utterly impossible not to feel, that, if this unlimited power of removal does exist, it may be made, in the hands of a bold and designing man, of high ambition, and feeble principles, an instrument of the worst oppression, and most vindictive vengeance."

Story, Joseph, *Commentaries on the Constitution of the United States: With a Preliminary Review of the Constitutional History of the Colonies and States Before the Adoption of the Constitution, Vol. II*, 351 (4th ed., 1873).

Notably, James Madison did not reject the legitimacy of this concern, but felt that there were other provisions in the Constitution that sufficiently mitigated them. *The Constitutional Debates*, *supra* at 380. Thus, his argument that the Constitution did not require Senate approval for removals, and his subsequent understanding that the question of the scope of such removal authority rested with the legislature, should be affirmed by this Court. The wisdom of this conclusion that Congress best reflects the "will of the community" as guided by the "ray of truth" is no better understood than in the context of federal employee whistleblowers.

In 1978, Congress passed the Civil Service Reform Act (CSRA), establishing the bi-partisan Merit Systems Protection Board (MSPB), which was empowered to adjudicate and decide nearly all federal employee whistleblower cases. *See generally* House of Representatives Committee on Post Office and Civil Service Committee Print No. 96-2, *Legislative History of the Civil Service Reform Act of 1978* (March 27, 1979) [hereinafter "CSRA House Report"].

The MSPB was expressly intended to act "independent of the President" and intervene in disputes between individuals and their government employers in an "impartial manner." *Id.* at 877 (Debate on the House Floor During Consideration of H.R. 11280, Statement of Congressman Herbert Harris). Congressman Harris was very clear that, to effectuate this mandate, the provision dictating that board members can only be terminated for cause must remain in the statute, questioning:

> How in the world are we going to have an independent board whose job it is to protect employees' rights, not to put forward the administration's position but to protect employees' rights, if in fact we allow them to be dismissed at the whim of the President?

Id. at 879.

Congress ultimately utilized its power to legislate on the executive removal authority, as envisioned by Madison, to retain the for-cause termination provision in the statute. *See* 5 U.S.C. § 1202.

The creation of this independent board in the context of federal employee whistleblowing was consistent with the spirit of Madison's "ray of truth". Whistleblowers within the federal government are encouraged – by law – to act in a manner which a President could consider disloyal by reporting corruption or fraud within the administration. The mandate of the MSPB was to *protect* those individuals, with the CSRA "prohibit[ing] reprisals against employees who divulge information to the press or the public (generally known as 'whistleblowers') regarding violations of law, agency, mismanagement, or dangers to the public's health and safety." *CSRA House Report, supra,* at 641 (H.R. Rep. No 95-1403 (1978)). It is the role of these board members to protect whistleblowers who disclose corruption within the executive branch, including corruption of the President him or herself. Thus, the limits Congress placed on firing MSPB board members specifically guard against corruption and represent the epitome of the will of the people as a check against the government, precisely as Madison envisioned.

In the context of the MSPB, the notion of unlimited executive removal authority is illogical and contravenes public policy. If one takes a step back to consider what the Founders would have done if the question presented in 1789 concerned the MSPB rather than the Secretary of Foreign Affairs, it is clear that the debate on the merits would have looked different. Madison's arguments that the President cannot faithfully execute the laws with a Secretary of Foreign affairs that is not loyal to him are entirely inapplicable to officers in an agency like the MSPB,

whose primary mandate is to protect those who accuse the federal government of misconduct. What possible justification could there be for affording the President unlimited removal authority over those required to reinstate and grant damages to a federal employee who may have been personally terminated by the President after challenging the legality of his conduct or refusing to perform an illegal task?

It is this range of contexts that demonstrates the wisdom of preserving Congressional authority to define the conditions of executive removal power. In the case of the CSRA, Congress reflected the "will of the community" by creating procedures to protect federal employee whistleblowers, who – by the nature of their conduct – could be targets of the "particularly vindictive vengeance" Justice Story was concerned about. Surely James Madison – the author of the First Amendment – would not have envisioned an executive removal power so sweeping that it allowed the President to terminate employees hired explicitly to protect those who spoke out against corruption.

Congressman Gerry, too, could well have been thinking about these very individuals who have the courage to report corruption in the executive office when he warned that a president with unlimitable removal power over appointed officers "holds their thread of life, [and] his power will be sovereign over them." *The Constitutional Debates, supra,* at 361. Gerry understood that limiting the power of removal was essential to "guard" against "corruption." *Id.* at 384.

National Whistleblower Center board member Dr. Tommie Savage is just one example of what occurs when that guard against corruption fails. For decades, the MSPB fulfilled its intended purpose: to stand as a "buttress against any intrusion on these merit principles" regardless of "which way a President wants to go, no matter how bad the effect might be." *CSRA House Report*, *supra*, at 881. Then, in February 2025, President Trump's termination of MSPB Chairwoman Cathy Harris without cause stripped the board of its quorum and halted its operations. Without an operable MSPB, Dr. Savage has been unable to obtain the restitution she is entitled to. After her nearly 15 years of fighting culminated in a victory before the MSPB, Dr. Savage is now trapped in limbo with no recourse. With no mechanism to replenish the Board's numbers without the President's nomination, which he can withhold for as long as he chooses, this limbo is indefinite.

Dr. Savage is by no means the only whistleblower impacted. With Chairwoman Harris fired, the MSPB has lost its ability to issue final enforceable decisions on behalf of *all* federal employee whistleblowers. Dr. Savage's situation is consistent with that of all other federal employee whistleblowers with pending MSPB claims whose cases are on indefinite hold because of the unilateral termination of a board member who Congress expressly made removable only for cause. Should the Court affirm this exercise of the removal authority, the President is effectively empowered to suspend all operations aimed at rooting out corruption in his or her own administration.

The consequences of this outcome extend beyond just the MSPB. Whistleblowers – and the people at large – depend on the consistency and steadfast impartiality of a number of independent agencies: the Office of the Special Counsel, the Federal Trade Commission, the National Labor Relations Board, the Securities and Exchange Commission, and the Federal Elections Commission, to name a few. If the power of Congress as reaffirmed in *Shurtleff* to utilize "clear and explicit language" to act as a check on the President's removal power is weakened with respect to any one of these agencies, it is weakened as to all of them.

The future implications of the 1789 legislative decision by the First Congress regarding the extent of the executive removal power were made clear by Congressman Gerry:

> It is against corruption in [the President] that we must endeavor to guard. Not that we fear anything from the virtuous character who now fills the executive chair; he is perhaps to be safer trusted with such a power than any man on earth; but it is to secure us against those who may hereafter obtrude themselves into power.

The Constitutional Debates, *supra*, at 384 (statements of Elbridge Gerry).

Since the time of the First Congress, when George Washington served as President, the federal government has grown exponentially, and so too has

the unquestionable need for independent oversight of the executive – as exemplified by the necessity of whistleblowers. Thus, the wisdom of James Madison's reliance on the legislature to make this determination as a reflection of the will of the community, guided by the ray of truth, rings even more true today than it did in 1789, and this Court must continue to uphold it.

CONCLUSION

For the foregoing reasons, as *amicus curiae* The National Whistleblower Center urges the Court to rule in favor of the Respondents in this case.

Respectfully submitted,

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