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 PUBLIC CITIZEN IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Constitutional Provisions

Other Authorities

INTEREST OF AMICUS CURIAE[1]

Amicus curiae Public Citizen is a nonprofit consumer advocacy organization with members in all fifty states. Public Citizen regularly appears before Congress, administrative agencies, and courts to advocate for laws and policies that protect consumers, workers, and the general public. Public Citizen has long taken the view that, to ensure that official actions are driven by expert assessment of evidence and not by political pressures, Congress may permissibly confer a degree of independence on federal officers who are responsible for implementing legislative directives. Public Citizen has accordingly participated as amicus curiae in many cases in this Court and the courts of appeals to defend the constitutionality of statutory provisions that Congress has enacted to guard against the arbitrary or politicized removal of federal officers. *See, e.g.*, *SEC v. Jarkesy*, 603 U.S. 109 (2024); *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020); *Morrison v. Olson*, 487 U.S. 654 (1988); *Sun Valley Orchards, LLC v. Dep't of Labor*, 148 F.4th 121 (3d Cir. 2025); *Leachco, Inc. v. CPSC*, 103 F.4th 748 (10th Cir. 2024), *cert. denied*, 145 S. Ct. 1047 (2025); *Illumina, Inc. v. FTC*, 88 F.4th 1036 (5th Cir. 2023).

SUMMARY OF ARGUMENT

I. This case asks whether a statutory provision that allows the President to remove members of the Federal Trade Commission (FTC) only for "inefficiency, neglect of duty, or malfeasance in office," 15 U.S.C. § 41, complies with constitutional separation-of-powers principles. This Court unanimously answer-

[1] This brief was not written in any part by counsel for a party. No one other than amicus curiae or its counsel made a monetary contribution to the preparation or submission of the brief.

ed that question in the affirmative ninety years ago in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). There, the Court held that Congress may place the statutory restriction at issue on the President's authority to remove FTC Commissioners. The government's arguments that the decision should be overruled or that its reasoning no longer applies to the FTC (and never really did) are unavailing.

To begin, *Humphrey's Executor* correctly holds that limited restrictions on the President's at-will removal authority—such as those applicable to the FTC—do not impermissibly compromise his ability to fulfill his constitutional responsibilities. Because officers like FTC Commissioners are appointed to implement legislative directives according to standards that Congress has set out, Congress acts within its constitutional authority when it sets qualifications for Commissioners' eligibility to serve or sets reasonable preconditions for their termination. Meanwhile, the President, whose constitutional role is to ensure that Congress's laws are faithfully executed, must abide by those statutory requirements.

Humphrey's Executor rests on this straightforward reasoning, and this Court has applied the precedent multiple times over a span of decades to uphold for-cause tenure protections for certain kinds of executive officers who, in Congress's considered view, require a degree of independence to properly carry out their functions. The government identifies no flaw in *Humphrey's Executor*'s constitutional analysis and no practical problems created by the precedent that would support a decision to overturn it.

II. Once this Court has reaffirmed *Humphrey's Executor*, the constitutionality of the FTC's tenure

protections follows inexorably from that precedent. The government cites repeatedly to broad pronouncements about the President's removal power that this Court made in *Myers v. United States*, 272 U.S. 52 (1926), but it disregards that *Humphrey's Executor* expressly repudiated those pronouncements and that this Court has on multiple occasions thereafter explained that any aspect of *Myers* that is inconsistent with *Humphrey's Executor* is no longer good law. Moreover, the government is wrong to argue that the contemporary FTC wields meaningfully different executive powers from those that the Court considered in *Humphrey's Executor*. Although Congress has made some changes to the specifics of the FTC's regulatory, adjudicatory, and enforcement powers over the ninety years since *Humphrey's Executor* was decided, the fundamental nature of those powers has remained unchanged since the FTC's inception in 1914.

III. Finally, this Court should reject the government's remedial argument that federal courts are powerless to order reinstatement of an unlawfully terminated officer. Because FTC Commissioners' statutory removal protections comport with the separation of powers, the government's argument that enforcing those protections unduly hinders the President in fulfilling his constitutional duties necessarily fails. Furthermore, the government's argument that there is no historical tradition of a reinstatement remedy is simply wrong. Whether by means of injunctive relief or mandamus, courts—including this Court—have long recognized that executive officers subordinate to the President may be judicially barred from giving effect to an unlawful termination. The district court's injunction here falls squarely within that tradition.

ARGUMENT

I. *Humphrey's Executor* correctly interprets the constitutional relationship between legislative and executive power.

A. Reflecting the "fundamental insight" that "[c]oncentration of power … is a threat to liberty," our Constitution divides federal authority among separate, coequal branches of government. *Clinton v. City of New York*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring); *see Morrison v. Olson*, 487 U.S. 654, 693 (1988) (observing that the Constitution's "system of separated powers and checks and balances" is meant to serve "as 'a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other'" (quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976) (per curiam))). Under Article I, § 1, "[a]ll" of the federal government's "legislative Powers" reside in Congress. Article II then vests "[t]he executive Power" in the President, U.S. Const. art. II, § 1, and requires him to "take Care" that Congress's "Laws be faithfully executed," U.S. Const. art. II, § 3.

This Court has long recognized, however, that "the separate powers were not intended to operate with absolute independence." *United States v. Nixon*, 418 U.S. 683, 707 (1974). For example, although Congress alone holds the legislative power, the exercise of that power is subject to the President's veto—which is subject, in turn, to being overridden by two-thirds of the Senate and two-thirds of the House of Representatives. *See* U.S. Const. art. I, § 7. Although the President is the Commander in Chief of the U.S. military, *see* U.S. Const. art. II, § 2, the power to declare war rests with Congress, *see* U.S. Const. art. I, § 8. And of particular relevance here, although the

President has the power to appoint "Officers of the United States," his power is subject to "the Advice and Consent of the Senate." U.S. Const. art. II, § 2. Meanwhile, with respect to "inferior Officers," Congress, "as [it] think[s] proper," may allow the appointment power to rest with "the President alone" or may assign it to "the Courts of Law" or "the Heads of Departments." *Id.*

Given the Executive Branch's responsibility to take care that the laws enacted by Congress be faithfully executed in the manner that Congress directs, it stands to reason that the Constitution assigns Congress a measure of input into the qualifications and methods of selection of executive officers. After all, in exercising its legislative power, "Congress has found it frequently necessary to use officers of the executive branch within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution." *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 406 (1928). From the Founding to the present day, then, Congress has regularly set qualifications for executive office-holders. *See, e.g.*, 6 U.S.C. § 313(c)(2) (requiring that the Administrator of the Federal Emergency Management Agency have "a demonstrated ability in and knowledge of emergency management and homeland security" and "not less than 5 years of executive leadership and management experience"); 15 U.S.C. § 2053(a) (requiring that members of the Consumer Product Safety Commission hold "background and expertise in areas related to consumer products and protection of the public from risks to safety"); 28 U.S.C. § 505 (requiring that the Solicitor General be

"learned in the law"); 35 U.S.C. § 3(a)(1) (requiring that the Director of the U.S. Patent and Trademark Office be a U.S. citizen and "a person who has a professional background and experience in patent or trademark law"); *see also Myers*, 272 U.S. at 265–74 (Brandeis, J., dissenting) (citing a large number of statutes dating back to 1789 that have restricted the President's choice of nominee for certain federal offices). And the Senate can refuse to confirm a nominee for a principal office (or for an inferior office that is subject to confirmation) if the Senate finds the nominee unqualified or otherwise unfit to serve.

Although the Constitution is silent on the circumstances under which a duly appointed federal officer may be removed from office, it grants Congress authority "[t]o make all Laws which shall be necessary and proper for carrying into Execution … all … Powers vested by th[e] Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8. In view of this power, it has long been accepted that "Congress can, under certain circumstances, create independent agencies run by principal officers appointed by the President, whom the President may not remove at will but only for good cause." *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 483 (2010).

Consistent with the respective powers and duties that the Constitution assigns to the Legislative and Executive Branches, the "proper inquiry" for assessing whether a statutory restriction on the removal of a federal officer "disrupts the proper balance between the coordinate branches" of government is ultimately whether "it prevents the Executive Branch from accomplishing its constitutionally assigned functions" and, if "the potential for disruption is present[,] …

whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 443 (1977). As this Court has repeatedly explained, as long as a statutory removal restriction does not "interfere impermissibly with [the President's] constitutional obligation to ensure the faithful execution of the laws" or to fulfill his other constitutional obligations, it represents a proper exercise of Congress's constitutional power to legislate. *Morrison*, 487 U.S. at 693.

B. These principles guided this Court's unanimous decision in *Humphrey's Executor*. As the Court held, the statutory provision that bars the President from removing FTC Commissioners absent "inefficiency, neglect of duty, or malfeasance in office," 15 U.S.C. § 41, does not impermissibly interfere with his ability to fulfill his constitutional duties. Because the FTC "is an administrative body created by Congress to carry into effect legislative policies embodied in [a] statute in accordance with the legislative standard therein prescribed," 295 U.S. at 628, "[t]he authority of Congress … to require [Commissioners] to act in discharge of their duties independently of executive control cannot well be doubted," *id.* at 629.

Humphrey's Executor left open the possibility that some officers, due to "the character of the office," must be subject to "the power of the President alone to make [a] removal." *Id.* at 631–32. And this Court recently held in *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020), that such officers include those who serve as the sole principal officers of executive agencies. Nonetheless, the Court has explained, "it [is] plain under the Constitution that illimitable power of removal is not possessed by

the President in respect of officers" who, like FTC Commissioners, head traditionally structured, multimember administrative agencies. *Humphrey's Executor*, 295 U.S. at 629; *see Seila Law*, 591 U.S. at 216 (explaining that *Humphrey's Executor* "permit[s] Congress to give for-cause removal protections to a multimember body of experts, balanced along partisan lines"). Rather than acting solely "as an arm or an eye of the executive," such an agency serves Congress's "legislative policies" by "filling in and administering the details embodied by [a] general [statutory] standard" through the "quasi legislative" work of promulgating substantive regulations and the "quasi judicial" work of conducting administrative adjudications. *Humphrey's Executor*, 295 U.S. at 628.

The Court's unanimous holding in *Humphrey's Executor* follows from core separation-of-powers principles. Just as Congress properly exercises its legislative power—and does not unconstitutionally invade the President's appointment power—by placing eligibility restrictions on federal officeholders, *see supra* pp. 5–6, Congress's specification of the circumstances under which the President may terminate certain officers appointed to implement legislative policy does not unconstitutionally invade the President's removal power. Rather, it remains the President's prerogative—and his alone—to remove officers when the statutory preconditions are satisfied. *See Morrison*, 487 U.S. at 686 (contrasting good-cause removal protections with statutory provisions that improperly authorize Congress "to involve itself in the removal of an executive official"). And a precondition that a member of a multimember regulatory agency must have committed inefficiency, neglect of duty, or malfeasance in office to be subject to removal from office

does not "interfere impermissibly with [the President's] constitutional obligation to ensure the faithful execution of the laws." *Id.* at 693. Rather, it gives full scope to the President's authority by allowing removal of officers who are not faithfully executing the law and who are thereby compromising the Executive Branch's ability to fulfill its constitutional role.

Moreover, a provision that limits the exercise of the President's removal power to specified circumstances is itself a substantive legislative command that the President must "take Care" to "faithfully execute[]." U.S. Const. art. II, § 3. As Justice Holmes observed, "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." *Myers*, 272 U.S. at 295 (dissenting opinion). That duty does not license the President to *violate* a law that gives full scope to his ability to see that certain kinds of officers charged with specifically defined statutory tasks are performing them in compliance with the law.

Arguing otherwise, the government seizes on language in *Humphrey's Executor* stating that an FTC Commissioner "exercises no part of the executive power." U.S. Br. 21 (quoting 295 U.S. at 628). Observing that members of administrative agencies "are executive officers," *id.* at 28, the government contends that the opinion rests on a faulty conceptual premise. The government overreads the relevant language.

It is true that, although the actions taken by agencies like the FTC "take 'legislative' and 'judicial' forms, … they 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). But this Court has explained that *Humphrey's Executor* did not "turn on whether" an FTC Commissioner's role is "executive" in this formal sense. *Morrison*, 487 U.S. at 689. Rather, *Humphrey's Executor* looked to the Commissioners' "duties." 295 U.S. at 628. Because the FTC was "created by Congress to carry into effect legislative policies embodied in [a] statute in accordance with the legislative standard therein prescribed," using the regulatory and adjudicatory powers that are typical of traditional multimember regulatory agencies, *id.*, this Court held that Congress could authorize FTC Commissioners to perform their jobs free from the "coercive influence" of the threat of arbitrary removal, *id.* at 630.

Put simply, what matters is "the intrinsic … character of the task" with which a tenure-protected officer "[i]s charged." *Wiener v. United States*, 357 U.S. 349, 355 (1958); *see Morrison*, 487 U.S. at 691 (explaining that "the real question is whether the removal restrictions are of such a nature that they impede the President's ability to perform his constitutional duty"). Where an executive officer's tasks involve implementing Congress's statutory commands as part of a traditionally structured administrative agency with regulatory and adjudicatory authority, Congress may permissibly insulate the officer to a degree from presidential directives that contradict the officer's independent view of how best to fulfill his or her statutory responsibilities. *See Humphrey's Executor*, 295 U.S. at 629 (explaining that such an officer must be able to "maintain an attitude of independence" against the President); *see also Seila Law*, 591 U.S. at 216. And one way that Congress may do so is by limiting the President's authority to remove the officer for reasons

unrelated to the officer's fidelity to those responsibilities. *See Humphrey's Executor*, 295 U.S. at 629.

The government also claims that *Humphrey's Executor* "misapprehended" the nature or extent of the powers that Congress has assigned to the FTC. U.S. Br. 24. This Court, though, has explained that "[c]ourts are not well-suited to weigh the relative importance of the regulatory and enforcement authority of disparate agencies," and it has therefore rejected the proposition that "the constitutionality of removal restrictions hinges on such an inquiry." *Collins v. Yellen*, 594 U.S. 220, 253 (2021).

Even so, the government identifies no inaccuracy in *Humphrey's Executor*'s description of the FTC's powers. For example, the government contends that the FTC's power to issue cease-and-desist orders upon finding a statutory violation is "plainly executive." U.S. Br. 24. *Humphrey's Executor*, however, accurately describes the "quasi judicial" administrative process through which such orders are imposed. 295 U.S. at 624; *see id.* at 620 (explaining that the FTC may issue a cease-and-desist order only after issuing an administrative complaint, conducting a hearing, and making factual findings and conclusions of law). Additionally, the government claims that *Humphrey's Executor* wrongly viewed the FTC as conducting investigations "*only* 'for the information of Congress.'" U.S. Br. 25 (emphasis added; quoting *Humphrey's Executor*, 295 U.S. at 628). Critically, though, the word "only" is the government's own. *Humphrey's Executor* correctly describes the FTC's main role as "carry[ing] into effect legislative policies" by "filling in and administering the details" of a statutory prohibition against unfair methods of competition. 295 U.S. at 628. It is only *after* identifying this chief function

that the opinion describes "other specified duties" that the FTC performs "as a legislative or as a judicial aid," including "making investigations and reports thereon for the information of Congress" and "act[ing] as a master in chancery" in judicial proceedings. *Id.*

C. The government's inability to show that *Humphrey's Executor* was wrongly decided is reason enough to reject the contention that it should be overruled. Moreover, this Court has "always required" a "special justification" for overruling precedent, beyond doubts about the precedent's correctness. *Dickerson v. United States*, 530 U.S. 428, 443 (2000) (quoting *United States v. Int'l Bus. Machines Corp.*, 517 U.S. 843, 856 (1996)). The government does not supply one.

When "deciding whether to overrule a past decision," this Court considers factors "including 'the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, … and reliance on the decision.'" *Knick v. Twp. of Scott*, 588 U.S. 180, 203 (2019) (alterations in original; quoting *Janus v. Am. Fed. of State, Cty., & Municipal Emps.*, 585 U.S. 878, 917 (2018)). Each of these factors strongly supports retaining *Humphrey's Executor*, particularly given its vintage. *See Gamble v. United States*, 587 U.S. 678, 691 (2019) (noting that "the strength of the case for adhering to … [a] decision[] grows in proportion to [its] 'antiquity'" (quoting *Montejo v. Louisiana*, 556 U.S. 778, 792 (2009))).

As to the opinion's reasoning, while the government quibbles about its use of the phrase "executive power," the opinion's core rationale—that limits on at-will removal of commission members tasked with exercising their independent judgment to define and apply legislative standards do not impede the Presi-

dent in carrying out his constitutional duties—is sound. That rationale, moreover, is consistent with the separation-of-powers jurisprudence that this Court has developed in the ninety years since. Nearly twenty-five years after *Humphrey's Executor*, the Court invoked the decision to uphold for-cause tenure protections for members of the War Claims Commission—a body that, like the FTC, performed administrative functions that required it to "exercise its judgment without the leave or hindrance of any other official or any department of the government." *Wiener*, 357 U.S. at 353 (quoting *Humphrey's Executor*, 295 U.S. at 625–26). And thirty years after *Wiener*, the Court invoked *Humphrey's Executor* to uphold a statutory provision barring the Attorney General from firing an independent counsel absent good cause. *Morrison*, 487 U.S. at 685–93.

Without meaningfully addressing this line of cases, the government cites four recent decisions that, it says, establish *Humphrey's Executor* to be a "doctrinal dinosaur." U.S. Br. 31 (quoting *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 458 (2015)). Three of those decisions, though, simply decline to "extend" *Humphrey's Executor* to "novel" agency configurations with no "foundation in historical practice," such as an independent agency headed by a single director. *Seila Law*, 591 U.S. at 204; *see Collins*, 594 U.S. at 251 (making "[a] straightforward application of [the] reasoning in *Seila Law*" to invalidate removal restrictions on the head of "an agency led by a single Director"); *Free Enterprise Fund*, 561 U.S. at 505 (declining to apply *Humphrey's Executor* to a "highly unusual" executive agency with only "a handful of isolated" historical analogues). Unlike those agencies, multimember independent agencies structured like

the FTC have a long historical pedigree that well predates the 1935 opinion in *Humphrey's Executor*. *See PHH Corp. v. CFPB*, 881 F.3d 75, 173 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting) (listing agencies dating back to 1887).

Indeed, far from casting doubt on *Humphrey's Executor*, *Seila Law*, *Collins*, and *Free Enterprise Fund* each carefully distinguish it. In *Seila Law*, the Court stated that "we need not and do not revisit our prior decisions allowing certain limitations on the President's removal power," and it reinforced that—in contrast to the single-director agency at issue there—Congress may permissibly "create expert agencies led by a *group* of principal officers removable by the President only for good cause." 591 U.S. at 204. *Collins* reiterated that *Seila Law* was limited to "the novel context of an independent agency led by a single Director." 594 U.S. at 251 (quoting *Seila Law*, 591 U.S. at 204). And *Free Enterprise Fund*, while holding that Congress may not create "two levels of protection from removal for those who nonetheless exercise significant executive power," 561 U.S. at 514, recognized Congress's power to "create independent agencies run by principal officers appointed by the President, whom the President may not remove at will but only for good cause," *id.* at 483. In reading these cases to discard *Humphrey's Executor*, the government ignores their stated reasons for their holdings and implicitly suggests that the limitations that the Court placed on those holdings were either poorly reasoned or not intended to be taken seriously. Either way, it is the government's argument, not the continued viability of *Humphrey's Executor*, that is out of step both with the Court's recent precedents and with the long line of decisions that they leave intact.

As for the fourth decision cited by the government, *Trump v. United States*, 603 U.S. 593 (2024), its passing remark that the President's removal power is "conclusive and preclusive," such that Congress may not regulate it, is dictum. *Id.* at 608–09 (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 638 (1952) (Jackson, J., concurring)). Moreover, the *Youngstown* concurrence on which *Trump* relies to support this dictum cites *Humphrey's Executor* as settled law and describes the President's removal power as "exclusive" only with respect to "executive agencies" that fall outside the scope of *Humphrey's Executor*'s holding. *Youngstown*, 343 U.S. at 638 n.4 (Jackson, J., concurring).

Furthermore, *Humphrey's Executor* has not proved unworkable in practice. In the ninety years since the decision was issued, Congress has exercised its power to create independent agencies structured like the FTC on numerous occasions. *See PHH Corp.*, 881 F.3d at 173 (Kavanaugh, J., dissenting) (naming more than fifteen such agencies that postdate *Humphrey's Executor*). The government identifies no resulting practical problems or any concrete way that for-cause removal protections for the heads of any of these agencies have interfered with any President's effective leadership of the Executive Branch. Indeed, despite contending that the President "remains saddled with subordinate officers who prevent him" from fulfilling his constitutional duty to execute the laws, U.S. Br. 4, the government does not provide a single real-world example of any concrete presidential failure.

The government's argument that for-cause removal protections unduly "saddle" the President also overlooks that executive agencies like the FTC are creations of Congress that are tasked with

promoting the substantive ends that *Congress* has specified through the powers that *Congress* has seen fit to authorize. If agency heads fail to perform these tasks adequately, the President retains authority to remove them for cause. Otherwise, the President suffers no harm from being unable to exercise a lever of control that Congress has decided to withhold to effectuate a lawful legislative objective.

Finally, although the government purports to identify doctrinal confusion in the lower courts, *see id.* at 35–36, the distinction that the Court's decisions currently draw between expert multimember regulatory agencies and executive agencies headed by a single principal officer has not proved difficult to comprehend. Rather, courts have consistently applied this Court's holding that Congress may "give for-cause removal protections to a multimember body of experts, balanced along partisan lines, that perform[s] legislative and judicial functions." *Seila Law*, 591 U.S. at 216; *see, e.g.*, *Walmart, Inc. v. Chief Admin. Law Judge*, 144 F.4th 1315, 1335 (11th Cir. 2025); *Consumers' Research v. CPSC*, 91 F.4th 342, 352 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 414; *Boyle v. Trump*, 791 F. Supp. 3d 585, 596–97 (D. Md. 2025). The recent cases that the government cites reflect no confusion about the 1935 *Humphrey's Executor* opinion, but at most some confusion over this Court's recent opinions qualifying the reach of *Humphrey's Executor* and its progeny. To the extent that there is any confusion for the Court to address, it can do so by affirming that *Humphrey's Executor* remains good law and that for-cause tenure protections for the heads of traditionally structured, multimember administrative agencies like the FTC remain constitutional.

II. *Humphrey's Executor* controls here.

Once *Humphrey's Executor* has been reaffirmed, it is "patently obvious" that the FTC's statutory tenure protections, which were already upheld in that case, are constitutional. App'x 56. The government's contrary arguments are ultimately unpersuasive.

As an initial matter, the government throughout its brief cites *Myers* for the proposition that the President enjoys an "unrestricted" power to remove executive officers. U.S. Br. 4 (quoting 272 U.S. at 176). *Myers*, however, predated *Humphrey's Executor*, which expressly "disapproved" any "expressions" in *Myers* that are "out of harmony" with the Court's ruling that for-cause tenure protections for FTC Commissioners are constitutional. 295 U.S. at 626.

Contrary to the government's reading, *Myers* holds only that Congress cannot give *itself* a role in removing executive officers (outside of the constitutional impeachment process) by requiring congressional consent to their removal. Although the majority opinion contains broad dicta—disavowed unanimously by this Court less than a decade later in *Humphrey's Executor*, *see id.*—the issue presented in *Myers* was whether Congress could "draw to itself, or to either branch of it, the power to remove or the right to participate in the exercise of that power." *Myers*, 272 U.S. at 161. The Court's holding was that it could not. *Id.*; *see id.* at 107 (considering a statutory provision that required the Senate's advice and consent for the President to remove postmasters). And this Court has subsequently read *Myers* to address only the narrow situation in which Congress has "attempt[ed] … itself to gain a role in the removal of executive officials other

than its established powers of impeachment and conviction." *Morrison*, 487 U.S. at 686.

The Court has repeatedly described *Humphrey's Executor* as having correctly rejected *Myers*'s broad dicta regarding the scope of executive power. *See, e.g.*, *Green v. United States*, 355 U.S. 184, 197 n.16 (1957); *United States v. Lovett*, 328 U.S. 303, 328 (1946) (Frankfurter, J., concurring). *Myers* has been cited as a testament to "the unwisdom of making solemn declarations as to the meaning of [the Constitution] which are unnecessary to decision." *Wright v. United States*, 302 U.S. 583, 604 (1938) (Stone, J., dissenting); *see, e.g.*, *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 136 (1951). And as this Court observed nearly seventy years ago, "[t]he assumption was short-lived that the *Myers* case recognized the President's inherent constitutional power to remove officials, no matter what the relation of the executive to the discharge of their duties and no matter what restrictions Congress may have imposed regarding the nature of their tenure." *Wiener*, 357 U.S. at 352.

The government's description of *Humphrey's Executor* as carving out only a "narrow exception" to the baseline presidential removal power identified in *Myers*, U.S. Br. 20, is thus no answer to the point that multiple precedents of this Court recognize that *Myers* affords the President no basis to "insist" that all regulatory and enforcement functions "be delegated to an appointee of his removable at will." *Buckley*, 424 U.S. at 141; *see, e.g.*, *Morrison*, 487 U.S. at 688–89 (rejecting the argument that, "under *Myers*, the President must have absolute discretion to discharge 'purely' executive officials at will"); *Bowsher v. Synar*, 478 U.S. 714, 724–26 & n.4 (1986) (reading *Myers* to foreclose Congress from "reserv[ing] for itself the

power of removal of an officer charged with the execution of the laws except by impeachment" but declining to "cast[] doubt on the status of 'independent' agencies" whose heads are removable by the President only for cause). "Narrow" or not, the *Humphrey's Executor* exception applies to cases, like this one, that fall within its well-established limits.

To be sure, as the government points out, *see* U.S. Br. 20, *Seila Law* reads *Myers* to confirm the proposition that, as a general matter, the President has "power to remove—and thus supervise—those who wield executive power on his behalf." 591 U.S. at 204. Yet *Seila Law* recognizes that this power is qualified by the limits set out in *Humphrey's Executor*, and it reaffirms the "limitations on the President's removal power" recognized in that precedent. *Id.*; *see Free Enterprise Fund*, 561 U.S. at 501 (declining to "take issue with for-cause limitations in general"). The decision thus does not advance the government's position here.

As the district court explained, App'x 64–76, the government is also wrong to argue that *Humphrey's Executor* does not apply to today's FTC because Congress has since "granted the FTC new powers that *Humphrey's Executor* did not consider." U.S. Br. 25. None of the powers that the government identifies differ meaningfully from "the set of powers" that the FTC had in 1935 when *Humphrey's Executor* was decided and that the Court "considered as the basis for its decision." *Seila Law*, 591 U.S. at 219 n.4. For example, the government observes that the FTC may "file civil suits seeking relief from private parties." U.S. Br. 25. *Humphrey's Executor*, though, discusses the FTC's power to initiate and adjudicate administrative enforcement actions with the potential to

culminate in cease-and-desist orders that the FTC can seek to enforce in federal court. *See Humphrey's Executor*, 295 U.S. at 620–21. The government does not explain why bringing a civil enforcement action in federal court in the first instance represents an executive power that is different in kind from bringing an enforcement action in an administrative tribunal and then applying to a court to enforce a resulting order. And while the government states that FTC orders now "can become final and enforceable without judicial intervention," U.S. Br. 27, those orders remain subject to judicial review. *See* 15 U.S.C. § 45(c).

The government also notes that the FTC has "broad power to issue substantive rules." U.S. Br. 26. The FTC, however, has had the power to issue regulations since its inception in 1914, including at the time that *Humphrey's Executor* was decided. *See* Federal Trade Commission Act, Pub. L. No. 63-203, § 6(g), 38 Stat. 717, 722 (1914). Although *Humphrey's Executor* does not specifically use the word "rulemaking," *see* U.S. Br. 26, the agency's authority to make rules was plain on the face of the statute that the decision extensively quotes and discusses. *See generally* 295 U.S. at 619–21. And the decision repeatedly references the FTC's authority to "fill[] in and administer[] the details" of the statutory scheme through "quasi legislative" action. *Id.* at 628. Since as early as 1864, and at the time of *Humphrey's Executor*, "quasi-legislative power" was understood to refer to "[a]n administrative agency's power to engage in rulemaking." *Black's Law Dictionary* (12th ed. 2024); *see, e.g.*, *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947) (referring to an agency's "quasi-legislative promulgation of rules" to "fill[] in the interstices of" a statute);

Mitchell Coal & Coke Co. v. Pa. R.R. Co., 230 U.S. 247, 296 (1913) (Pitney, J., dissenting) (same).

More fundamentally, *Humphrey's Executor* directly acknowledges the FTC's power to determine whether a given "method of competition is … prohibited" by statute. 295 U.S. at 620. The government offers no reason why exercising this power through the statutory authority to promulgate forward-looking regulations differs meaningfully from doing so by adjudicating the legality of a given practice after the fact. Indeed, as this Court explained in the years following *Humphrey's Executor*, "the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of [an] administrative agency." *Chenery*, 332 U.S. at 203; *see FDA v. Wages & White Lion Investments, LLC*, 604 U.S. 542, 582 (2025) ("[A]bsent a statutory prohibition, agencies may generally develop regulatory standards through either adjudication or rulemaking.").

Although the government cites investigatory powers that Congress has conferred on the FTC since 1935, U.S. Br. 27, these powers, too, are comparable to the powers that the FTC held at the time that *Humphrey's Executor* was decided. Specifically, the decision references the FTC's "wide powers of investigation" into potentially unlawful activities. 295 U.S. at 621. Given *Humphrey's Executor*'s recognition that the FTC was statutorily authorized to initiate administrative proceedings to "prevent" regulated parties "from using unfair methods of competition in commerce," *id.* at 620 (citation omitted), the agency's "power to investigate potential lawbreakers for the purpose of determining whether to pursue enforcement action," U.S. Br. 27, is nothing new.

Finally, the government contends that the FTC can now "conduct[] foreign relations" by entering into international agreements. *Id.* at 28. But it admits that the FTC's power in this regard is contingent on approval by the Secretary of State, who is indisputably subject to the President's at-will removal authority. Given the Secretary's control and direction, the President can "attribute" any "failings" in the FTC's international activities "to those whom he *can* oversee." *Free Enterprise Fund*, 561 U.S. at 496; *see Morrison*, 487 U.S. at 692 (holding that the President "retain[ed] ample authority" over an executive officer who held "good cause" tenure protection but was subject to the Attorney General's oversight).

All told, the government identifies no relevant factual developments that have changed the nature of the FTC between 1935 and today. Consequently, what was true then remains true now: Its members' statutory tenure protections are constitutional.

III. Reinstatement is available to remedy the unlawful termination of a federal officer.

As the government recognizes, U.S. Br. 38 n.2, courts routinely exercise their discretion to enjoin Executive Branch officials from giving effect to the unlawful termination of federal officers. Properly so. If courts were foreclosed from granting such relief, the executive could freely flout permissible legislative limits on his removal authority, effectively abrogating the merits holding of *Humphrey's Executor* and rendering statutory tenure protections for executive officers impotent. Under the government's theory, the President may terminate such officers at will so long as he offers them backpay. *See id.* at 40. *Humphrey's Executor*, though, held that Congress may limit the

President's ability to use his "power of removal" to exert "coercive influence" over "the independence of a commission." 295 U.S. at 629–30. Transforming a statutory guarantee of agency independence into a severance-pay provision would render Congress's permissible legislative judgment ineffectual. *See id.* at 626 (holding that it would "thwart, in large measure, the very ends which Congress sought to realize" if "the members of the [FTC]" were held to "continue in office at the mere will of the President").

Rather than confront the fundamental illogic of its position on remedy, the government repackages its merits arguments, contending that "[a]n order preventing a removal *ex post* raises separation-of-powers concerns" by intruding on the President's authority. U.S. Br. 38. The question of remedy, however, arises only after this Court has concluded that Congress acted within its constitutional authority to confer good-cause tenure protections on FTC Commissioners. Having held that the enactment of such protections does *not* violate the separation of powers, it would make no sense for this Court then to hold that their effective enforcement nonetheless *does*.

History supports what common sense suggests: Federal courts have the authority to remedy an unlawful termination through reinstatement. *See, e.g.*, *Vitarelli v. Seaton*, 359 U.S. 535, 546 (1959) (holding that an unlawfully discharged employee of the Department of the Interior was "entitled to the reinstatement which he seeks"); *Pelicone v. Hodges*, 320 F.2d 754, 757 (D.C. Cir. 1963) (holding that an unlawfully discharged employee of the Department of Commerce was "entitled to reinstatement to Government service"); *Berry v. Reagan*, 1983 WL 538, at *6 (D.D.C. Nov. 14, 1983) (enjoining the President from

"preventing or interfering" with the service of unlawfully terminated members of the U.S. Commission on Civil Rights); *Paroczay v. Hodges*, 219 F. Supp. 89, 95 (D.D.C. 1963) (declaring that an unlawfully terminated Department of Commerce employee was "entitled to be reinstated to his position" and "retain[ing] jurisdiction … so that a mandatory injunction c[ould] issue" if needed).

The cases cited by the government, *see* U.S. Br. 41–42, are not to the contrary. *Walton v. House of Representatives*, 265 U.S. 487, 489 (1924), *Harkrader v. Wadley*, 172 U.S. 148, 165 (1898), and *In re Sawyer*, 124 U.S. 200, 212 (1888), describe limits on federal courts' equitable powers with respect to *state* officers and proceedings. *See Baker v. Carr*, 369 U.S. 186, 231 (1962) (describing *Walton* and *Sawyer* as "h[olding] that federal equity power could not be exercised to enjoin a state proceeding to remove a public officer"). And although *White v. Berry*, 171 U.S. 366 (1898), applied *Sawyer* to a federal officer (albeit without explaining its basis for doing so), *id.* at 376–78, that opinion recognized that mandamus relief is available "to determine the title to a public office," *id.* at 377.

Moreover, the government overlooks that the injunction entered by the district court in this case runs only against subordinate executive officers and is not directed to the President. Courts, including this Court, have long recognized that judicial relief is available to bar subordinate officers from giving effect to an unlawful termination. *See, e.g.*, *Delgado v. Chavez*, 140 U.S. 586, 591 (1891) (recognizing the validity of a court order in favor of "certain parties showing themselves to be *de facto* commissioners [seeking] to compel [a public official] to respect their possession of the office, discharge his duties …, and

not assume to himself judicial functions, and adjudicate against the validity of their title"); *Severino v. Biden*, 71 F.4th 1038, 1042–43 (D.C. Cir. 2023) (recognizing a court's authority to enjoin the President's subordinates from giving effect to an unlawful termination); *Swan v. Clinton*, 100 F.3d 973, 980 (D.C. Cir. 1996) (same); *Priddie v. Thompson*, 82 F. 186, 192 (D.W.V. 1897) (entering "an injunction … to restrain [a United States] marshal … from any interference or molestation with [the deputy marshal] in the possession of the office"); *cf. Youngstown*, 343 U.S. at 584, 589 (affirming a judgment enjoining a subordinate officer from implementing an unconstitutional presidential directive). The government offers no persuasive reason for this Court to overturn that firmly established practice.

CONCLUSION

This Court should affirm the judgment of the district court.

Respectfully submitted,

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