

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 U.S.
Court of Appeals for the D.C. Circuit

**BRIEF OF CAMPAIGN LEGAL CENTER AND
TREVOR POTTER AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENTS**

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INTERESTS OF AMICI CURIAE¹

Trevor Potter, currently President of Campaign Legal Center (“CLC”), served as a Republican Commissioner and Chairman of the Federal Election Commission (“FEC”) between 1991 and 1995 and as general counsel to Senator John McCain’s 2000 and 2008 presidential campaigns.

CLC is a nonpartisan, nonprofit organization dedicated to solving the wide range of challenges facing American democracy. It was founded in 2002 by Mr. Potter for the purpose of defending the then-newly enacted Bipartisan Campaign Reform Act of 2002 against constitutional challenge. After the Act was sustained by this Court, CLC began an FEC regulatory practice and a public education effort to ensure that federal campaign finance law was effectively interpreted, enforced, and defended.

CLC also maintains a broad voting rights and redistricting practice, litigating to expand access to voting and ensure fair district lines. For example, CLC filed a lawsuit challenging Arizona’s HB 2492 in part to challenge Arizona’s requirement that federal form applicants provide documentary proof of citizenship to vote by mail. *See Mi Familia Vota v. Fontes*, 129 F.4th 691, 710 (9th Cir. 2025). As part of its work, CLC has likewise submitted comments in response to proposed rulemakings by both the

¹ This brief was not authored in whole or in part by counsel for any party. No person or entity other than *amici* or their counsel made a monetary contribution to this brief’s preparation or submission. S. Ct. R. 37.6.

Election Assistance Commission (“EAC”) and the FEC.

Amici curiae submit this brief to explain the grave impacts of overturning *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935), analyzing this possibility through the lens of their long experience serving on, practicing before, and advocating for reform at the FEC and EAC. The independence and impartiality of these election agencies are critical to the integrity of federal elections and thus the legitimacy of this nation’s entire democratic system.

Amici curiae file in support of respondent Rebecca Kelly Slaughter, but above all, strongly urge this Court to tailor its ruling to the specific statute and agency at issue in this case. A broad ruling here has the potential to cause a profound disruption to the functioning of our government without a full analysis of the unique constitutional, historical, and structural considerations that support the independence of agencies not before this Court.

SUMMARY OF ARGUMENT

Petitioners Donald J. Trump, et al., ask this Court to overturn its 90-year-old decision in *Humphrey’s Executor* as contrary to the Constitution, the early history of this Republic, and principles of democratic accountability. None of these arguments have merit, but it is the last line of attack that amici will address here.

Petitioners would interpret Article II of the Constitution to vest the President with the power to

remove executive branch officials, as President Trump has done with respect to respondent Slaughter, and to control the activities of all federal agencies, officers, and employees, regardless of express statutory language to the contrary. U.S. Br. at 20. Under this extreme version of a “unitary executive” theory, an independent agency like the Federal Trade Commission (“FTC”) is constitutionally suspect because it is “insulat[ed] from democratic accountability,” *id.* at 33, and does not answer to the President, “the one executive official who is accountable to the body politic,” *id.* (citation omitted).

Although petitioners thus invoke “electoral accountability,” U.S. Br. at 5, they offer no historical evidence or empirical studies to support the idea that Presidential removal authority makes government more accountable to voters. In reality, for-cause termination requirements and other statutory protections of agency independence permit agency commissioners to express and consider a wide range of political perspectives and enhance agency transparency and public oversight. The available evidence thus demonstrates that agency independence in fact *enhances* democratic values.

Nowhere is this principle more apparent than in the structure and operation of the federal election agencies. Both the FEC and EAC were carefully designed by Congress to operate in an impartial, bipartisan manner and to remain substantively independent of the President, whose past campaigns, future election activities, and aligned party campaign

committees are subject to these agencies' oversight. Authorizing the President to control these agencies would derogate Congress's lawmaking power, undermine public confidence in the integrity of our elections, and open election administration to partisan manipulation.

Even if this Court questions removal protections with respect to the FTC, it should decline to endorse the sweeping "unitary executive" theory that underpins petitioners' claims. A broad ruling in this case—untethered from the specific statute, agency, and action (i.e. removal) at issue here—could disturb the structure of at least "two-dozen multimember independent agencies." *Seila Law LLC v. CFPB*, 591 U.S. 197, 230 (2020). Indeed, this Court has already acknowledged that both the "unique[] structure" and "distinct historical tradition" of certain agencies, such as the Federal Reserve, may bear upon the constitutionality of provisions protecting their independence, including for-cause removal protections. *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025). So too do the unique structure and sensitive legal areas regulated by the EAC and FEC counsel in favor of a narrow, agency-specific ruling here that does not undermine their independence.

The example of the election agencies, even if distinguishable, also brings into focus the sweeping and largely unexamined impacts of overturning *Humphrey's Executor* on the integrity and functioning of our government. The statutes establishing and structuring independent agencies like the FEC and

EAC often include multiple protections to ensure their impartiality and bipartisan operation. The Presidential control that petitioners demand cannot be achieved without rendering multiple critical provisions of these a nullity. Congress has only delegated powers related to our election system to agencies insulated from the President and calibrated to achieve bipartisan results. This pattern makes clear that Congress would likely not have delegated these powers absent these protections. Thus, it is no solution to simply sever termination protections, as petitioners urge with respect to the FTC—or otherwise strip agencies of their independence while maintaining their statutory powers. U.S. Br. at 36. This would represent a unilateral judicial transfer of powers held by Congress to the Executive in contravention of express legislative intent.

Finally, the specter of Presidential control over election agencies illustrates the more fundamental structural dangers arising from consolidation of authority under a single executive. The FEC was created as a direct response to abuses of Presidential power during the Watergate scandal and reflected Congress's concerns that an election authority under Presidential control would "choose to ignore infractions committed by members of the President's own political party." *FEC v. NRA Pol. Victory Fund*, 513 U.S. 88, 95-96 (1994). If, by contrast, a partisan executive controls election agencies, they can become tools for manipulating campaign finance and election rules, influencing electoral outcomes, disadvantaging

opposition candidates and parties, and entrenching the power of the incumbent President and his party.

ARGUMENT

I. Preserving removal restrictions—and by extension, Congress’s creation and design of “independent” agencies—further democratic accountability.

Petitioners and their *amici* posit that, as a matter of history and constitutional structure, accountability for the exercise of government authority “depends on ‘oversight by an elected President.’” See U.S. Br. at 20 (citing *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010)); see also Amicus Br. of Edwin Meese III, et al., at 26-27. Petitioners, however, offer no empirical evidence for the supposed “accountability” benefits flowing from Presidential removal authority.

A. Congressional creation and oversight of, along with Presidential appointment to, independent agencies provide ample democratic inputs.

In arguing that “independent agencies mean . . . insulation from democratic accountability,” U.S. Br. at 33, petitioners ignore that Congress is of course a coequal, democratically elected branch of government that voters can hold accountable for its laws creating independent agencies. Indeed, these authorizing statutes would seem at least as likely as any particular agency action to generate public

disapproval or approval at the ballot box. This form of democratic accountability is consonant with the Framers' expectations that Congress would be the most democratic branch and would define the "content" of law, while the President's duty was "executing laws and judgments made by others." See Caleb Nelson, *Must Administrative Officers Serve at the President's Pleasure?*, Democracy Project at NYU Law (Sep. 29, 2025), <https://perma.cc/JZ3B-V2YU>.

Congress, in its creation and oversight of independent agencies, may in fact have a *superior* claim to facilitating democratic accountability. Independent agencies like the FTC at issue here, or other agencies like the FEC and EAC, are often born from extensive legislative debate and compromise between Congress and the President. Given the strictures of bicameralism and presentment, compounded by the dynamics of intense political competition, major legislation is often the result of a "public mood" of intense mobilization amongst the citizenry," and thus carries significant democratic bona fides. Blake Emerson, *Liberty and Democracy through the Administrative State: A Critique of the Roberts Court's Political Theory*, 73 Hastings L.J. 371, 414 (2022) (citation omitted). If the Court invalidates for-cause removal restrictions that Congress and the President have agreed upon in authorizing statutes, it would shift "democratic power from general lawmaking to the plebiscitary discretion of the Chief Executive." *Id.*

Further, Congress has stronger electoral incentives than the President to hew to the policy preferences of the electorate over time. House members are elected more often than the President, and all members of Congress can run for office indefinitely, in contrast to the President's two-term limitation. See Peter M. Shane, *Political Accountability in a System of Checks and Balances: The Case of Presidential Review of Rulemaking*, 48 Ark. L. Rev. 161, 199-200 (1995). Indeed, the Framers anticipated that Congress, not the President, would serve as the "main claimant of direct accountability to the people," as the lone branch that was directly elected. Martin S. Flaherty, *The Most Dangerous Branch*, 105 Yale L.J. 1725, 1822-23 (1996). The Founders were also comfortable establishing non-hierarchical forms of decisionmaking within the Executive Branch that did not assume overarching Presidential superintendence. See Christine Kexel Chabot, *Interring the Unitary Executive*, 98 Notre Dame L. Rev. 129, 162-90 (2022).

Moreover, recognizing Congress's role in holding independent multimember commissions accountable does not negate the President's capacity to do the same—even without unfettered executive authority. Such commissions are "created, dismantled, funded, and authorized to act through Acts of Congress that the President must either sign or see enacted over his veto." Abner S. Greene, *Discounting Accountability*, 65 Fordham L. Rev. 1489, 1505 (1997). Most fundamentally, Presidents have the power to appoint commissioners to independent

agencies with the advice and consent of the Senate. And Presidents may advocate to the public and to Congress about his views on policy and the interpretation of statutes as part of the regular political process. *See, e.g.*, U.S. Const. art. II, § 3.

Multiple avenues thus exist for democratic input on the activities of independent agencies, and Congress has a stronger structural claim than the President to being the branch most capable of compelling independent agencies to act consistently with the electorate's preferences.

B. Independent agencies are accountable to elected officials and promote democratic values.

Petitioners further ignore that operation of independent agencies in government affirmatively *promotes* democratic values, including the consideration of diverse and often opposing viewpoints, checks on abuses of power, and transparency in decisionmaking.

The structure of multi-member commissions, often with partisan balance requirements, ensures that opposing views are aired and considered, leading to informed decisionmaking responsive to a broad constituency. When commissioners hold differing opinions on a regulatory question, debate between competing views can often generate a consensus position. *See PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 184 (D.C. Cir. 2018) (Kavanaugh, J., dissenting). Further, when such

commissions act contrary to any commissioner's preferred course, that dissenting commissioner can raise alarm bells for Congress, the President, voters, and courts. Dissents thus can help stakeholders hold the agency to account and lessen the costs on Congress and the President to monitor agency action. *See* Sharon B. Jacobs, *Administrative Dissents*, 59 Wm. & Mary L. Rev. 541, 575, 587-91 (2017). Consequently, the multi-member nature of independent agencies "reduces the risk of arbitrary decisionmaking and abuse of power." *PHH Corp.*, 881 F.3d at 165 (Kavanaugh, J., dissenting). Authorizing unrestrained Presidential control over independent agencies, by contrast, would chill viewpoints that differed from those of the President, and would erode these structural protections for the consideration of opposing views.

This kind of deliberation also serves the regulated public. Independent agencies often ensure that the regulated community has at least some receptive leaders within the agency such that they feel their concerns can be addressed. By contrast, if policymaking authority is centralized in the President, that only "increase[s] the chances that one interest or set of interests will have disproportionate access and influence." Peter M. Shane, *Political Accountability in a System of Checks and Balances: The Case of Presidential Review of Rulemaking*, 48 Ark. L. Rev. 161, 203 (1995).

Another benefit of the structure of independent agencies is their transparency. Because multi-

member commissions are likely to foster disagreement, independent agencies create a “built-in monitoring system for interests on both sides.” *PHH Corp.*, 881 F.3d at 185 (quoting Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 Tex. L. Rev. 15, 41 (2010)). If independent agencies were brought under strict Presidential control, greater risks of secrecy and corruption would emerge, since the Presidency is “structurally well-equipped for secrecy and information control” and possesses “strong political incentives to use these capacities.” See Heidi Kitrosser, *The Accountable Executive*, 93 Minn. L. Rev. 1741, 1742 (2009). Increased transparency that comes from an agency’s independence is thus likely to improve the electorate’s ability to engage with agency decisions and hold leaders to account.

C. Unfettered Presidential control over independent agencies does not advance democratic accountability.

Petitioners’ contrary claim—that voters hold the President accountable for the regulatory decisions of individual agencies—is empirically dubious. Even presuming that the majority of voters “signal” their preferred regulatory approach in a presidential election, such a signal cannot possibly provide reliable insight on majoritarian preferences for all the varied, complex, and technical judgments that agencies make every day.

Petitioners stress the need for “electoral accountability” for independent agency decisions. But

to hold the President “accountable” for agency actions, voters would need to know about incumbents’ records on a particular agency action, form judgments about such action, attribute responsibility to the President, and then cast ballots based on those judgments and attributions. *See* Nicholas O. Stephanopoulos, *Accountability Claims in Constitutional Law*, 112 Nw. U. L. Rev. 989, 993 (2018). Available evidence on the motivating factors behind voters’ choice for President make each of these assumptions suspect. *See id.* at 1024. For one, voters are unlikely to be aware of the vast number of technical regulations and adjudications performed by independent agencies. To the extent voters are dissatisfied with the *overall* regulatory direction of a given agency, and choose to vote based on that viewpoint, Presidential *appointment* of agency leadership is likely to suffice in redirecting the agency’s focus. And insofar as voters are dissatisfied with the general scope of an agency’s powers, Congress is the branch that is better able to take action. In other words, granting the President unchecked removal power is not a solution responsive to the perceived absence of electoral accountability on the part of independent agencies.

Even if one looks only at voters who supported a successful candidate for President, their views on questions of regulatory policy are heterogenous. Elections for President create a “bundling problem” wherein voters are presented with candidates who each offer a package of policies, and elections rarely involve more than a few highly salient issues. *See* Cynthia R. Farina, *The Consent of the Governed*:

Against Simple Rules for a Complex World, 72 Chi.-Kent L. Rev. 987, 998 (1997). To suggest that an elected President’s views on all matters of regulatory minutiae align with a reflected consensus among voters is “at best, counterintuitive.” *Id.* at 995. Bureaucratic control over specific agency actions by the President is “simply to [sic] fine-grained, too recondite, to produce an impact on the voters.” Edward Rubin, *The Myth of Accountability and the Anti-administrative Impulse*, 103 Mich. L. Rev. 2073, 2083 (2005).

Nor does it appear that voters even prefer a chief executive who dictates all activities of the executive branch. A recent study surveyed over 5,000 American voters and presented them with fictional “agency decision-making vignettes” that modulated aspects of presidential influence and asked participants to rate “how responsive . . . the agency [is] to people like you.” Brian D. Feinstein, *Presidential Administration and the Accountability Illusion*, 74 Duke L.J. 1791, 1849 (2025). The study found that presidential influence does not boost perceived accountability and in fact was associated with a *reduction* in perceived accountability as compared to an agency insulated from the White House. *Id.* at 1832. As some scholars have posited, it thus appears that voters take a more robust vision of “democratic accountability” than petitioners do—favoring values like “impartiality and expertise in administrative decision-[making].” Bijal Shah, *The President’s Fourth Branch?*, 92 Fordham L. Rev. 499, 527 (2023).

The structural design of independent agencies is the result of decades of Congressional handiwork and has been shown to promote democratic values, such as robust debate, responsive decisionmaking, and governmental transparency. Petitioners' contrary theory, that Presidential control promotes "democratic accountability," is wholly lacking in factual support.

II. A sweeping ruling here that enhances Presidential control over independent agencies would run counter to Congress's clear intent to create independent election agencies and would undermine the integrity of elections.

Little evidence supports petitioners' argument that an interest in democratic accountability justifies the adoption of their "unitary executive" theory as discussed *supra* Part I. But however tenuous this interest is in general application, it is entirely implausible as a justification for the President's recent attempts to control *all agencies*, including the federal election agencies. Any broad ruling here that would legitimize that effort could undermine the integrity of federal elections—including the presidential election—upon which our system of democratic self-governance depends.

Petitioners' sweeping theory of Presidential power would reach beyond the particulars of this case to affect agencies, like the FEC and EAC, where independence is central to the congressional design and critical to maintaining a democratic balance of

power. The President has taken several steps to realize petitioners' goal of control over the election agencies,² primarily through executive orders.

In February 2025, the President signed Executive Order 14215, which seeks to bring all agencies, including independent agencies like the FEC and EAC, under the direction of the President. *See* Exec. Order No. 14215, 90 Fed. Reg. 10447 (Feb. 18, 2025) ("Agency Order"); *see also Democratic Nat'l Comm. v. Trump*, No. 25-cv-00587-AHA, 2025 WL 1573181, at *1 (D.D.C. June 3, 2025) (considering challenge by Democratic national party committees to Agency Order as contrary to statute). This order asserts that "[t]he President and the Attorney General's opinions on questions of law are controlling on all employees" of the executive branch and prohibits any employee from "advanc[ing] an interpretation of the law" that "contravenes the President or the Attorney General's opinion on a matter of law." 90 Fed. Reg. at 10448-49.

In a similar vein, this March, President Trump issued Executive Order No. 14248, 90 Fed. Reg. 14005 (Mar. 25, 2025) ("Election Order"), attempting to change various aspects of *state* election laws,

² President Trump fired Democratic FEC Commissioner Ellen Weintraub in February 2025, although it is "likely" that "the President can remove [FEC] commissioners only for good cause." *FEC v. NRA Pol. Victory Fund*, 6 F.3d 821, 826 (D.C. Cir. 1993); *see also* Andrew Howard, *Trump ousted the top Democratic campaign finance regulator*, Politico (Feb. 7, 2025), <https://www.politico.com/news/2025/02/07/donald-trump-fec-commissioner-firing-014200>.

including mail-in ballot requirements and voting systems requirements. It further commands the EAC to take various actions, in particular directing the agency to “require, in its national mail voter registration form,” documentary proof of U.S. citizenship. *Id.* at 14006.

But Congress structured the FEC and EAC to be independent and “inherently bipartisan.” *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 37 (1981). Whether through executive orders or the termination of commissioners, any attempt to bring these bipartisan and independent election agencies under the unfettered partisan command of the President violates the agencies’ authorizing statutes, flouts Congress’s lawmaking power, and risks undermining the integrity of federal elections.

A. Federal Election Commission

1. Congress intended to insulate the FEC from Presidential control.

The President’s attempt to control the FEC’s decisionmaking cannot be reconciled with the reason Congress created the FEC in the first place: the need for an impartial, bipartisan campaign-finance enforcement body insulated from presidential influence.

Congress created the FEC in direct response to the Presidential scandal of Watergate. *See* Charles N. Steele and Jeffrey H. Bowman, *The Constitutionality of Independent Regulatory Agencies Under the*

Necessary and Proper Clause: The Case of the Federal Election Commission, 4 Yale J. on Reg. 363, 371-72 (1987). The Senate Watergate Committee's lengthy hearings exposed the Nixon administration's widespread politicization of the Executive Branch—including the Department of Justice—to further the re-election efforts of President Nixon. See Final Report of the Select Committee on Presidential Campaign Activities, S. Rep. No. 93-981, at 127-29, 145-47, 699-729, 980-98, 1184-87 (1974) (hereinafter, "Watergate Report"). As a result, Congress recognized that the Department of Justice could not always be trusted to robustly or evenhandedly enforce campaign finance laws. As one Representative observed, "[t]he failure of the Justice Department to prosecute in 1972 is widely known," and consistent with the fact that "[n]o administration or enforcement agency that is in any manner politically encumbered has ever done an adequate, consistent job in administering and enforcing election law." H.R. Rep. No. 93-1239, at 140 (1974) (supp. views of Rep. Frenzel).

Congress thus came to the "belief that campaign finance laws could not regulate the activities of the President's own reelection committee unless the execution of those laws was free from his direct control." Steele, 4 Yale J. on Reg. at 371, 372 n.51. That view is reflected in the Senate Watergate Committee's final report, which recommended that "Congress enact legislation to establish an independent, nonpartisan Federal Election Commission." Watergate Report, S. Rep. No. 93-981,

at 564. The Committee detailed the paramount necessity of independence, stating:

Probably the most significant reform that could emerge from the Watergate scandal is the creation of an *independent nonpartisan* agency to supervise the enforcement of the laws relating to the conduct of elections. Such a body—given substantial investigatory and enforcement powers—could not only help insure that misconduct would be prevented in the future, but that investigations of alleged wrongdoing would be vigorous and conducted with the confidence of the public.

Id. (emphasis added). While Congress debated the precise form that the FEC would take, all agreed that the agency's essential features would be its independence and bipartisan structure. For example, Senator Hubert H. Humphrey, among the earliest advocates for an independent FEC, argued that “an independent body is necessary to properly execute the election laws in an impartial and nonpartisan manner,” given that the “temptation to politicize the Department of Justice, which currently has jurisdiction over such matters, is or has been apparently too great to resist.” 119 Cong. Rec. 21,677 (1973). Similarly, Representative Dante Fascell stressed the need for an “independent enforcement commission,” which he characterized as the “heart

and crux of campaign reform.” 120 Cong. Rec. 27,472 (1974).

Describing the final bill creating the FEC, members of both Houses of Congress indicated that “legislators believed the bill met their goal of establishing an independent body.” Steele, 4 Yale J. on Reg. at 376. As Senate Minority Leader Hugh Scott expressed, the legislation had successfully produced “an independent Federal Election Commission.” 120 Cong. Rec. 34,373 (1974).

2. The FEC is designed to operate as an independent and bipartisan agency.

Consistent with Congress’s intent, the Federal Election Campaign Act (“FECA”) creates a commission whose independence and bipartisanship are inherent in its structure, powers, and operation.

The FEC is tasked with the administration, interpretation, and civil enforcement of FECA. 52 U.S.C. §§ 30106(b)(1), 30107(a), 30109. Among the agency’s powers are the ability to “formulate policy,” promulgate regulations, and “render advisory opinions.” *Id.* §§ 30106(b)(1), (f), 30107(a)(7). The FEC is also authorized to investigate potential FECA violations, adjudicate citizen complaints alleging such violations, enter into conciliation agreements to resolve complaints, and initiate civil enforcement actions in U.S. district courts to enforce its determinations. *Id.* § 30109(a)(1)-(6).

To ensure the FEC's impartiality and independence, FECA provides that the agency comprises six commissioners, no more than three of whom "may be affiliated with the same political party." *Id.* § 30106(a)(1). The commissioners serve staggered six-year terms—longer than the four-year term of any President—and they choose from among their members a chairman and vice chairman who "shall not be affiliated with the same political party." *Id.* § 30106(a)(2), (5). For the agency to exercise any of its core functions affecting the rights of regulated parties, FECA requires a bipartisan "affirmative vote of 4 members of the Commission." *Id.* § 30106(c) (citing 52 U.S.C. § 30107(a)(6), (7), (8), (9)). The Act prevents commissioners from side stepping these requirements by prohibiting them from "delegat[ing] to any person his or her vote or any decisionmaking authority or duty." *Id.*

Consistent with these provisions, FECA provides only a minimal role for the President or Attorney General in the exercise of the agency's powers and duties. *Id.* §§ 30106(c), 30107(a); *cf. id.* § 30106(b)(2) (specifying that the FEC's powers shall not be "construed to limit" certain of Congress's powers with respect to "elections for Federal office"). FECA provides that the President shall appoint commissioners, *id.* § 30106(a)(1), but otherwise insulates the FEC from the President. Congress gave the FEC "independent litigating authority," except in Supreme Court proceedings. *See NRA Political Victory Fund*, 513 U.S. at 91-92 & 101 n.2 (citing 52 U.S.C. § 30107(a)(6)). FECA further provides for

congressional, rather than presidential, review of the Commission's proposed regulations, 52 U.S.C. § 30111(d); gives the Commission authority to submit its own budget to Congress without presidential approval, *id.* § 30107(d)(1); and precludes the President from controlling the Commission's submissions to Congress, *id.* § 30107(d)(2).

FECA further requires FEC commissioners to use their own independent legal judgment in exercising the agency's powers. FECA states that commissioners must be chosen "on the basis of their experience, integrity, impartiality, and good judgment" and may not otherwise be government officials or employees. 52 U.S.C. § 30106(a)(3). As one FEC commissioner has explained, "nothing in the Act instructs commissioners to obediently vote one way or the other on any motion. Each commissioner exercises their judgment and discretion in every vote they cast." Statement of FEC Commissioner Ellen L. Weintraub, On the Voting Decisions of FEC Commissioners at 11 (Oct. 4, 2022), <https://perma.cc/9LRY-3Z5E>.

In sum, FECA's text, and regulations promulgated by the FEC itself, are consistent with Congress's intent to create a bipartisan and independent agency that is not "under the thumb of those who are to be regulated." FEC, *Legislative History of Federal Election Campaign Act Amendments of 1976* at 72 (1977), <https://perma.cc/G23G-SQ7T>.

B. Election Assistance Commission

1. Congress structured the EAC to be independent and bipartisan.

The sweeping Presidential control that petitioners urge is likewise inconsistent with Congress's express intention to create an independent and impartial EAC. After the controversy of the 2000 Presidential election, Congress sought to ensure the reliability and accuracy of election results. To aid this effort, a task force headed by former Presidents Ford and Carter and an academic study by the California Institute of Technology and the Massachusetts Institute of Technology recommended the creation of a new, independent agency with technical expertise to analyze and recommend voting equipment to the states and to administer federal financial assistance in making related updates. *See* Gerald R. Ford & Jimmy Carter, *To Assure Pride and Confidence in the Electoral Process: The Report of the National Commission on Federal Election Reform*, Nat'l Comm'n on Federal Election Reform, at 3 (Aug. 2001); R. Michael Alvarez et al., *Voting – What Is, What Could Be*, CalTech/MIT Voting Technology Project, at 3 (July 2001), <https://vote.caltech.edu/reports/1>.

Congress embraced this recommendation, enacting the Help America Vote Act of 2002 (“HAVA”) and creating the EAC to “restore the voters’ trust in their government . . . [and] assure voters that votes will be counted accurately, and that legally registered voters will not be disenfranchised.” 148 Cong. Rec.

20,842 (2002) (statement of Sen. McCain). The EAC was granted authority to administer grant programs to states, develop voluntary voting system guidelines, issue guidance on compliance with Title III of HAVA (dealing with minimum standards for voting systems), create a system for the testing and certification of voting technologies, maintaining the federal voter registration form, and serve as a national clearinghouse for information on election administration. *See* 52 U.S.C. § 20922.

Taking inspiration from the FEC, Congress designed the EAC to administer HAVA in a bipartisan and impartial manner, drawing on the independent judgment of the agency’s commissioners. Accordingly, Congress structured the EAC as an “independent entity,” 52 U.S.C. § 20921, with “four members appointed by the President, by and with the advice and consent of the Senate” after recommendations made by Congressional leadership, *id.* § 20923(a)(1)-(2). The EAC must not have more than two members of the same political party, *see id.* § 20923(b)(2)-(3), and each commissioner must possess “experience with or expertise in election administration or the study of elections,” *id.* § 20923(a)(3). EAC commissioners serve four-year staggered terms, with two commissioner terms (one associated with each political party) expiring simultaneously every two years. *See id.* § 20923(b). Congress further ensured that all actions taken by the EAC—as with the FEC—must occur on a bipartisan basis by prescribing that “[a]ny action” the EAC takes “may be carried out only with the approval of at least three of its members.” *Id.* § 20928.

In sum, the EAC's structure was carefully crafted by Congress to minimize the possibility of either partisan or Presidential capture. The EAC, like the FEC, was deliberately designed to have an even number of members, such that any Commission actions require bipartisan agreement. *See id.* § 20923(a), (c). HAVA's primary Democratic sponsor, Senator Chris Dodd, made clear that the Commission's partisan balance requirement was designed "[t]o reflect the need for a continuing nonpartisan approach to election administration." 148 Cong. Rec. 4,405 (2002). Likewise, the leading Senate Republican sponsor, Senator Mitch McConnell, explicitly connected his primary objectives in enacting HAVA with the structural considerations inherent to the EAC:

From the beginning, I have been committed to providing not only financial assistance but also informational assistance to States and localities. *The best way to achieve both of these goals is by establishing an independent, bipartisan election commission.* The commission will be a permanent repository for the best, unbiased, and objective election administration information for States and communities across America.

148 Cong. Rec. 20,656 (2002) (emphasis added).

2. The EAC operates consistently with principles of federalism.

In addition to structuring the EAC to be independent and bipartisan, Congress also sought to protect principles of federalism in its design of the agency's powers and operation. Complying with EAC guidance or certification processes is therefore entirely voluntary upon the states. *See* 148 Cong. Rec. 20,317 (2002) (statement of Rep. Bob Ney). Because Congress was concerned with federal mandates in an area of traditional state regulation—elections—the EAC's rulemaking authority is quite narrow: the EAC can only promulgate rules affecting the “Federal Form” established by the National Voter Registration Act (“NVRA”) and the agency's semiannual report to Congress on the operation of the NVRA. 52 U.S.C. § 20508. Further, Congress explicitly assigned enforcement authority for HAVA's minimum voting standards to the Department of Justice, not the EAC. *Id.* § 21111.

Congress likewise established external federalism and expertise-based checks on the EAC through the establishment of advisory committees. Congress created a “Standards Board” composed of one state and one local election official from every State and Territory, with each State required to send representatives from different political parties. *See* 52 U.S.C. § 20943(a). Congress established a “Board of Advisors” staffed by representatives from bipartisan organizations of state and local officials (e.g., National Association of State Election Directors, National

Association of Counties, etc.) and federal government entities with elections expertise, as well as persons assigned to represent “voter interests” or “professionals in the field of science and technology.” *See id.* § 20944. The EAC is required to consult with both the Standards Board and the Board of Advisors when formulating guidance on voting systems, disability access, and overseas and military voter access. *See id.* §§ 20924(e), 20942.

Throughout its history, the EAC has operated in the bipartisan, impartial, and expert fashion intended by Congress. The Commission has administered over \$4.5 billion in grant funding to states and localities for election administration purposes including replacing lever and punch card voting systems, ensuring election software is protected against foreign interference, and supporting necessary alterations to election administration caused by the COVID-19 pandemic. *See* Karen L. Stanton, *R46646: Election Administration: Federal Grant Programs for States and Localities*, Cong. Rsch. Serv. (May 30, 2025), <https://www.congress.gov/crs-product/R46646>. The EAC has also emerged as a trusted partner to the States as they address novel challenges in election administration. *See, e.g.*, Nat’l Ass’n of Sec’y of State, *NASS Resolution on Principles for Federal Assistance in Funding of Elections* (Feb. 10, 2024), <https://www.nass.org/sites/default/files/resolutions/2024-02/nass-resolution-principles-election-funding-winter24.pdf> (urging Congress to provide EAC “stable federal funding that allows states to plan and implement election security

enhancements to counter emerging cybersecurity threats”). The EAC has accomplished all of this on a bipartisan, independent basis, as required by Congress.

In sum, the EAC, like the FEC, reflects Congress’s judgment that the best way to create a “repository for expertise and unbiased advice to States and localities,” *see* 148 Cong. Rec. 20,656 (2002) (statement of Sen. McConnell), comes in the form of an expert, bipartisan independent agency. The text, historical context, and legislative history of both FECA and HAVA confirm that Congress intended these agencies to operate independently of the President and other partisan influence, and Congress likely would not have created these agencies without that independence.

III. As the election agencies illustrate, a broad ruling that allows for Presidential control over all independent agencies would countermand congressional intent, disable key functions of government, and subvert the democratic process.

There is no way to square petitioners’ theory of a unitary executive—and their resulting theory of Presidential control over election agencies, in particular—with the statutes that created and delegated authority to those agencies. Although the Court here is only considering the constitutionality of termination protections with respect to the FTC, endorsing petitioners’ position could imperil most, if not all, the “two-dozen multimember independent

agencies” that have been created over the last century in reliance on *Humphrey’s Executor*. *Seila Law*, 591 U.S. at 230.

The “unique[] structure” and “distinct historical tradition” of the FEC and EAC—as well as the extraordinary need for impartiality in the administration of elections—counsel in favor of retaining their statutory structure. *Wilcox*, 145 S. Ct. at 1415. But the example of the election agencies illustrates the broad and largely unexamined impacts of overturning *Humphrey’s Executor* and adopting a wholesale unitary executive theory as petitioners request—which could extend far beyond the statute and agency at issue in this case.

Petitioners assume that the simple excision of statutory removal restrictions from the various laws containing this protection, U.S. Br. at 23, will remedy the perceived constitutional defect in their design. But this ignores that subordinating these agencies to Presidential command, as petitioners demand, would do great damage to their authorizing statutes and effectively require a “re-write” of those statutes, thereby usurping Congress’s role and transferring powers to the President that Congress has never, in fact, delegated.

A. Enhancing Presidential power over election agencies would contravene congressional intent and undermine the integrity of these agencies' operations.

First, the statutes establishing and structuring the FEC and EAC—as well as many other independent agencies—often include multiple provisions meant to preserve their bipartisan structure and independent, impartial operation. These statutes cannot be “re-written” without usurping the role of Congress and causing widespread legal and practical dysfunction across the federal government.

Typifying this problem, both the Agency Order and Election Order not only attempt to override the independence of the FEC and EAC but would effectively nullify the statutory provisions requiring the election agencies to make all decisions on a bipartisan basis. FECA provides that the FEC can take significant agency action only with the vote of at least four commissioners, necessitating at least one vote from commissioners of both parties on the balanced six-member entity. 52 U.S.C. § 30106(c). Similarly, HAVA provides that the EAC can only render a final decision provided that at least three of its four commissioners join. *Id.* § 20928. By purporting to allow the President and his party to control the agencies' interpretations of law, the orders render meaningless these statutory prescriptions for the agencies' decision-making. If the President and his

party were authorized to dictate the FEC’s official interpretations of FECA or the EAC’s administration of HAVA, this would be the functional equivalent of replacing the bipartisan majority necessary for agency action with a single administrator answerable to the President.

This partisan balance is particularly crucial when an agency engages in case-by-case or adjudicatory action, such as when the FEC reviews and decides on administrative complaints filed under 52 U.S.C. § 30109(a). President Trump and his electoral campaigns have been subject to dozens of administrative complaints alleging campaign finance violations. It is untenable to suggest there is no harm posed by Presidential control over the FEC’s interpretations of law that govern its review of complaints pending against the President³—and against his political opponents. *See also Myers v. United States*, 272 U.S. 52, 135 (1926) (noting that “there may be duties of a quasi judicial character

³ Consistent with its nonpartisan mission, CLC files complaints that target apparent campaign finance violations by candidates and political committees across the political spectrum, including various candidates for the office of President. *See, e.g., CLC v. FEC*, 106 F.4th 1175 (D.C. Cir. 2024) (affirming district court’s judgment that FEC’s dismissal of CLC complaint against 2016 presidential campaign of Hillary Clinton was contrary to law); *CLC Alleges that Donald Trump’s Committees Illegally Obscured Legal Services Payments* (Apr. 24, 2024), <https://campaignlegal.org/document/clc-alleges-donald-trumps-committees-illegally-obscured-legal-services-payments> (alleging that 2024 Trump campaign and affiliated committees failed to fully disclose their payments to reimburse a vendor for legal expenses).

imposed on executive [tribunals] . . . whose decisions after hearing affect interests of individuals, the discharge of which the President cannot in a particular case properly influence or control”).

The structure of the FEC and EAC, as well as their statutory bipartisan vote requirements, thus guarantee parties with interests before the agencies the right to a politically neutral arbiter. These agencies “must decide issues charged with the dynamics of party politics, often under the pressure of an impending election.” *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 37 (1981). Any attempt to exert Presidential control over the election agencies effectively nullifies their “carefully balanced bipartisan structure” and injects personal and partisan considerations into the otherwise impartial administration of the nation’s election laws. *Common Cause v. FEC*, 842 F.2d 436, 449 n.32 (D.C. Cir. 1988).

Second, Congress’s clear intent was to establish independent, bipartisan agencies to administer FECA, HAVA, and related federal election statutes—statutes which have been settled law for decades. Congress would not have delegated these powers to partisan agencies controlled by the President—given that the office of President would inevitably be occupied at some point by a political opponent of the very representatives and senators voting to create the FEC and EAC. Endorsing Presidential control over these agencies thus would achieve exactly what Congress intended to prevent when it designed the FEC and EAC: putting agencies whose independence

is crucial to the integrity of U.S. democracy under the thumb of an officer whose election and campaign activities the agencies are mandated to oversee.

Legislative history makes clear that it was Presidential abuses of power underlying the Watergate scandal that motivated Congress to establish the FEC in the first place as “an independent nonpartisan agency to supervise the enforcement of the laws relating to the conduct of elections.” Watergate Report, S. Rep. No. 93-981 at 564. As one senator advocating the FEC’s creation explained, this history confirmed that “an independent body” is necessary to administer election law because the “temptation to politicize” entities the President controlled was “apparently too great to resist.” 119 Cong. Rec. 21,677 (1973) (statement of Sen. Humphrey).

Indeed, Congress’s concern about Presidential control was so great that it initially attempted to retain authority even to *appoint* commissioners to the original FEC, reserving several such appointments for the leadership of the House and Senate. *Buckley v. Valeo*, 424 U.S. 1, 125-26 (1976). While this Court held that legislative appointments violated the Appointments Clause, in so holding, it nevertheless noted that the President may not “insist” that the functions of an independent commission like the FEC “be delegated to an appointee of his removable at will.” *Id.* at 141. When Congress subsequently amended FECA to vest the appointment power solely in the President, it thus clearly anticipated that the FEC

would operate as an independent agency and would not be subject to the President's unilateral control.

Similarly, Congress would not have delegated powers to the EAC to administer the NVRA and HAVA if those powers would be subject to the unfettered control of the President. Congress instead clearly signaled that it wanted any delegated powers to be exercised only by a bipartisan majority vote on an independent commission. This Court should decline to override Congress's clearly expressed preference.

Thus, even if this Court concludes that Article II requires the power delegated by Congress to an independent regulatory agency be controlled by the President, it is not clear that striking termination protections or otherwise vitiating the agency's independence is the correct remedy to that perceived problem. Invalidating the removal protections in, for example, the FTC Act, but retaining all delegated powers to the FTC, threatens to do "appreciable damage to Congress's work" and countermand legislative intent. *Seila Law*, 591 U.S. at 237. This result would violate separation of powers principles by allowing the President to arrogate powers that Congress would not have otherwise delegated to the executive branch by firing Commissioners that do not act in line with his preferences. It would also subvert any notion that a "unitary executive" furthers democratic accountability; to the contrary, such a remedy would allow the President—or the Court—to "re-write Congress's work by creating offices, terms,

and the like,” *id.* at 238, in defiance of the will of the electorate that found expression in statutes enacted by Congress.

B. Presidential control over independent agencies, as petitioners urge here, would subvert the democratic process and facilitate the entrenchment of executive power.

Beyond violating congressional intent and foundational separation of power principles, unlimited removal authority—or other means of exerting Presidential control over independent administrative agencies—poses a danger to the rule of law and democratic accountability. Again, while this concern may be most acute with respect to Presidential control of election authorities, the creation of independent, multimember structures to administer the law “helps to prevent . . . abuse of power” across government and thereby “helps protect individual liberty.” *PHH Corp.*, 881 F.3d 75 at 183 (Kavanaugh, J., dissenting).

These concerns are reflected in the experience of countries around the world, where elected executives and their ruling parties have wrested control over independent governmental institutions to consolidate power—to the detriment of democratic governance. *See* Steven Levitsky & Lucan A. Way, *The New Competitive Authoritarianism*, 31 J. of Democracy 51 (Jan. 2020). While of course not every instance of centralized control over an executive

branch function is a harbinger of authoritarianism, the case is much clearer and more troubling when a chief executive attempts to dictate the administration of elections. The legitimacy of the U.S. democratic system—and the public’s confidence in that system—turns on whether federal elections are regulated and administered in a fair and impartial manner by administrative agencies independent of partisan influence. *See, e.g., Democratic Nat’l Comm.*, 2025 WL 1573181, at *6 (“Given the FEC’s central role in overseeing parties and campaigns, a compromise of its independence would pose an immense threat to our democratic elections, for all the reasons Congress established the FEC’s independence in the first place.”).

Scholars of comparative politics have likewise consistently found that the independence of a country’s election authority is “critical to the quality of [its] elections.” Nic Cheeseman & Brian Klaas, *How To Rig An Election* 184 (2018). For example, one study surveying elections worldwide between 2012 and 2016 found that “the likelihood of a credible election is inversely proportional to the degree to which the ruling regime directly controls the election management body.” *Id.* at 185; *see also* Carolien van Ham & Holly Ann Garnett, *Building impartial electoral management? Institutional design, independence and electoral integrity*, 40 Int’l Pol. Sci. Rev. (Apr. 22, 2019) (study of election authorities in 72 countries indicates a “strong and positive impact” of “de facto [election authority] independence on electoral integrity”). Unsurprisingly, a key hallmark

of democratic backsliding is an effort by the incumbent executive to control or “pack” loyalists on the relevant election authorities in their nation. Levitsky & Way, *supra*, at 63-64.

In the election context, attempts by a chief executive to exert control over the regulation and administration of elections are therefore not simply an arrogation of general powers to the executive, but also a means of entrenching an incumbent in office and rendering elections less responsive to democratic will. See Lisa Marshall Manheim, *Presidential Control of Elections*, 74 Vand. L. Rev. 385, 451 (2021). As legal scholars have documented, “centralized control over [election] administration regularly contributes to tilting the electoral playing field, as electoral commissions brought under the political control of the autocrat’s party shape the electorate to tilt electoral outcomes in the autocrat’s favor.” David M. Driesen, *The Unitary Executive Theory in Comparative Context*, 72 Hastings L.J. 1, 38 (2020).

And even if a President does not take advantage of the power he claims over federal election agencies for partisan ends, affording the chief executive such sweeping authority risks citizens losing confidence in the integrity of American elections. As this Court has long recognized, avoiding the appearance of governmental corruption and malfeasance is “[o]f almost equal concern” as the danger of *actual* corruption because otherwise “confidence in the system of representative

Government is . . . eroded to a disastrous extent.” *Buckley*, 424 U.S. at 27 (citation omitted); *see also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) (recognizing that “public confidence in the integrity of the electoral process . . . encourages citizen participation in the democratic process”) (internal quotation marks and citations omitted); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.”).

In sum, it is unsustainable to assert, as petitioners do, that an absolutist approach to a unitary executive is justified on grounds of “democratic accountability”—the reality is quite the opposite, particularly, but not exclusively, in the context of national election agencies. The specter of a President dictating the interpretation and administration of federal election laws—including even as applied to his own campaigns—is a textbook feature of authoritarian regimes, not a constitutional democracy.

CONCLUSION

Amici urge this Court to rule in favor of respondents and sustain *Humphrey’s Executor*, but in any event, to confine its ruling here to the facts of this case, in recognition of the breadth of constitutional, historical, and structural considerations that support the independence of other agencies not before this Court.

Respectfully submitted, November 14, 2025

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