No. ________

IN THE

Supreme Court of the United States

TODD M. HARPER AND TANYA F. OTSUKA,

Petitioners,

v.

SCOTT BESSENT, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

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QUESTIONS PRESENTED

This Court in *Humphrey's Executor* sustained restrictions on the removal of Commissioners of the 1935 Federal Trade Commission, and it has since reaffirmed that this precedent covers certain other multi-member boards. Separately, this Court has stated that removal protections may be sustained for certain agencies that follow in the "distinct historical tradition" of the First and Second Banks of the United States.

The questions presented are:

1. Whether Congress did and can constitutionally limit the Executive's authority to remove members of the National Credit Union Administration Board, which follows in the same distinct historical tradition as the Federal Reserve.

2. Whether a federal court may reinstate or prevent a person's removal from membership on the National Credit Union Administration Board, either through relief at equity or at law.

PARTIES TO THE PROCEEDING

Petitioners Todd M. Harper and Tanya F. Otsuka were plaintiffs in the district court and are appellees below.

Respondents Scott Bessent, Larry Fazio, Kyle S. Hauptman, Trent Morse, and Donald J. Trump were defendants in the district court and are appellants below.

RELATED PROCEEDINGS

- *Harper* v. *Bessent*, No. 25-cv-1294, U.S. District Court for the District of Columbia. Opinion and Order entered July 22, 2025.
- *Harper* v. *Bessent*, No. 25-5268, U.S. Court of Appeals for the District of Columbia Circuit.

There are no other proceedings in state or federal courts, or in this Court, that are directly related to this case within the meaning of this Court's Rule 14(b)(1).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully submit this petition requesting that this Court grant certiorari before judgment in this case, and then consider the issues raised in this case alongside *Trump* v. *Slaughter*, No. 25-332.

OPINIONS BELOW

The opinion and order of the United States District Court for the District of Columbia dated July 22, 2025 is unreported, but is available at 2025 WL 2049207, and is reproduced beginning at page 15a of the Appendix ("Pet. App."). The order of the United States Court of Appeals for the D.C. Circuit granting a stay pending appeal and expediting that pending appeal is unreported, but is available at 2025 WL 2426660, and is reproduced beginning at Pet. App. 3a.

JURISDICTION

The district court entered a final judgment on July 22, 2025. Pet. App. 50a–51a. Respondents appealed to the United States Court of Appeals for the D.C. Circuit on July 23, 2025. The D.C. Circuit granted Respondents' motion to stay the district court's order pending appeal on August 21, 2025 and set an expedited briefing schedule. *Id.* at 4a. The case remains pending in that court, with oral argument currently scheduled for November 21, 2025. This petition is timely, and the Court has jurisdiction under 28 U.S.C. §§ 1254(1) and 2101(e).

PROVISIONS INVOLVED

12 U.S.C. § 1752a(b) provides, in relevant part: "The [National Credit Union Administration] Board shall consist of three members, who are broadly representative of the public interest, appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the Board, the President shall designate the Chairman. Not more than two members of the Board shall be members of the same political party."

12 U.S.C. § 1752a(c) provides, in relevant part: "The term of office of each member of the Board shall be six years."

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

A. Modern American credit unions trace their lineage to pre-Revolutionary War, English "friendly societies," which were mutual cooperatives that pooled member savings to provide mutual aid, offer basic financial security in times of hardship, and help working-class members purchase or build homes, often through rotating, interest-free mortgages. See Erdis W. Smith, *Federal Credit Unions: Origin and Development*, 18 Soc. Sec. Bull. 3 (Nov. 1955); Simon Cordery, *British Friendly Societies, 1750–1914*, 12–29 (Palgrave Macmillan 2003).

As these grassroots cooperatives grew in popularity in England amid rising poverty, mounting national debt, and with banks largely out of reach for the ordinary populace, Parliament began to recognize and regulate them through the Friendly Societies Act of 1793, enacted "for the protection and encouragement of friendly societies in [the Great British] kingdom." 33 Geo. III, c. 54, § 1, reprinted in *The Statutes at Large: From Magna Charta to the End of the Eleventh Parliament of Great Britain* 205 (Danby Pickering ed., Vol. XXXIX, 1793).

In addition to granting these organizations tax-exempt status and legal standing, the Act vested oversight of friendly societies in Crown officials, principally the "clerks of the peace," who, among other things, chartered societies and monitored trustees investing member funds in Crown securities. *Id.* §§ 1, 5–9. Although clerks of the peace held office under the Crown, they could not be removed without cause. Saikrishna Prakash & Steven Smith, *How to Remove a Federal Judge*, 116 Yale L.J. 72, 96 (2006). The Act also granted supervisory authority to the Exchequer and its Crown-appointed Barons, who exercised judicial and regulatory functions and, like the clerks of the peace, were removable only for cause. 33 Geo. III, c. 54, § 8; see 12 & 13 Will. III, c. 2, § 3, reprinted in *The Statutes at Large: From the Eighth Year of King William III to the Second Year of Queen Anne* 357, 360 (Danby Pickering ed., Vol. X, 1764).

Parliament's insulation of friendly-society regulators reflected the longstanding English practice of protecting officials critical to market stability, a tradition dating back to the Stop of the Exchequer in

1672, when the Crown's suspension of debt payments precipitated the worst economic crisis of its era. See Moshe Milevsky, *The Day the King Defaulted: Financial Lessons from the Stop of the Exchequer in 1672* (Palgrave Macmillan 2017). That crisis spurred the creation of the Bank of England and the establishment of protections against at-will removal for key Exchequer officials, including its Barons. See Douglass North & Barry Weingast, *Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, 49 J. Econ. Hist. 803, 812–17 (1989); John Clapham, *The Bank of England: A History Vol. I*, 1–12 (1945).

B. Drawing on these lessons, Congress in the early Republic sought to stabilize the post-Revolutionary economy by adopting Alexander Hamilton's plan for a national bank modeled on the Bank of England. See Roger Lowenstein, *America's Bank* 2 (Penguin Press 2015). Inspired by the English tradition of freeing markets and related regulators from Crown interference, Hamilton urged insulation of the bank to secure "firm, stable and unqualified" public confidence and to avoid "calamitous abuse" by partisan interference. Alexander Hamilton, *Report on a National Bank (1790)*, in 7 Papers of Alexander Hamilton 305, 327, 331 (Harold Syrett ed., 1963).

Congress adopted Hamilton's design, tasking the First Bank of the United States with providing "security for an upright and prudent administration" of "the national finances," and providing the President no removal authority over its directors. Act of Feb. 25, 1791, ch. 10, § 4, 1 Stat. 191, 192–93. In practice, the First Bank became the Republic's earliest lender of last resort, supplying emergency liquidity during the Financial Panic of 1792 and establishing a tradition in which U.S. financial regulators would play a stabilizing role in times of crisis. See Richard Sylla et al., *Alexander Hamilton, Central Banker: Crisis Management During the U.S. Financial Panic of 1792*, 83 Bus. Hist. Rev. 61, 77 (2009).

C. The Great Depression prompted Congress to overhaul federal regulation of financial institutions. Congress strengthened the Federal Reserve's independence and created the Federal Deposit Insurance Corporation (FDIC) to insure banking deposits amid widespread bank runs, all with the goal of preventing systemic collapse. See Banking Act of 1933, Pub. L. No. 73-66, 48 Stat. 162; Banking Act of 1935, Pub. L. No. 74-305, 49 Stat. 684.

In 1934, Congress also enacted the Federal Credit Union Act, Pub. L. No. 73-467, 48 Stat. 1216, responding to concerns (mirroring the pre-revolutionary English experience with friendly societies) that ordinary people lacked access to banks and bank credit, and that "industrial recovery depend[ed] on the[ir] buying power." S. Rep. No. 555, 73d Cong., 2d Sess. 1, 3 (1934); see H.R. Rep. No. 2021, 73d Cong., 2d Sess. 1–2 (1934). The Act formally placed federal credit unions under federal regulation, with a statutory framework traceable to England's Friendly Societies Act of 1793.

In 1970, Congress overhauled the credit-union regulatory scheme by creating the National Credit Union Administration (NCUA), which was to be an "independent Federal agency for the supervision of federally chartered credit unions," Pub. L. No. 91-206, 84 Stat. 49, and which Congress created to place "the credit union supervisory body on a par with the agencies which supervise and regulate banks," like "the Federal Reserve Board," 116 Cong. Rec. 2417 (1970).

In its original form, the NCUA was led by a single "Administrator" who functioned as the agency's "chief executive officer" and who, by statute, "serve[d] at the pleasure of the President." 84 Stat. at 50. The Administrator could seek the advice of an advisory board, whose members also "serve[d] at the pleasure of the President." *Ibid.*

D. Congress redesigned the NCUA's governance in 1978, adopting the board structure in place today.

Two years earlier, President Ford removed the NCUA administrator, Herman Nickerson, without cause, shortly after Nickerson testified before a Senate Banking subcommittee about the risks of lacking tenure protections. Claudia Levy, *Nickerson Successor Expected in Few Weeks, White House Says*, Wash. Post (Mar. 13, 1976), at A14. This led the Chair of that subcommittee to propose amending the statute.

Then, in 1978, Congress enacted legislation adopting the current board structure. Congress excised all references to NCUA administrators "serv[ing] at the pleasure of the President." Moreover, drawing on the multi-member structure endorsed by this Court in *Humphrey's Executor*, 295 U.S. 602 (1935), Congress replaced the NCUA single administrator with a three-member Board, each Member of which serves a fixed, staggered six-year term, with no more than two Members from the same political party, and all of whom must be "broadly representative of the public interest" with experience in financial services, financial regulation, or financial policy. 12 U.S.C. § 1752a.

E. Today, the NCUA's primary mission is to "protect[] the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance." Nat'l Credit Union Admin., *Mission and Values* (May 30, 2024), https://ncua.gov/about/mission-values.

The NCUA Board serves functions similar to the FDIC and the Federal Reserve. Like the FDIC (which insures consumer deposits at banks), the NCUA Board administers the National Credit Union Share Insurance Fund, which insures the deposits of more than 143 million credit-union members and serves as the credit-union system's financial backstop. See 12 U.S.C. §§ 1781–1790e. Like the Federal Reserve, the NCUA Board also functions as a lender of last resort for the financial institutions within its purview; the NCUA Board indeed oversees the Central Liquidity

Facility, which provides loans to credit unions in times of need (just like the Federal Reserve does for banks), and which Congress created "to improve general financial stability by meeting the liquidity needs of credit unions," *id.* §§ 1795–1795k.

The NCUA Board oversees the agency's operations. *Id.* § 1752a(a). The Board is authorized to prescribe rules and regulations for the administration of the Federal Credit Union Act; submits yearly reports to Congress and the President summarizing agency operations; and exercises incidental powers necessary to carry out its congressionally entrusted duties which include safeguarding member interests, conserving credit-union assets, and protecting the National Credit Union Share Insurance Fund. *Id.* §§ 1752a(d), 1766, 1789. Unlike agencies with regulatory authority over the entire economy or society at large, the NCUA Board's regulatory authority covers only credit unions (including their officers, agents, and related persons).

The Board also possesses limited adjudicatory authority over credit unions, similar to the powers exercised by the Federal Reserve with regard to banks within the Fed's purview. The NCUA Board may initiate administrative proceedings against federally insured credit unions and affiliated parties, issue cease-and-desist orders, and remove credit union officers or directors for unsafe practices or breaches of fiduciary duty. See *id.* § 1786. These proceedings are adjudicated before the same administrative law judges that consider adjudications initiated by the

Federal Reserve, with internal appeals directed to the Board, see 12 C.F.R. §§ 747.1–747.40. As part of its adjudicative duties, the Board also reviews appeals of "material supervisory determinations" made by the agency. *Id.* § 746.101. The Board's final decision following such a proceeding may be appealed to the appropriate U.S. Court of Appeals. See 12 U.S.C. § 1786(j)(2).

Should the Board issue a sanction or other order, it lacks authority to enforce that order without the involvement of the U.S. Department of Justice. No statute empowers the Board to appear in court on its own behalf, except in liquidation proceedings when it stands in the credit union's shoes. See *id.* § 1766(b).

II. Factual and Procedural Background

A. Petitioners Harper and Otsuka were nominated by the President and confirmed by the Senate for NCUA Board terms expiring April 10, 2027 and August 2, 2029, respectively. Pet. App. 19a–20a. On April 15, 2025, Respondent Morse sent them each an email "terminat[ing]" their "position" without cause. *Id.* at 20a.

On April 28, 2025, Mr. Harper and Ms. Otsuka sued Respondents to challenge their removal, moving for summary judgment and a preliminary injunction the next day. Petitioners sought a declaratory judgment, a permanent injunction requiring reinstatement, and, in the alternative, a writ of mandamus. *Ibid.*

B. The district court granted Mr. Harper and Ms. Otsuka summary judgment on July 22, 2025, declaring their terminations unlawful and permanently enjoining Respondents (other than the President) from "removing Harper and Otsuka from their offices without cause or in any way treating Harper and Otsuka as having been removed from office." *Id.* at 49a.

Addressing the Government's argument that there was no statutory restriction on removing Petitioners without cause, the district court stated that "[t]he statutory text and context, and the structure and function of the NCUA, make clear Congress restricted the President's authority to fire NCUA Board members." *Id.* at 17a.

The district court also rejected the Government's argument that Congress's restrictions on removal were unconstitutional. It held that the NCUA Board's for-cause removal protections are "consistent with the separation of powers because the NCUA Board fits comfortably within the traditional model of a multimember expert agency that does not wield substantial executive power." *Ibid.* The court further concluded that "the Board does not exercise any more significant executive power than the 1935 FTC as characterized by the *Humphrey's* Court," *id.* at 36a, and that "[t]he overlap in powers wielded by the NCUA Board and the Federal Reserve, and their common role as financial regulators, supports the conclusion that Congress can insulate NCUA Board members from at-will removal," *id.* at 39a.

On the issue of remedy, the district court held that precedent "makes clear" reinstatement is available for unlawful removals and deemed reinstatement a proper remedy. *Id.* at 43a.

C. The Government noticed an appeal and moved for a stay of the district court's order. *Id.* at 9a. The district court denied that motion, observing that the Government "fail[ed] to appreciate that the NCUA's predominant role is overseeing financial institutions in a manner similar to the Federal Reserve and Federal Deposit Insurance Corporation, rather than exercising 'considerable executive power.'" *Id.* at 10a.

On July 25, the Court of Appeals entered an administrative stay. *Id.* at 8a. On August 21, the Court of Appeals issued an order expediting the appeal and staying the district court's judgment pending appeal. *Id.* at 4a. The Court of Appeals has instructed the parties to complete briefing by October 17, and oral argument is scheduled for November 21, 2025. *Ibid.*; *id.* at 2a.

REASONS FOR GRANTING THE PETITION

Petitioners respectfully petition for certiorari before judgment in view of this Court having granted certiorari before judgment in *Slaughter*, No. 25-332. The Court in *Slaughter* is set to consider "whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor* v. *United States*, 295 U. S. 602 (1935), should be overruled." It is also set to consider a related remedial question as to federal-court authority to address an unlawful termination.

The Court should review the removal restrictions that apply to the NCUA Board at the same time. As the Court stated in its stay order in *Harris* and *Wilcox*, the constitutionality of restrictions on removing members of the NLRB and MSPB does not "necessarily implicate the constitutionality of for-cause removal protections for members of the Federal Reserve's Board of Governors or other members of the Federal Open Market Committee" because the Federal Reserve "follows in the distinct historical tradition of the First and Second Banks of the United States." *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025).

The NCUA Board follows in the same tradition. With the Court having granted certiorari before judgment in *Slaughter* and now being set to review the removal restrictions that apply to FTC Commissioners—and potentially to revisit *Humphrey's Executor*—the Court should grant review in this case too. That would allow the Court to evaluate the *Humphrey's Executor* framework, and the role of history and tradition, for agencies following in the same distinct tradition as the Federal Reserve.

I. The Constitutional Question In This Case Should Be Considered Alongside *Slaughter*

In considering the current sweep of *Humphrey's Executor*, including whether that precedent should be revisited, there are important reasons to consider this case at the same time. That is because the NCUA displays different features from the FTC and many other agencies, and, like the Federal Reserve, the NCUA hails from a distinct historical tradition of independence from politics.

A. To begin, this case will provide the Court the opportunity to further refine what counts as considerable executive power.

The Court granted a stay in *Harris* and *Wilcox* based on its "judgment that the Government is likely to show that both the NLRB and MSPB exercise considerable executive power." *Wilcox*, 145 S. Ct. at 1415. The Government argues in *Slaughter* that the Court should reach the same judgment for the modern-day FTC.

The NCUA Board displays significant differences. Whereas the Government contends that the NLRB and FTC currently regulate broad swaths of the entire economy, and that they set labor and antitrust policy for society at large, the NCUA Board can only regulate federal credit unions and their affiliates. Cf. *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 286 (2020) (Kagan, J., concurring in part and dissenting in part) (noting that "the FTC has power to go after 'unfair or deceptive acts or practices in or affecting commerce'— a portfolio spanning a far wider swath of the economy" than consumer financial products). The NCUA Board is also quite unlike the MSPB, given that it has no authority over other parts of the Executive branch.

Unlike these agencies, the NCUA Board has authority similar in scope to the Federal Reserve and the FDIC; both those agencies, like the NCUA Board, only regulate prescribed financial institutions (and their related persons).

And when the NCUA Board regulates the persons subject to its oversight, it exercises the sorts of powers also exercised by the Federal Reserve Board with respect to financial institutions within its own purview. In briefing below, the Government pointed to the fact that the NCUA Board can promulgate binding regulations on financial institutions within its purview, initiate enforcement actions, issue cease-and-desist orders, remove financial-institution officers and directors, and impose daily civil penalties up to $1,000,000. Pet. App. 38a. The Federal Reserve Board has statutory authority to do all these things. 12 U.S.C. §§ 1818(b)–(e), (i); 1844(b). Indeed, Congress granted these powers to the Federal Reserve Board and the NCUA Board simultaneously in 1989—in the same statute, the Financial Institutions Reform, Recovery, and Enforcement Act, enacted in response to the savings and loan crisis. Pub. L. No. 101-73, §§ 902, 904–05, 907, 103 Stat. 183.

If these powers are constitutionally suspect in the hands of the NCUA Board, they would be equally so in the hands of the Federal Reserve Board. Pet. App. 38a ("If the NCUA Board exercises substantial executive power, it is difficult to see how the same would not be true of the Federal Reserve.").

It is also worth emphasizing, as noted above, that the NCUA Board lacks all authority to enforce federal law in court without the consent and participation of the Department of Justice. See *supra* at 9. That is because, unlike many other agencies including the FTC, no statute empowers the Board to act in court through its own attorneys. Compare *Free Enter. Fund* v. *Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 588 (2010) (Breyer, J., dissenting) (NCUA lacks "authority to appear in court independent of the Department of Justice"), with 15 U.S.C. § 56(a)(2) (granting the FTC "exclusive authority to commence or defend, and supervise the litigation of" certain actions "in its own name by any of its attorneys"). Thus, even assuming that the Board exercises "substantial executive power" when it issues sanctions and orders, Congress limited this authority substantially because the Board cannot enlist the assistance of the federal courts to enforce those orders or to bring the Government's power to bear upon private persons without calling upon the DOJ, whose head is subject to removal by the President, to enforce its orders. See *Seila Law*, 591 U.S. at 219 (characterizing the CFPB Director's "power to seek daunting monetary penalties against private parties on behalf of the United States in federal court" as "quintessentially executive").

The Court should not reconsider Congress's authority to prescribe for-cause removal protections for independent agencies under *Humphrey's Executor* without considering the implications for the Federal Reserve Board and other market-stabilizing financial regulators like the NCUA Board. See Daniel K.

Tarullo, *The Federal Reserve and the Constitution*, 97 S. Cal. L. Rev. 1, 48 (2024) (warning that if Federal Reserve Board Members are removable at will, "the presumed independence of the Federal Reserve would [be] called into question" and "there could be a period of volatility as market actors speculated on whether the President might use the implicit threat of removal to force a change in policy"); Cristina Bodea & Raymond Hicks, *Price Stability and Central Bank Independence: Discipline, Credibility, and Democratic Institutions*, 69 Int'l Org. 35, 38 (2015) (noting the economic importance of the public's "belie[f] that the central bank is free from interference and that the law [governing the bank] is unlikely to change swiftly").

B. Next, the Court should also consider this case alongside *Slaughter*, because this case (unlike *Slaughter*) implicates the question of the extent to which the historical tradition of independent financial regulators plays a role in the constitutional analysis of removal protections, given the founding era traditions of insulating bankers and their regulators from politics. *Seila Law*, 591 U.S. at 222 n.8 ("assuming financial institutions like the Second Bank and the Federal Reserve can claim a special historical status"); see also *id.* at 271–74 (Kagan, J., concurring in part and dissenting in part). As noted, the *Wilcox* stay order underscores this point, recognizing that its stay decision did not implicate the constitutionality of the Federal Reserve Board. 145 S. Ct. at 1415. But this case does implicate those issues, thus making it a good vehicle for consideration of the constitutional issues also present in *Slaughter*.

First, the NCUA Board was explicitly modeled on the Federal Reserve Board to serve a parallel role for credit unions. See H.R. Rep. No. 1383, 95th Cong., 2d Sess. 26 (1978). Both the Federal Reserve Board and the NCUA Board share unique features among federal agencies: each acts as a lender of last resort to financial institutions in their purview, a market-stabilizing function inherited from the Bank of England and the First Bank of the United States. Compare 12 U.S.C. §§ 1795–1795k (NCUA), with 12 U.S.C. §§ 248(b), 343, 347b (Federal Reserve). Both also resemble quasi-private institutions, as they are financed "in whole or in part by fees charged to those who make use of their services or are subject to their regulation." *CFPB* v. *Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 467 (2024) (Alito, J., dissenting) (describing the NCUA and Federal Reserve).

The NCUA's functions also bear relation to the "Federal Reserve's special functions in setting monetary policy and stabilizing the financial markets." *PHH Corp.* v. *CFPB*, 881 F.3d 75, 192 n.17 (D.C. Cir. 2018) (Kavanaugh, J., dissenting). By statute, the Board sets permissible interest rates on credit-union loans in consultation with "[f]ederal financial institution regulatory agencies," including the Federal Reserve Board. 12 U.S.C. § 1757(5)(A)(vi). Adjusting these rates directly influences the availability and cost of credit in the credit-union system, much as the Federal Reserve Board shapes credit conditions in the banking sector. Likewise, as noted, the NCUA provides liquidity support through its Central Liquidity Facility, a function that stabilizes markets in parallel with the Federal Reserve's lender-of-last-resort role. See *supra* at 7–8.

Second, the NCUA Board's independence is rooted in founding-era and English traditions of insulated financial oversight. As explained above, credit unions trace their origins to English friendly societies, member-owned cooperatives that Parliament subjected to formal oversight by officials who were insulated from political pressure and could *not* be removed by the Crown otherwise than for cause. See *supra* at 2–4. That model was itself drawn from English tradition going back to the 1600s, adopted in the Bank of England, carried through by Hamilton and Congress to the design of the First Bank, and onward to the Federal Reserve and the NCUA Board. Cf. *Seila Law*, 591 U.S. at 271–74 (Kagan, J., concurring in part and dissenting in part) ("the First Congress gave officials handling financial affairs—as compared to diplomatic and military ones—some independence from the President" and that tradition carried forward).

In sum, this case squarely implicates the historical tradition of insulating those who regulate banks and financial institutions, and who lend to those institutions and safeguard consumer deposits there. It also implicates the ramifications of revisiting *Humphrey's Executor* for the Federal Reserve and other financial regulators. Because the Court has granted review to address the scope of *Humphrey's Executor* and its potential application to federal agencies, it should grant review in this case too, as that would allow the Court to clarify whether and how history permits a "Federal Reserve exception," and, if so, to "reassure the markets" that Congress's design of independent financial regulators remains sound. *Wilcox*, 145 S. Ct. at 1421 (Kagan, J., dissenting); see also *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 25, 27 (2022) (assessing if law was analogous to "historical precedent" from "before, during, and even after the founding" and explaining that "our focus on history also comports with how we assess many other constitutional claims").

II. If Certiorari Is Granted, The Statutory Question Would Also Warrant Review

The Government has also raised a statutory question as to whether Congress provided for at-will removal of NCUA Board Members. That question is also worthy of the Court's attention, especially because it (also) directly implicates the removability of the Chair of the Federal Reserve Board and certain other members of financial regulators like the FDIC.

A. This Court interprets federal statutes against the common law and in light of the general legal context in which Congress enacts them. *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 80 (2023) ("[W]hen Congress enacts statutes, it is aware of this Court's relevant precedents."). When Congress adopted the current NCUA Board structure, Congress acted against the context of this Court having endorsed independent multi-member agencies in *Humphrey's Executor* and of the Court having ruled in *Wiener* v. *United States*, 357 U.S. 349 (1958), that agency heads may enjoy for-cause removal protection even in the absence of an express statutory provision so prescribing. As this Court stated in *Wiener*, "the most reliable factor for drawing an inference regarding the President's power of removal" is "the nature of the function that Congress vested in the [agency]." *Id.* at 353. If the functions of a particular agency are incompatible with presidential "influenc[e]," "a fortiori must it be inferred that Congress did not wish to have hang over the [agency] the Damocles' sword of removal by the President for no reason other than that he preferred to have on that [agency] men of his own choosing." *Id.* at 356.

Interpreting this Court's precedents, the D.C. Circuit has held that there are "two ways Congress can send [] a clear signal" imposing removal restrictions: Congress "may impose a removal restriction in the plain text of a statute," or it "may clearly indicate its intent to restrict removals through the statutory structure and function of an office." *Severino* v. *Biden*, 71 F.4th 1038, 1044 (D.C. Cir. 2023) (citing *Seila Law*, 591 U.S. at 229–30, and *Wiener*, 357 U.S. at 353).

In this case, the district court applied these precedents and held that "the text and history of the NCUA statute, along with the structure and function of the NCUA Board, confirm Congress restricted the President's power to remove Board members." Pet. App. 33a; see also *Swan* v. *Clinton*, 100 F.3d 973, 981 (D.C. Cir. 1996) ("The lack of an express for cause restriction does not dispose of the question of whether NCUA Board members are entitled to removal protection, however, for an examination of the NCUA's function, statutory language and legislative history may demonstrate that Congress nonetheless intended such removal protection to exist.").

The district court's conclusion followed not only from the fact that Congress adopted the very same multi-member board structure that this Court endorsed in *Humphrey's Executor* and *Wiener*, but also from the fact that Congress amended the statute in 1978 and specifically removed all references to those managing the NCUA as "serv[ing] at the pleasure of the President." See *supra* at 6–7. That sort of historical context is significant to the task of statutory interpretation. See *BNSF Ry. Co.* v. *Loos*, 586 U.S. 310, 329 (2019) (Gorsuch, J., dissenting) ("the record of *enacted* changes Congress made to the relevant statutory text over time" constitutes "the sort of textual evidence everyone agrees can sometimes shed light on meaning").

And this Court has repeatedly held that it is improper for courts to reintroduce through interpretation the very words that Congress removed. See *Stone* v. *I.N.S.*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 256 (2012) ("a change in the language of a prior statute presumably connotes a change in meaning"). So too here.

B. In spite of these precedents, none of which have been narrowed or overruled, the Government has argued in briefing below that the statutory question in this case must be answered in its favor because the Court stated last term that "to 'take away' the power of at-will removal . . . Congress must use 'very clear and explicit language.'" *Kennedy* v. *Braidwood Mgmt., Inc.*, 145 S. Ct. 2427, 2448 (2025) (quoting *Shurtleff* v. *United States*, 189 U.S. 311, 315 (1903)). In the Government's view, this forecloses any interpretation of the NCUA's organic statute that would include for-cause protection for NCUA Board Members, never mind the words Congress adopted and excised, and the context against which it acted, because there is no express provision in point. That is wrong. *Braidwood* held that removal restrictions should not be inferred from Congress labeling an agency independent, and none of this Court's recent jurisprudence on Congress's authority in the area of removal protection overrules or abrogates *Wiener*. See *Collins* v. *Yellen*, 594 U.S. 220, 250 n.18 (2021); *Seila Law*, 591 U.S. at 216–18; *Free Enter. Fund*, 561 U.S. at 502; *Braidwood*, 145 S. Ct. at 2448.

Under *Wiener*, Congress may withdraw removal authority from the President for "a multimember body of experts, balanced along partisan lines, that perform[s] legislative and judicial functions" without exercising "executive power," when the text of the statute makes clear Congress's intent to do so, whether or not Congress uses the explicit words of for-cause protection. *Seila Law*, 591 U.S. at 216; see also *Wiener*, 357 U.S. at 356 (concluding that "[t]he philosophy of Humphrey's Executor, in its explicit language as well as its implications, precludes [the] claim" that at-will removal authority is "impliedly conferred upon [the President] by statute simply because Congress said nothing about it."). That is just what Congress has done for the NCUA. The Court's grant of review in *Slaughter* to revisit the scope of for-cause removal protections under *Humphrey's Executor* warrants granting review to reaffirm the vitality of *Wiener*.

C. The statutory questions the Government has raised in this case are not confined to the NCUA Board, although that would be sufficiently important to warrant the Court's attention.

Other regulators of financial institutions operate under statutes that are well understood to include protections barring removal otherwise than for cause, even though those statutes lack the magic words that the Government now says are necessary. That includes, most prominently, the Chair of the Federal Reserve Board. 12 U.S.C. § 242. It also includes members of the Board of Directors of the Federal Deposit Insurance Corporation. *Id.* § 1812.

Yet, courts have long understood that the President cannot remove the leaders of these critical financial regulators at will. That includes the Chair of the Federal Reserve Board, *Seila Law*, 591 U.S. at 283 (Kagan, J., concurring in part and dissenting in part) (noting that "the Federal Reserve's independence stops a President trying to win a second term from manipulating interest rates"), and the members of the FDIC Board, *Calcutt* v. *FDIC*, 37 F.4th 293, 303 (6th Cir. 2022), rev'd on other grounds, 598 U.S. 623 (2023). It also includes the Commissioners of the Securities and Exchange Commission, see *Free Enter. Fund*, 561 U.S. at 487 ("decid[ing] the case with [the] understanding" that SEC "Commissioners cannot themselves be removed by the President except under the *Humphrey's Executor* standard of 'inefficiency, neglect of duty, or malfeasance in office'").

The NCUA Board is by no means the only multi-member agency Congress has endowed with for-cause protection without using the words the Government claims to be necessary, and as the above examples make clear, that includes agencies whose work and independence are widely seen as vital to the national economy. See *Swan*, 100 F.3d at 983 ("Independence from presidential control is arguably important if agencies charged with regulating financial institutions, such as the NCUA, are to successfully fulfill their responsibilities; people will likely have greater confidence in financial institutions if they believe that the regulation of these institutions is immune from political influence."). Any analysis of the scope of Congress's removal authority should take these agencies, and the NCUA Board, into account.

III. This Case, Like *Slaughter*, Presents The Same Question Of Federal-Court Authority To Order Reinstatement

Like *Slaughter*, this case presents the question whether federal courts possess authority to remedy unlawful removal of an executive officer through means other than an award of back pay. The district court rejected the Government's argument that "back pay is the proper remedy for an officer who has been unlawfully removed," Pet. App. 42a, and instead held that "reinstatement is available when the President unlawfully removes an executive officer and proper here," *id.* at 17a.

In both *Slaughter* and this case, the Government contends that Article III courts are powerless to issue a meaningful remedy whenever the President violates a for-cause removal statute. That assertion is refuted by longstanding precedent recognizing federal-court authority to reinstate officials wrongfully deprived of their office. *Sampson* v. *Murray*, 415 U.S. 61, 71, 92 n.68 (1974); *Service* v. *Dulles*, 354 U.S. 363, 370, 389 (1957); *Vitarelli* v. *Seaton*, 359 U.S. 535, 537, 546 (1959); see also *Severino*, 71 F.4th at 1042–43; *Swan*, 100 F.3d at 980.

That authority is rooted in an even older Anglo-American history and tradition of courts issuing writs of mandamus to restore unlawfully removed officials to office. See 3 W. Blackstone, *Commentaries on the Laws of England* *264–65 ("mandamus" is a "full and effectual remedy" "for refusal or admission where a person is intitled to an office" and "for wrongful removal, where a person is legally possessed" and "the franchise[] concern[s] the public"); *Marbury* v. *Madison*, 5 U.S. 137, 173 (1803) (finding a "plain case for a mandamus" where an officer's commission was wrongfully withheld); see also *Kalbfus* v. *Siddons*, 42 App. D.C. 310, 319 (D.C. Cir. 1914) (recognizing the "overwhelming" authority that "[a] mandamus to restore" lies where a person removable only for "causes specified" "is wrongfully dispossessed of [an] office"). And declaratory relief is available to clarify the relationship of the parties. See 28 U.S.C. § 2201.

The Court has granted certiorari in *Slaughter* on the scope of federal-court authority to reinstate terminated employees "either through relief at equity or at law." This case cleanly presents that question as well.

CONCLUSION

In light of this Court's grant of certiorari in *Slaughter*, this Court should also grant the petition for a writ of certiorari before judgment in this case.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED SEPTEMBER 19, 2025

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5268 September Term, 2025
1:25-cv-01294-AHA

TODD M. HARPER, IN HIS PERSONAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD AND TANYA F. OTSUKA, IN HER PERSONAL CAPACITY AND IN HER OFFICIAL CAPACITY AS A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD,

Appellees,

v.

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE TREASURY, *et al.*,

Appellants.

Filed On: September 19, 2025 [2135885]

Appendix A

ORDER

It is **ORDERED**, on the court's own motion, that this case be scheduled for oral argument on November 21, 2025, at 9:30 A.M. The composition of the argument panel will usually be revealed thirty days prior to the date of oral argument on the court's web site at www.cadc.uscourts.gov.

The time and date of oral argument will not change absent further order of the Court.

A separate order will be issued regarding the allocation of time for argument.

FOR THE COURT:
Clifton B. Cislak, Clerk
BY: /s/
Michael C. McGrail
Deputy Clerk

The following forms and notices are available on the Court's website:

Memorandum to Counsel Concerning Cases Set for Oral Argument (Form 71)

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED AUGUST 21, 2025

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5268

September Term, 2024
1:25-cv-01294-AHA
August 21, 2025, Filed

TODD M. HARPER, IN HIS PERSONAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD AND TANYA F. OTSUKA, IN HER PERSONAL CAPACITY AND IN HER OFFICIAL CAPACITY AS A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD,

Appellees,

v.

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE TREASURY, *et al.*,

Appellants.

BEFORE: Henderson, Childs, and Pan, Circuit Judges.

ORDER

Upon consideration of the emergency motion for stay pending appeal, the Rule 28(j) letter, the emergency opposition to the motion, which includes a motion to expedite, the reply, and the opposition to the motion to expedite, it is

ORDERED that the administrative stay entered on July 25, 2025, be dissolved. It is

FURTHER ORDERED that the emergency motion for stay pending appeal be granted. Appellants have satisfied the stringent requirements for a stay pending appeal. *See Nken v. Holder,* 556 U.S. 418, 434, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009); *D.C. Circuit Handbook of Practice and Internal Procedures* 33 (2025). It is

FURTHER ORDERED that this appeal be expedited and the following briefing schedule apply:

Appellants' Brief	September 12, 2025
Appendix	September 12, 2025
Appellees' Brief	October 3, 2025
Appellants' Reply Brief	October 17, 2025

Appendix B

The Clerk is directed to calendar this case for argument on the first appropriate date following the conclusion of briefing. The parties will be informed later of the date of oral argument and the composition of the merits panel.

Due to the expedited nature of this case, the court will not entertain dispositive motions. The parties should therefore address in their briefs any arguments otherwise properly raised in such motions.

Appellants should raise all issues and arguments in the opening brief. The court ordinarily will not consider issues and arguments raised for the first time in the reply brief.

To enhance the clarity of their briefs, the parties are urged to limit the use of abbreviations, including acronyms. While acronyms may be used for entities and statutes with widely recognized initials, briefs should not contain acronyms that are not widely known. *See D.C. Circuit Handbook of Practice and Internal Procedures* 44 (2025); Notice Regarding Use of Acronyms (D.C. Cir. Jan. 26, 2010).

Parties are strongly encouraged to hand deliver the paper copies of their briefs to the Clerk's office on the date due. Filing by mail may delay the processing of the brief. Additionally, counsel are reminded that if filing by mail, they must use a class of mail that is at least as expeditious as first-class mail. *See* Fed. R. App. P. 25(a). All briefs and appendices must contain the date that the case is scheduled for oral argument at the top of the cover. *See* D.C. Cir. Rule 28(a)(8).

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Selena R. Gancasz
Deputy Clerk

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED JULY 25, 2025

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5268 September Term, 2024
1:25-cv-01294-AHA

TODD M. HARPER, IN HIS PERSONAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD AND TANYA F. OTSUKA, IN HER PERSONAL CAPACITY AND IN HER OFFICIAL CAPACITY AS A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD,

Appellees,

v.

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE TREASURY, *et al.*,

Appellants.

BEFORE: Millett, Pillad, and Rao, Circuit Judges

Filed On: July 25, 2025

Appendix C

ORDER

Upon consideration of the emergency motion for stay pending appeal, which includes a request for an administrative stay, the Rule 28(j) letter, and the opposition to the request for an administrative stay, it is

ORDERED that the district court's summary judgment order, dated July 22, 2025, be administratively stayed pending further order of this court. The purpose of this administrative stay is to give the court sufficient opportunity to consider the emergency motion for stay pending appeal and should not be construed in any way as a ruling on the merits of that motion. *See D.C. Circuit Handbook of Practice and Internal Procedures* 33 (2024). It is

FURTHER ORDERED that appellees file a response to the emergency motion by August 4, 2025, and that appellants file any reply by August 11, 2025.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Selena R. Gancasz
Deputy Clerk

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED JULY 24, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-01294 (AHA)

TODD M. HARPER, *et al.*,

Plaintiffs,

v.

SCOTT BESSENT, *et al.*,

Defendants.

Filed July 24, 2025

ORDER

On July 22, 2025, the Court granted Plaintiffs' motion for summary judgment, concluding their removal as National Credit Union Administration ("NCUA") Board members was unlawful. *Harper v. Bessent*, No. 25-cv-01294, 2025 U.S. Dist. LEXIS 140006, 2025 WL 2049207, at *13 (D.D.C. July 22, 2025). The Court issued a declaratory judgment and a permanent injunction ordering de facto reinstatement. *Id.* The government has moved to stay the Court's order pending appeal. ECF No. 31. As discussed herein, the government's motion does not satisfy the stay criteria. The stay motion and reply, like the government's merits arguments, fail to appreciate that the NCUA's predominant role is overseeing financial institutions in a manner similar to the Federal Reserve and Federal Deposit Insurance Corporation, rather than exercising "considerable executive power." *Trump v. Wilcox*, 145 S. Ct. 1415, 1415, 221 L. Ed. 2d 985 (2025).

"A stay is an intrusion into the ordinary processes of administration and judicial review and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 427, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) (internal quotation marks and citation omitted). The court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 434.

The government has not satisfied these criteria. For the reasons in the Court's opinion, the government is not likely to succeed on the merits of its argument that NCUA Board members must be removable at will. *See Harper*, 2025 U.S. Dist. LEXIS 140006, 2025 WL 2049207, at *3-10. In its stay motion, the government simply states that it "respectfully disagrees with the Court's analysis" and reiterates arguments that the Court has already rejected. ECF No. 31 at 3-4. This falls well short of the "strong showing" required to obtain a stay pending appeal. *See Nken*, 556 U.S. at 434.

The government points to recent stay orders in cases involving the removal of executive officers. ECF No. 31 at 2-3 (citing *Wilcox*, 145 S. Ct. 1415; *Grundmann v. Trump*, No. 25-5165, 2025 U.S. App. LEXIS 16480, 2025 WL 1840641 (D.C. Cir. July 3, 2025); *LeBlanc v. U.S. Priv. & C.L. Oversight Bd.*, No. 25-5197, 2025 U.S. App. LEXIS 16228, 2025 WL 1840591 (D.C. Cir. July 1, 2025)). The government offers only a conclusory assertion that "the Supreme Court's logic" in staying the orders at issue in *Wilcox* "compels the same result here." *Id.* at 4; *see Wilcox*, 145 S. Ct. at 1415 ("The stay reflects our judgment that the Government is likely to show that both the [National Labor Relations Board] and [Merit Systems Protection Board] exercise considerable executive power."). As Plaintiffs observe, however, the NCUA Board does not resemble agencies at issue in those decisions because "[i]t does not set federal policy for society at large in broad areas like labor (as the NLRB and the [Federal Labor Relations Authority] do), and it also does not oversee the functioning of the executive branch by considering federal-employee appeals (like the MSPB)." ECF No. 33 at 3; *cf. Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 215, 140 S. Ct. 2183, 207 L. Ed. 2d 494 (2020) ("[T]he contours of the *Humphrey's Executor* exception depend upon the characteristics of the agency before the Court."). Instead, the NCUA, much like the Federal Reserve and the Federal Deposit Insurance Corporation, regulates private financial institutions. ECF No. 33 at 3; *see Harper*, 2025 U.S. Dist. LEXIS 140006, 2025 WL 2049207, at *9 (discussing similarities between the NCUA and the Federal Reserve and noting that the government "all but concedes that its position as to the NCUA would lead to the same conclusion as to the Federal Reserve"); *see also Swan v. Clinton*, 100 F.3d 973, 983, 321 U.S. App. D.C. 359 (D.C. Cir. 1996) ("Independence from presidential control is arguably important if agencies charged with regulating financial institutions, such as the NCUA, are to successfully fulfill their responsibilities; people will likely have greater confidence in financial institutions if they believe that the regulation of these institutions is immune from political influence.").

The government has also failed to show irreparable harm or that the balance of the equities and the public interest support a stay. It returns to the argument that the Supreme Court's analysis in *Wilcox* "controls here." ECF No. 31 at 5; *see also Trump v. Boyle*, 606 U.S. ___, No. 25A11, 2025 U.S. LEXIS 2695, 2025 WL 2056889 (U.S. July 23, 2025) ("Although our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases."). But again, the government was likely to show those agencies exercise "considerable executive power." *Wilcox*, 145 S. Ct. at 1415; *see also Boyle*, 606 U.S. at ___, 2025 U.S. LEXIS 2695, 2025 WL 2056889 (granting stay because "the Consumer Product Safety Commission exercises executive power in a similar manner as the National Labor Relations Board, and the case does not otherwise differ from *Wilcox* in any pertinent respect"). As this Court has explained, the NCUA does not wield the kind of substantial executive power that would preclude for-cause removal protection, and the agency's independence is particularly important because of its key role as a financial regulator. *Harper*, 2025 U.S. Dist. LEXIS 140006, 2025 WL 2049207, at *8-9.

The government has not made any showing specific to this case that Plaintiffs' continued service on the NCUA Board constitutes an intrusion on executive power warranting a stay. *Cf. Associated Press v. Budowich*, No. 25-5109, 2025 U.S. App. LEXIS 13980, 2025 WL 1649265, at *4 (D.C. Cir. June 6, 2025) (noting that "a stay is an exercise of equitable discretion, and therefore '[t]he propriety of its issue . . . depend[s] upon the circumstances of the particular case" (alterations and omission in original) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672-73, 47 S. Ct. 222, 71 L. Ed. 463 (1926))).[1] On the other side of the scale, the Court has already concluded that Plaintiffs and the NCUA Board would be irreparably harmed absent injunctive relief because they "have been deprived of the ability to carry out their congressional mandate." *Harper*, 2025 U.S. Dist. LEXIS 140006, 2025 WL 2049207, at *13 (quoting *Wilcox v. Trump*, 775 F. Supp. 3d 215, 236 (D.D.C. 2025), *appeal docketed*, No. 25-5057 (D.C. Cir. Mar. 7, 2025)). The government does not explain why its stay arguments would not apply equally to removal of the Chair of the Federal Reserve or Federal Deposit Insurance Corporation Board members—indeed, neither its stay motion nor reply mentions the agencies, let alone propose a meaningful limiting principle.

1. The government offers a generalized assertion that the Court's order is "an extraordinary intrusion into the President's authority." ECF No. 31 at 2. It offers no support for that assertion that is grounded in the actual role of the NCUA; indeed, the stay motion and reply do not even mention that the NCUA Board convened for a meeting this morning with Plaintiffs present, let alone suggest any harm to executive authority or function. *See* ECF No. 33 at 5-6.

For these reasons, the government's motion for a stay pending appeal, ECF No. 31, is denied.

/s/ Amir H. Ali
AMIR H. ALI
United States District Judge

Date: July 24, 2025

APPENDIX E — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED JULY 22, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-01294 (AHA)

TODD M. HARPER, *et al.*,

Plaintiffs,

v.

SCOTT BESSENT, *et al.*,

Defendants.

Filed July 22, 2025

MEMORANDUM OPINION

This case concerns the President's firing of two Board members of the National Credit Union Administration ("NCUA"), an independent agency that functions much like the Federal Reserve and Federal Deposit Insurance Corporation ("FDIC"), except for credit unions rather than banks. The NCUA is the lender of last resort for, regulates, and can issue penalties to credit unions, like the Federal Reserve does for banks. The NCUA also administers the national insurance fund for credit unions, like the FDIC does for banks.

In the 1970s, Congress decided to make the NCUA similar to the Federal Reserve and FDIC not just in function but in form, too. On the morning of March 10, 1976, the NCUA's Administrator—then, a single agency head serving "at the pleasure of the President"—appeared before the Senate Banking Subcommittee on Financial Institutions to discuss possible restructuring of the NCUA. The Administrator testified that his "day to day" tenure meant "you don't know whether you're going to take a position that would be your last day in office or not." *Restructuring the National Credit Union Administration: Hearing on S. 1475 Before the Subcomm. on Fin. Insts. of the S. Comm. on Banking, Hous. & Urb. Affs.*, 94th Cong. 10 (1976) (statement of Herman Nickerson, Jr., Adm'r, Nat'l Credit Union Admin.). A few hours after the hearing, President Ford summoned the Administrator to the White House and asked for his resignation. *See* S. Rep. No. 94-751, at 4 (1976); 122 Cong. Rec. 6225 (1976) (statement of Sen. Thomas J. McIntyre).

Congress then enacted legislation that restructured the agency. In 1978, it passed a law replacing the NCUA's single Administrator and "advisory board" with a formal, governing board structure. Congress removed the statutory text saying that agency leadership served "at the pleasure of the President." And it provided that the Board's three members would serve fixed, staggered six-year terms with no more than two members affiliated with the same political party. Nearly fifty years later, the President summarily fired two NCUA Board members, Todd M. Harper and Tanya F. Otsuka. Harper and Otsuka filed this action challenging their removals as unlawful and seeking reinstatement to their positions. For its part, the government concedes the President lacked any cause for the terminations. The government argues instead that the President maintains absolute authority to remove NCUA Board members at will, and that reinstatement is not an available remedy. These arguments—which the government all but concedes would apply equally to the Chair of the Federal Reserve and FDIC Board members—are unavailing.

The statutory text and context, and the structure and function of the NCUA, make clear Congress restricted the President's authority to fire NCUA Board members. And Congress did so consistent with the separation of powers because the NCUA Board fits comfortably within the traditional model of a multimember expert agency that does not wield substantial executive power. *See Humphrey's Executor v. United States*, 295 U.S. 602, 55 S. Ct. 869, 79 L. Ed. 1611 (1935). Under governing Circuit precedent, reinstatement is available when the President unlawfully removes an executive officer and proper here. The Court accordingly grants the plaintiffs' motion for summary judgment and denies the government's cross motion.

I. Background

In 1970, through amendments to the Federal Credit Union Act ("the NCUA statute"), Congress created the NCUA "for the supervision of federally chartered credit unions." Act of Mar. 10, 1970, Pub. L. No. 91-206, 84 Stat. 49, 49. Soon after, Congress created the National Credit

Union Share Insurance Fund, which "insures the accounts of federally chartered credit unions and of many state chartered credit unions," and designated the NCUA to administer the insurance fund. *Swan v. Clinton*, 100 F.3d 973, 975, 321 U.S. App. D.C. 359 (D.C. Cir. 1996) (citing 12 U.S.C. §§ 1781–1790(c)).

In its original form, the NCUA "was led by a single Administrator with assistance from an advisory board composed of a Chairman and one member from each of the federal credit union regions." *Id.* at 974–75. The Administrator and the advisory board members were appointed by the President, with the advice and consent of the Senate. *Id.* at 975. The Administrator and the advisory board chair served "at the pleasure of the President." *Id.* (quoting Act of Mar. 10, 1970, 84 Stat. at 50).

A few years later, Congress amended the NCUA statute through the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95-630, 92 Stat. 3641. *Swan*, 100 F.3d at 975. The 1978 amendments replaced the Administrator and advisory board with a formal, governing Board made up of three members. 12 U.S.C. § 1752a(b)(1). Congress required that each member of the Board be appointed by the President, with the advice and consent of the Senate, and allowed the President to designate one member as chair. *Id.* Congress removed any reference to leadership serving "at the pleasure of the President." It provided that members would be appointed to fixed, six-year terms that are staggered, so vacancies arise every two years. *Id.* § 1752a(c). It also required that members be "broadly representative of the public interest," with no more than two members affiliated with the same political party. *Id.* § 1752a(b)(1). In making appointments, the President must "give consideration to individuals who, by virtue of their education, training, or experience relating to a broad range of financial services, financial services regulation, or financial policy, are especially qualified to serve on the Board." *Id.* § 1752a(b)(2)(A). The amendments also expanded the responsibilities of the NCUA. *Swan*, 100 F.3d at 975. Congress created the National Credit Union Central Liquidity Facility, which "advances funds to member credit unions so that they are able to meet their liquidity needs." *Id.* The NCUA manages that facility as well. *Id.* (citing 12 U.S.C. §§ 1795–1795k); *see* 12 C.F.R. § 725.1.

Today, the NCUA's primary mission is "[p]rotecting the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance." *Mission and Values*, Nat'l Credit Union Admin., https://ncua.gov/about/mission-values (last visited July 22, 2025). The NCUA Board is authorized "to prescribe rules and regulations to accomplish" the agency's obligations and "to manage the NCUA itself." *Swan*, 100 F.3d at 983. The Board may also initiate administrative proceedings against federally insured credit unions and affiliated parties, issue cease-and-desist orders, and remove credit union officers and directors for unsafe practices or breaches of fiduciary duty. 12 U.S.C. § 1786.

The President nominated and the Senate confirmed Harper and Otsuka to terms on the NCUA Board that began in 2022 and 2024, respectively. ECF No. 3-2 ¶¶ 4, 7. In April 2025, they both received emails from a White House official that stated: "On behalf of President Donald J. Trump, I am writing to inform you that your position on the National Credit Union Administration is terminated, effective immediately." *Id.* ¶¶ 9-12. Neither email provided a basis. *Id.* ¶ 13.

Harper and Otsuka filed this action asserting their removals were *ultra vires* and violated the Administrative Procedure Act and the separation of powers. ECF No. 1 ¶¶ 29–36, 39–41. They seek a declaration that their terminations were unlawful and an injunction reinstating them as Board members. ECF No. 3-7. Each side has moved for summary judgment, and the Court held a hearing on June 12, 2025. ECF Nos. 3, 11.[1]

II. Discussion

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A fact is 'material' if a dispute over it might affect the outcome of a suit under governing law; factual disputes that are 'irrelevant or unnecessary' do not affect the summary judgment determination." *Holcomb v. Powell*, 433 F.3d 889, 895, 369 U.S. App. D.C. 122 (D.C. Cir. 2006) (quoting *Anderson v. Liberty*

1. The plaintiffs initially sought a preliminary injunction, but have since withdrawn that request in favor of resolution of the merits. ECF No. 10 at 2.

Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). A dispute "is 'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Id.* (quoting *Anderson*, 477 U.S. at 248). The reviewing court "must view the evidence in the light most favorable to the nonmoving party . . . , draw all reasonable inferences in her favor, and eschew making credibility determinations or weighing the evidence." *Czekalski v. Peters*, 475 F.3d 360, 363, 374 U.S. App. D.C. 351 (D.C. Cir. 2007). The Court first addresses whether Congress insulated NCUA Board members from at-will removal and concludes that the statutory text and context, as well as the NCUA's structure and function, confirm it did. The Court then addresses whether such protection is consistent with the separation of powers and concludes it is because the NCUA's multimember expert Board does not wield substantial executive power. *See Humphrey's Executor*, 295 U.S. 602. Finally, the Court considers the proper remedy and, applying Circuit precedent, concludes reinstatement is available and appropriate here.

A. Congress Protected NCUA Board Members From At-Will Removal

The first dispute between the parties is whether, in amending the NCUA statute in 1978 after President Ford asked for the Administrator's resignation, Congress afforded Board members protection from at-will removal by the President.

The government says no. It argues that NCUA Board members are still removable at the pleasure of the

President because Congress did not add express language stating Board members could be removed only for cause. The government's argument would be compelling in many contexts. After all, "[w]hen a statute does not limit the President's power to remove an agency head," courts "generally presume that the officer serves at the President's pleasure." *Collins v. Yellen*, 594 U.S. 220, 248, 141 S. Ct. 1761, 210 L. Ed. 2d 432 (2021); *see also Kennedy v. Braidwood Mgmt.*, 606 U.S., 145 S. Ct. 2427, 222 L. Ed. 2d 867, 2025 WL 1773628, at *13 (U.S. 2025) ("The Court has said that to 'take away' the power of at-will removal from an appointing officer, Congress must use 'very clear and explicit language.'" (quoting *Shurtleff v. United States*, 189 U.S. 311, 315, 23 S. Ct. 535, 47 L. Ed. 828, 38 Ct. Cl. 746 (1903))). Here, it is undisputed that the NCUA statute does not contain a provision that expressly limits the President's ability to remove the agency's Board members.

Yet both the Supreme Court and D.C. Circuit have been clear that the absence of an express provision should not be treated as dispositive, and agency heads may enjoy for-cause removal protection even in the absence of an express statutory provision. *See, e.g., Wiener v. United States*, 357 U.S. 349, 356, 78 S. Ct. 1275, 2 L. Ed. 2d 1377, 142 Ct. Cl. 932 (1958) (concluding President could not remove members of War Claims Commission at will, even though statute was silent on removal protection); *Fed. Election Comm'n v. NRA Pol. Victory Fund*, 6 F.3d 821, 826, 303 U.S. App. D.C. 362 (D.C. Cir. 1993) (explaining Federal Election Commission was "likely correct" that President could remove commissioners only for cause despite statute's silence as to removal protection). Indeed, as to the NCUA specifically, the D.C. Circuit has instructed that "[t]he lack of an express for cause restriction does not dispose of the question of whether NCUA Board members are entitled to removal protection." *Swan*, 100 F.3d at 981. Rather, "an examination of the NCUA's function, statutory language and legislative history may demonstrate that Congress nonetheless intended such removal protection to exist." *Id.* In accordance with Circuit precedent, this Court looks to the NCUA statute's "plain text" and the agency's "statutory structure and function" to determine whether Congress imposed a removal restriction. *Severino v. Biden*, 71 F.4th 1038, 1044, 461 U.S. App. D.C. 313 (D.C. Cir. 2023).

The Court starts with the statutory text and context. As mentioned, prior to 1978, the statute provided that the NCUA was run by a single Administrator, assisted by an advisory board with a chair. Act of Mar. 10, 1970, 84 Stat. at 50. The Administrator and the advisory board chair did not have fixed terms, and the statute explicitly stated that both served "at the pleasure of the President." *Id.* In moving to a board structure, Congress modified the text related to tenure in two ways. First, Congress specified that, instead of indefinite tenure, Board members would have fixed, six-year terms. 12 U.S.C. § 1752a(c). Providing for fixed terms would not be enough on its own. *Severino*, 71 F.4th at 1047 ("A defined term of office, standing alone, does not curtail the President's removal power during the office-holder's service."). But here, that textual change does not stand on its own. As the D.C. Circuit explained, the legislative history "is revealing" and shows "the Senate Banking Committee believed the six year terms would protect NCUA Board members from at will removal during their appointed terms." *Swan*, 100 F.3d at 982; *see also id.* (referring to Senate Report noting that the NCUA Administrator "is the only Federal financial regulator to serve at the pleasure of the President without tenure" and explaining that "the committee recognizes the need to provide tenure for the Administrator in order to strengthen the [NCUA]'s status as an independent agency" (alteration in original) (quoting S. Rep. No. 94-751, at 3-4)). While the legislative history itself is "obviously not determinative," it is "nonetheless to some degree instructive on Congress' intent" to create removal protection in the wake of the Administrator's resignation. *Id.* at 983. As Judge Silberman put it, Congress's "most obvious purpose" in adding a term of appointment is "to provide the incumbent with some measure of tenure or security against arbitrary removal." *Id.* at 990 (Silberman, J., concurring).

In any event, adding a term was not the only change Congress made to the text in the 1978 amendments. Congress's second change concerning the President's removal authority was to remove the statute's prior text stating that agency leadership served "at the pleasure of the President." *Id.* at 982 (majority opinion); *see* 12 U.S.C. § 1752a. In arguing that Board members nonetheless serve at the pleasure of the President, the government asks this Court to read that language back into the statute even though Congress took it out. *But see Hazardous Waste Treatment Council v. EPA*, 861 F.2d 270, 276, 274 U.S. App. D.C. 37 (D.C. Cir. 1988) ("When a statutory provision is deleted in a subsequent reenactment, the omitted term cannot be read into the later statute."). As the D.C. Circuit put it, albeit without needing to resolve the issue, these textual changes provide "support for inferring some removal protection." *Swan*, 100 F.3d at 982.[2]

The other way "Congress may clearly indicate its intent to restrict removals" is "through the statutory structure and function of an office." *Severino*, 71 F.4th at 1044. Congress has done that with the NCUA. In *Severino*, the D.C. Circuit identified several structural features in rejecting for-cause removal protection for members of the council supervising the Administrative Conference of the United States: roughly half of the council's members are subject to at-will removal based on their other positions in the executive branch; members serve three-year terms, so "no member could outlast a President"; and non-governmental members are unpaid.

2. The government asks the Court to overlook Congress's deletion of "at the pleasure of the President" because the 1978 amendments "completely restructured the NCUA." ECF No. 11-1 at 8. According to the government, the Court thus cannot "draw inferences from Congress's choice to line-item remove certain provisions from a statute." *Id.* The notion that Congress would not have acted intentionally here is dubious to begin with given the import of the topic at issue—the very leadership of the agency. And it is simply not credible in light of the relevant factual background; as the D.C. Circuit detailed, Congress amended the text in response to concerns about the NCUA's independence. *Swan*, 100 F.3d at 982–83; *see also, e.g., Fischer v. United States*, 603 U.S. 480, 491, 144 S. Ct. 2176, 219 L. Ed. 2d 911 (2024) (interpreting statute's subsection as limited "in light of the history of the provision").

Id. at 1049. Congress thus "left no structural or contextual clues that protection from removal was integral, or even desirable, to the performance of Council members within an advisory organization housed squarely in the Executive Branch." *Id.* at 1050.

The structure of the NCUA Board, on the other hand, closely tracks the traditional multimember board held to have removal protection in *Humphrey's Executor*. The *Humphrey's Executor* Court "identified several organizational features that helped explain its characterization of the [Federal Trade Commission ("FTC")] as non-executive." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 216, 140 S. Ct. 2183, 207 L. Ed. 2d 494 (2020). The 1935 FTC was composed of five members, with no more than three from the same political party; it "was designed to be 'non-partisan' and to 'act with entire impartiality.'" *Id.* (quoting *Humphrey's Executor*, 295 U.S. at 624). "The FTC's duties were 'neither political nor executive,' but instead called for 'the trained judgment of a body of experts' 'informed by experience.'" *Id.* (quoting *Humphrey's Executor*, 295 U.S. at 624). "And the Commissioners' staggered, seven-year terms enabled the agency to accumulate technical expertise and avoid a 'complete change' in leadership 'at any one time.'" *Id.* (quoting *Humphrey's Executor*, 295 U.S. at 624); *see also Severino*, 71 F.4th at 1049 (noting that staggered terms "promote the independence, autonomy, and non-partisan nature of an agency" (internal quotation marks and citation omitted)).

In its 1978 amendments, Congress reconstituted the NCUA Board to share the structural characteristics from

Humphrey's. The Board has three members appointed by the President and confirmed by the Senate, with no more than two members from the same political party. 12 U.S.C. § 1752a(b)(1). The Board members must be "broadly representative of the public interest" and, in making appointments, the President must "give consideration to individuals who, by virtue of their education, training, or experience relating to a broad range of financial services, financial services regulation, or financial policy, are especially qualified to serve on the Board." *Id.* § 1752a(b)(1), (2)(A). And Congress gave the Board members staggered, six-year terms. *Id.* § 1752a(c). The NCUA Board's structure accordingly indicates that Congress restricted the President's removal power.

So too does the NCUA's function support removal restrictions. The D.C. Circuit has said when Congress assigns an agency "quasi-judicial or quasi-legislative functions that are deemed to be operationally incompatible with at-will Presidential removal, that can be a relevant signal that Congress meant for members of that agency to be shielded from Presidential removal, even without an explicit textual statement to that effect." *Severino*, 71 F.4th at 1047. In *Humphrey's Executor*, for instance, the Supreme Court held that the FTC acted "'as a legislative agency' in reporting to Congress and 'as an agency of the judiciary' in holding administrative hearings, and that the 'character' of both functions is inconsistent with allowing at-will removal by the President." *Id.* (quoting *Humphrey's Executor*, 295 U.S. at 628–29). The Court took a functional approach again in *Wiener*, concluding that the War Claims Commission "could not fulfill its duty to fairly apply 'evidence and governing legal considerations' to resolve 'the merits of each claim,' without some removal protections." *Id.* (quoting *Wiener*, 357 U.S. at 355).

In *Severino*, the D.C. Circuit distinguished those agencies from the council of the Administrative Conference, whose principal role is to provide advice to the executive branch. *Id.* at 1048. Congress created the Conference "for the purpose of helping '[f]ederal agencies, assisted by outside experts' to 'study mutual problems, exchange information, and develop recommendations.'" *Id.* (alteration in original) (quoting 5 U.S.C. § 591(1)). While the Conference may inform the other branches about certain aspects of administrative procedure, "the overwhelming majority of the Conference's work focuses on and contributes to the internal workings of the Executive Branch." *Id.*; *see also id.* ("The Executive Branch is the planet around which all of the Conference's responsibilities revolve."). And the Conference does not exercise anything resembling the "quasi-judicial functions" that were essential to the Supreme Court's holdings in *Humphrey's Executor* and *Wiener. Id.* In short, the Conference has "no adjudicatory or legislative features that would clearly signal a need for some measure of independence from Presidential control." *Id.* at 1049.

That cannot be said of the NCUA Board, which exercises both quasi-judicial and quasi-legislative functions. The Board is adjudicatory, conducting formal administrative proceedings. That includes proceedings to determine whether a credit union should be ordered to cease and desist from engaging in "an unsafe or unsound practice" and to take affirmative action to correct the practice. 12 U.S.C. § 1786(e). And the Board can remove credit union officers and directors in certain circumstances, upon notice and a hearing. *Id.* § 1786(g). These proceedings are conducted before administrative law judges under uniform rules of practice and procedure, and the Board then renders a final decision. 12 C.F.R. §§ 747.1, 747.5, 747.40. The Board's decisions are appealable to the D.C. Circuit or the court of appeals for the circuit in which the credit union's principal office is located. 12 U.S.C. § 1786(j)(2). The Board thus has several "judicial functions" that suggest "Congress meant to sheath 'the Damocles' sword of removal by the President'" during the Board members' terms. *See Severino*, 71 F.4th at 1047 (quoting *Wiener*, 357 U.S. at 356).[3]

The NCUA Board is quasi-legislative as well. It exercises its statutory authority to prescribe rules and regulations for the administration of the Federal Credit Union Act. 12 U.S.C. § 1766(a); *see* Cong. Rsch. Serv., IF11713, *Introduction to Financial Services: Credit Unions* 2 (2025) (discussing certain rules implemented by NCUA). The Board also submits a yearly report to Congress and the President summarizing the operations of the NCUA and providing information for Congress "to

3. In *Swan*, the government observed: "The [NCUA] Board is authorized to adjudicate issues relevant to the exercise of its authority to terminate the insured status of a credit union, issue cease and desist orders, remove or suspend credit union officials from office, and assess civil monetary penalties." Brief for the Appellees, *Swan*, 100 F.3d 973 (No. 96-5193), 1996 WL 34482875, at *27 (citing 12 U.S.C. § 1786).

review the financial program approved by the Board." 12 U.S.C. § 1752a(d). So, like the FTC in *Humphrey's Executor*, "[i]n administering the provisions of the statute . . . , that is to say, in filling in and administering the details embodied by that general standard," the NCUA Board "acts in part quasi legislatively and in part quasi judicially." *See* 295 U.S. at 628; *see also id.* (noting FTC's role in "making investigations and reports thereon for the information of Congress . . . in aid of the legislative power"). The Board "is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed." *Id.*

The "absolute freedom from Executive interference" the Supreme Court deemed essential in *Humphrey's Executor* and *Wiener* is also critical to the functioning of the NCUA. *See Severino*, 71 F.4th at 1049 (quoting *Wiener*, 357 U.S. at 353); *see also Berry v. Reagan*, No. 83-cv-3182, 1983 U.S. Dist. LEXIS 20740, 1983 WL 538, at *2 (D.D.C. Nov. 14, 1983) (absent express removal provision, "this Court must ascertain whether Congress required the [U.S. Commission on Civil Rights] Commissioners to act independently, with 'absolute freedom from Executive interference,' in the discharge of their duties" (quoting *Wiener*, 357 U.S. at 353)). As the D.C. Circuit put it in *Swan*: "Independence from presidential control is arguably important if agencies charged with regulating financial institutions, such as the NCUA, are to successfully fulfill their responsibilities; people will likely have greater confidence in financial institutions if they believe that the regulation of these institutions is immune from political influence." 100 F.3d at 983. The court continued: "The NCUA's function may therefore provide further evidence indicating that Board members enjoy removal protection during their appointed terms." *Id.* at 983–84. Although *Swan* ultimately did not decide the question because it concerned the removal of a holdover Board member rather than one serving a full term, this Court finds its reasoning persuasive. The function of the NCUA provides support for removal protections.

The government's arguments to the contrary are rather superficial. First, the government says the Supreme Court definitively resolved whether NCUA Board members are protected from at-will removal in *Collins*. ECF No. 11-1 at 10–11. That case concerned the Federal Housing Finance Agency ("FHFA"), which has a single director. *Collins*, 594 U.S. at 226–27. The statute at issue "expressly restricted the President's power to remove a confirmed Director but said nothing of the kind with respect to an Acting Director." *Id.* at 248. The plaintiffs asserted that the statute should be read to restrict the removal of an acting director based on language describing the FHFA as an "independent agency of the Federal Government." *Id.* (emphasis omitted) (quoting 12 U.S.C. § 4511(a)). Rejecting that argument, the Court noted that "Congress has described many agencies as 'independent' without imposing any restriction on the President's power to remove the agency's leadership," including the NCUA. *Id.* at 249. The Court's observation that use of the word "independent" does not necessitate or always accompany removal restrictions does not bear on, let alone decide, this case. And the notion that the Court intended its reasoning to foreclose statutory interpretation of the NCUA statute, without any analysis, is strained.[4]

Second, rather than meaningfully dispute that the NCUA Board exercises quasi-judicial and quasi-legislative functions, the government asks the Court in a footnote to overlook *Severino*'s focus on function, saying that it is in tension with *Collins*. ECF No. 11-1 at 11 n.5; *see also id.* at 15 (asserting that "legislative power is vested exclusively in Congress . . . and judicial power in the federal courts"). Contrary to the government's argument, the Court does not see tension between *Severino* and *Collins*, which was decided two years earlier. The Supreme Court simply held in *Collins* that there were "no grounds for an exception in this case" to the general presumption that the President can remove executive officers at will. 594 U.S. at 250. While the Court distinguished *Wiener* on the basis that it concerned "an adjudicatory body" with "a unique need for 'absolute freedom from Executive interference,'" it did not set out any rule that would foreclose *Severino*'s method of analysis. *Id.* at 250 n.18 (quoting *Wiener*, 357

4. The Court also referred to several other agencies' enabling statutes, including the Peace Corps, the Defense Nuclear Facilities Safety Board, the Commodity Futures Trading Commission, the Farm Credit Administration, and the Railroad Retirement Board. *Collins*, 594 U.S. at 249. The government's position would mean that the Court, in a single sentence, definitively resolved the interpretation of each statute without any analysis of the text, structure, or function applicable to the particular agency. *Cf. Seila Law*, 591 U.S. at 215 ("[T]he contours of the *Humphrey's Executor* exception depend upon the characteristics of the agency before the Court.").

U.S. at 353). This Court is bound by Circuit precedent and cannot ignore *Severino*'s holding that an agency's quasi-judicial and quasi-legislative functions are relevant to the question whether Congress intended to impose removal restrictions. *See* 71 F.4th at 1047.

In sum, the text and history of the NCUA statute, along with the structure and function of the NCUA Board, confirm Congress restricted the President's power to remove Board members.

B. Congress's Removal Restriction For NCUA Board Members Does Not Violate The Separation Of Powers

The Court next considers whether Congress's removal restriction is constitutional. Article II provides the President shall "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. "To fulfill that duty, the President generally must be able to 'control[] those who execute the laws' on his behalf." *Severino*, 71 F.4th at 1044 (alteration in original) (quoting *Seila Law*, 591 U.S. at 213). Without the power to remove executive officials, "the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else." *Id.* (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 514, 130 S. Ct. 3138, 177 L. Ed. 2d 706 (2010)). At the same time, the Supreme Court has recognized "two exceptions to the President's unrestricted removal power." *Seila Law*, 591 U.S. at 215. The first exception applies to "multimember expert agencies that do not wield substantial executive power."

Id. at 218. That exception, established in *Humphrey's Executor* and reaffirmed in *Wiener*, is the one the plaintiffs rely on in this case.[5]

More recently, in *Seila Law*, the Court held unconstitutional the for-cause removal protection enjoyed by the director of the Consumer Financial Protection Bureau ("CFPB"). The Court distinguished the CFPB from the 1935 FTC because the former was "led by a single Director who cannot be described as a 'body of experts' and cannot be considered 'non-partisan' in the same sense as a group of officials drawn from both sides of the aisle." *Id.* (quoting *Humphrey's Executor*, 295 U.S. at 624). The Court identified two constitutional defects in the design of the CFPB. First, the CFPB's structure was "almost wholly unprecedented." *Id.* at 220. The Court observed that in "only a handful of isolated incidents" had Congress provided for-cause protection to a single principal officer. *Id.* (internal quotation marks and citation omitted). So the CFPB's single-director model represented "an innovation with no foothold in history or tradition." *Id.* at 222. Second, and relatedly, the Court found that the single-director design was "incompatible with our constitutional structure," which "scrupulously avoids concentrating power in the hands of any single individual." *Id.* at 222–23. The Court therefore concluded that the CFPB's leadership by a single director with for-cause removal protection violated the separation of powers. *Id.* at 232.

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5. The second exception applies to "inferior officers with limited duties and no policymaking or administrative authority" and is not relevant here. *Seila Law*, 591 U.S. at 218. The plaintiffs do not argue NCUA Board members are inferior officers.

The Court was careful to emphasize, however, that it was "not revisit[ing] *Humphrey's Executor* or any other precedent." *Id.* at 228. Indeed, the government concedes *Humphrey's Executor* "remains good law." ECF No. 20 at 29. The NCUA Board fits at the core of the *Humphrey's* exception. The Board is designed in the classic pattern of a multimember, bipartisan, expert agency that does not exercise substantial executive power. As discussed above, the Board's structure closely resembles the 1935 FTC—as well as several other independent agencies—so the single director and "lack of historical precedent" that posed problems in *Seila Law* are wholly inapposite. *See* 591 U.S. at 220 (citation omitted).[6]

The government asserts that the NCUA Board does not fit within the *Humphrey's* exception because "unlike the 1935 FTC . . . , the NCUA exercises significant executive power." ECF No. 11-1 at 13. It points to several powers to support this argument, but none bring the NCUA Board outside the parameters of the exception. *See id.* at 13–14. At the hearing, the government emphasized that the NCUA investigates and prosecutes violations of

6. In *Seila Law*, the Supreme Court emphasized that the removal protection at issue was "even more problematic" because the CFPB director served a five-year term, so some Presidents might be denied the opportunity to "shape [the agency's] leadership and thereby influence its activities." 591 U.S. at 225. NCUA Board members serve staggered six-year terms, meaning that vacancies arise every two years—and the President designates one member as chair. There is no possibility that a President serving a four-year term will not have the opportunity to shape the agency's leadership.

the Federal Credit Union Act and related regulations, and "can issue daunting monetary penalties." ECF No. 20 at 28; *see also* ECF No. 11-1 at 14 (noting that NCUA Board may impose daily penalties of up to $5,000 for violations and up to $1,000,000 if the violation is "knowing or reckless" (citing 12 U.S.C. § 1786(k))). It also highlighted that the NCUA prescribes rules and regulations "fleshing out numerous federal statutes with implications for broad swaths of the American economy." ECF No. 20 at 28. According to the government, "those activities are quintessential exercises of executive power." *Id.*

The NCUA Board does not exercise the kind of substantial executive power that would warrant a departure from *Humphrey's Executor*. Indeed, the Board does not exercise any more significant executive power than the 1935 FTC as characterized by the *Humphrey's* Court. The FTC Act empowered the FTC to prevent persons and corporations "from using unfair methods of competition in commerce." *Humphrey's Executor*, 295 U.S. at 620. To carry out that statutory obligation, the FTC could issue complaints, enter cease-and-desist orders after a hearing, and apply to the appropriate court of appeals for enforcement of those orders. *Id.* at 620–21. The statute also gave the FTC "wide powers of investigation in respect of certain corporations." *Id.* at 621. If the 1935 FTC did not exercise sufficient executive power to necessitate at-will removal by the President, neither does the NCUA Board. *See also Slaughter v. Trump*, F. Supp. 3d, No. 25-cv-909, 2025 U.S. Dist. LEXIS 136631, 2025 WL 1984396, at *11–12 (D.D.C. July 17, 2025) (discussing 1935 FTC's powers and noting that the *Humphrey's Executor* Court "was plainly aware of the FTC's investigatory, adjudicatory, and rulemaking abilities and yet it upheld the FTC Act's removal protections as constitutional"), *appeal docketed*, No. 25-5261 (D.C. Cir. July 18, 2025).

That conclusion is reinforced by the particular importance of independence for agencies that play key roles as financial regulators. To reiterate the D.C. Circuit in *Swan*: "Independence from presidential control is arguably important if agencies charged with regulating financial institutions, such as the NCUA, are to successfully fulfill their responsibilities; people will likely have greater confidence in financial institutions if they believe that the regulation of these institutions is immune from political influence." 100 F.3d at 983. The Supreme Court has since indicated that removal protections for certain financial regulators may be permissible. *See Trump v. Wilcox*, 145 S. Ct. 1415, 1415, 221 L. Ed. 2d 985 (2025) (rejecting argument that decision necessarily implicated constitutionality of for-cause removal protection for Federal Reserve Board of Governors because the Fed "is a uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States"); *Seila Law*, 591 U.S. at 222 n.8 (assuming that "financial institutions like the Second Bank and the Federal Reserve can claim a special historical status"); *cf. id.* at 285 (Kagan, J., concurring in the judgment with respect to severability and dissenting in part) ("Congress has historically given—with this Court's permission—a measure of independence to financial regulators like the Federal Reserve Board and the FTC.").

If the NCUA Board exercises substantial executive power, it is difficult to see how the same would not be true of the Federal Reserve. The Fed has broad regulatory authority. *See, e.g.*, 12 U.S.C. § 1844(b) (authorizing Federal Reserve Board "to issue such regulations and orders, including regulations and orders relating to the capital requirements for bank holding companies, as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof"); *id.* § 1831p-1 (authorizing each "appropriate Federal banking agency" to prescribe certain standards by regulation or guideline for insured depository institutions); *see also Bd. of Governors of Fed. Rsrv. Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 365, 106 S. Ct. 681, 88 L. Ed. 2d 691 (1986) (noting Federal Reserve Board's "broad regulatory authority . . . over bank holding companies to restrain the undue concentration of commercial banking resources and to prevent possible abuses related to the control of commercial credit" (internal quotation marks and citation omitted)). Like the NCUA Board, the Fed is also authorized to initiate enforcement actions, issue cease-and-desist orders that are enforceable in federal court, remove officers and directors, and impose daily civil penalties up to $1,000,000. 12 U.S.C. § 1818(b)-(e), (i). The NCUA and the Fed even use the same administrative law judges to adjudicate enforcement actions. *See* Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183, 486 (codified at 12 U.S.C. § 1818 note) (requiring the Fed, other federal banking agencies, and the NCUA to jointly establish "their own pool of administrative law judges" and "develop a set of uniform rules and procedures for administrative hearings"). In *Seila Law*, the Supreme Court distinguished the CFPB as in "an entirely different league" from other financial regulators because of its vast powers and because "it is the only agency of its kind run by a single Director"—neither distinction applies to the NCUA. *See* 591 U.S. at 222 n.8.

The government all but concedes that its position as to the NCUA would lead to the same conclusion as to the Federal Reserve, relegating its response to a footnote that states, without elaboration, that the Fed is unique because of its historical pedigree. ECF No. 11-1 at 15 n.6. At the hearing, the government declined to expand on that footnote, stating that it "do[es] not have a formal position" on the implications of its arguments for the Federal Reserve. ECF No. 20 at 27. When asked what executive power the NCUA Board wields that the Federal Reserve and the FDIC do not, the government responded again that it would not "take a position on those agencies at this time." *Id.* at 29. At the end of the day, the government does not point to any difference at all between the agencies with respect to the relevant executive power analysis. The overlap in powers wielded by the NCUA Board and the Federal Reserve, and their common role as financial regulators, supports the conclusion that Congress can insulate NCUA Board members from at-will removal.

The Court accordingly holds that Congress's for-cause removal restrictions for NCUA Board members do not pose any constitutional problem. And because the government does not dispute that the plaintiffs were terminated without cause, those removals were unlawful.[7]

7. Because the Court concludes that the removal restrictions are constitutional, it need not reach the plaintiffs' argument that it would still be appropriate for the Court to limit removal in

C. The Plaintiffs Are Entitled To Declaratory And Injunctive Relief

That conclusion prompts the question of what remedy is appropriate for the unlawful removals. The plaintiffs ask the Court to declare that the President removed them unlawfully and to enjoin all the defendants—except the President—from (1) removing the plaintiffs from office; (2) treating them as having been removed; (3) denying or obstructing their access to benefits or resources of their office; (4) replacing them as Board members; or (5) recognizing any other person as a Board member in their stead. ECF No. 3-7; *see* ECF No. 3-1 at 21–24. The Court concludes that the plaintiffs are entitled to declaratory and injunctive relief.[8]

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some way in the event of a constitutional defect. *See* ECF No. 13 at 17–19. Similarly, because the removals were *ultra vires*, the Court need not address the plaintiffs' claims that they violated the Administrative Procedure Act and the separation of powers. *See* ECF No. 1 ¶¶ 34–36, 39–41.

8. The plaintiffs also request mandamus relief in the alternative. ECF No. 3-1 at 24–25. The Court need not reach the issue because it grants the requested declaratory and injunctive relief, but other courts have found mandamus is likely available in similar circumstances. *See, e.g., Wilcox v. Trump*, 775 F. Supp. 3d 215, 237 n.22 (D.D.C. 2025) ("[I]f injunctive relief were not available here because of adherence to the historical dividing lines of law and equity, a writ of mandamus would likely be available, and the effective relief provided to plaintiff would be the same."), *appeal docketed*, No. 25-5057 (D.C. Cir. Mar. 7, 2025); *Harris v. Bessent*, 775 F. Supp. 3d 164, 188 (D.D.C. 2025) ("Were equitable injunctive relief unavailable here, . . . the Court would not hesitate to 'vigilantly enforce federal law' and 'award[] necessary relief'

The Declaratory Judgment Act provides that "[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). A declaratory judgment "rests within the sound discretion of the court" and will "ordinarily be granted only when it will either serve a useful purpose in clarifying the legal relations in issue or terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *President v. Vance*, 627 F.2d 353, 364 n.76, 200 U.S. App. D.C. 300 (D.C. Cir. 1980) (internal quotation marks and citation omitted).

As other courts in this District have concluded in recent cases finding the removal of independent agency members unlawful, "a declaratory judgment would serve a useful purpose to clarify the legal relations between the parties and afford relief from the underlying challenged actions." *LeBlanc v. U.S. Priv. & C.L. Oversight Bd.*, No. 25-cv-542, F. Supp. 3d, 2025 U.S. Dist. LEXIS 97011, 2025 WL 1454010, at *25 (D.D.C. May 21, 2025) (collecting cases), *appeal docketed*, No. 25-5197 (D.C. Cir. May 29, 2025). The plaintiffs challenge their removal as members of the NCUA Board and seek clarity on whether they may resume work. The government, for its part, maintains that the President may lawfully remove NCUA Board members

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through a writ of mandamus as an alternative remedy at law." (alteration in original) (quoting *DL v. Dist. of Columbia*, 860 F.3d 713, 726, 429 U.S. App. D.C. 420 (D.C. Cir. 2017))), *appeal docketed*, No. 25-5055 (D.C. Cir. Mar. 4, 2025).

at will. The Court therefore exercises its discretion to provide declaratory relief.[9]

The Court also finds it proper to order injunctive relief in the form of reinstatement. According to the government, injunctive relief is not available because this Court lacks the authority to reinstate principal executive officers removed by the President. ECF No. 11-1 at 16. The government suggests instead that back pay is the proper remedy for an officer who has been unlawfully removed. *Id.* Asked whether that means an award of back pay would be the only remedy for the Chair of the Federal

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9. The government contends that declaratory relief is not available, relying primarily on *Samuels v. Mackell*, 401 U.S. 66, 91 S. Ct. 764, 27 L. Ed. 2d 688 (1971). ECF No. 11-1 at 23–24. But the limited holding of *Samuels* was that declaratory relief "should ordinarily be denied" where a state criminal prosecution has been initiated prior to the federal lawsuit, since "the basic policy against federal interference with pending state criminal prosecutions will be frustrated as much by a declaratory judgment as it would be by an injunction." 401 U.S. at 73. The Court made clear that it was expressing "no views on the propriety of declaratory relief when no state proceeding is pending at the time the federal suit is begun." *Id.* at 74. The government also cites no controlling authority for the proposition that a court "cannot issue a declaratory judgment against the President." ECF No. 11-1 at 23 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 827, 112 S. Ct. 2767, 120 L. Ed. 2d 636 (1992) (Scalia, J., concurring in part and concurring in the judgment)); *cf. Clinton v. City of New York*, 524 U.S. 417, 420–21, 118 S. Ct. 2091, 141 L. Ed. 2d 393 (1998) (affirming declaratory judgment that President's actions under Line Item Veto Act were invalid); *Nat'l Treasury Emps. Union v. Nixon*, 492 F.2d 587, 616, 160 U.S. App. D.C. 321 (D.C. Cir. 1974) (opting to issue declaratory decree against President instead of mandamus).

Reserve if he were unlawfully terminated, the government declined to answer, repeating its refrain that "we don't take a position on other entities not before the Court." ECF No. 20 at 36.

The government's position and its extreme consequences find no support in D.C. Circuit precedent, which makes clear that reinstatement is available. Analyzing redressability in *Swan*, the Circuit recognized that "[a] question exists . . . as to whether a federal court has the power to grant injunctive relief against the President of the United States in the exercise of his official duties." 100 F.3d at 976. But the court did not need to reach that question because injunctive relief against officials subordinate to the President could substantially redress the plaintiff's injury. *Id.* at 979. Those subordinate officials could not officially reinstate the plaintiff, but they could accomplish "de facto" reinstatement "by treating [the plaintiff] as a member of the NCUA Board and allowing him to exercise the privileges of that office." *Id.* at 980. The court reached a similar conclusion in *Severino*, holding that it could enjoin the agency's chair to include the plaintiff in board meetings, grant him access to his former office, and allow him to cast votes "as if he were a Council member." 71 F.4th at 1043.

The same principles apply here. The Court need not enjoin the President himself—and the plaintiffs do not ask the Court to do so. Instead, injunctive relief against the other defendants, including the Chair of the NCUA Board and the agency's executive director, can accomplish de facto reinstatement. The government insists that *Swan* and *Severino* are not controlling because they concerned whether the plaintiffs had Article III standing. ECF No. 11-1 at 19 n.8; ECF No. 15 at 14. But standing is a jurisdictional requirement. *E.g., Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998). So the Circuit necessarily concluded in both cases that the plaintiffs could be reinstated to their offices; otherwise, the redressability prong would not have been satisfied. *See Harris v. Bessent*, No. 25-5037, 2025 U.S. App. LEXIS 7301, 2025 WL 980278, at *44 (D.C. Cir. Mar. 28, 2025) (Millett, J., dissenting) ("Because jurisdiction in both *Swan* and *Severino* depended on holding that an injunction could issue, and both cases held that there was jurisdiction and went on to decide the merits, both cases necessarily held that an injunction could restore someone to office *de facto*."); *see also Grundmann v. Trump*, 770 F. Supp. 3d 166, 185–86 (D.D.C. 2025) (collecting cases holding that *Swan* and *Severino* stand for the proposition that de facto reinstatement is an available remedy), *appeal docketed*, No. 25-5165 (D.C. Cir. May 14, 2025).[10]

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10. The government's assertion that suits challenging unlawful removals have traditionally sought back pay—rather than reinstatement—disregards the type of relief requested in *Swan* and *Severino. See* ECF No. 11-1 at 16. As other courts have pointed out, moreover, reinstatement would not have made sense in several of the cases the government cites: the plaintiffs were deceased in both *Humphrey's Executor* and *Myers v. United States*, 272 U.S. 52, 47 S. Ct. 21, 71 L. Ed. 160 (1926); in *Wiener*, the War Claims Commission was no longer in existence. *See Grundmann*, 770 F. Supp. 3d at 186. And in any event, the Court does not lack power to issue injunctive relief "simply because the plaintiffs in *Wiener* and *Humphrey's Executor* decided to seek another remedy." *Harris*, 775 F. Supp. 3d at 185 n.15.

Appendix E

Several other courts in this District have addressed the same question in recent months and held that reinstatement is available when an executive officer is unlawfully removed by the President. *See Slaughter*, F. Supp. 3d at __, 2025 U.S. Dist. LEXIS 136631, 2025 WL 1984396, at *17; *LeBlanc*, __ F. Supp. 3d at __, 2025 U.S. Dist. LEXIS 97011, 2025 WL 1454010, at *27; *Grundmann*, 770 F. Supp. 3d at 187; *Wilcox v. Trump*, 775 F. Supp. 3d 215, 237 (D.D.C. 2025), *appeal docketed*, No. 25-5057 (D.C. Cir. Mar. 7, 2025); *Harris v. Bessent*, 775 F. Supp. 3d 164, 184 (D.D.C. 2025), *appeal docketed*, No. 25-5055 (D.C. Cir. Mar. 4, 2025). The en banc D.C. Circuit, citing a panel dissent from Judge Millett, has also held in the stay context that the government failed to show a strong likelihood of success on its claim that there was "no available remedy" for two unlawfully removed officials. *Harris v. Bessent*, No. 25-5037, 2025 U.S. App. LEXIS 8151, 2025 WL 1021435, at *2 (D.C. Cir. Apr. 7, 2025) (en banc); *see Harris*, 2025 U.S. App. LEXIS 7301, 2025 WL 980278, at *43–46 (Millett, J., dissenting).[11]

11. The Supreme Court granted the government's motion for a stay pending appeal in *Wilcox* and *Harris*, concluding that it was likely to show the agencies in question "exercise considerable executive power." *Wilcox*, 145 S. Ct. at 1415. The D.C. Circuit has also granted a stay pending appeal in *Grundmann* and *LeBlanc*. *See Grundmann v. Trump*, No. 25-5165, 2025 U.S. App. LEXIS 16480, 2025 WL 1840641, at *1 (D.C. Cir. July 3, 2025); *LeBlanc v. U.S. Priv. & C.L. Oversight Bd.*, No. 25-5197, 2025 U.S. App. LEXIS 16228, 2025 WL 1840591, at *1 (D.C. Cir. July 1, 2025). The Supreme Court and the Circuit did not address the issue of reinstatement in those decisions.

Having concluded that injunctive relief is available, the Court turns to the requirements for a permanent injunction. To obtain that relief, a plaintiff must show "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57, 130 S. Ct. 2743, 177 L. Ed. 2d 461 (2010) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006)). All those factors are satisfied in this case.

To start, the plaintiffs have demonstrated irreparable injury. A federal employee seeking injunctive relief must show "irreparable injury 'sufficient in kind and degree to override the factors cutting against the general availability of preliminary injunctions [such as disruption of the administrative process] in Government personnel cases.'" *Berry*, 1983 U.S. Dist. LEXIS 20740, 1983 WL 538, at *5 (alteration in original) (quoting *Sampson v. Murray*, 415 U.S. 61, 84, 94 S. Ct. 937, 39 L. Ed. 2d 166 (1974)). Again, several courts have recognized irreparable harm in similar cases "involving the removal of individuals appointed to independent, multimember boards based on the[ir] unlawful removal from office by the President and the obviously disruptive effect that such removal has on the organization's functioning." *LeBlanc*, F. Supp. 3d at, 2025 U.S. Dist. LEXIS 97011, 2025 WL 1454010, at *30 (alteration in original) (internal quotation marks and citation omitted). Here too, the plaintiffs have been removed from "a presidentially appointed and congressionally confirmed position of high importance"; both they and the NCUA Board "have been deprived of the ability to carry out their congressional mandate." *Wilcox*, 775 F. Supp. 3d at 236. And those injuries "cannot be retroactively cured by monetary damages." *Id.*; *see also Grundmann*, 770 F. Supp. 3d at 188 ("A check in the mail does not address the gravamen of this lawsuit."). The plaintiffs have therefore demonstrated irreparable injury and inadequate remedies at law. *See, e.g., Slaughter*, F. Supp. 3d at, 2025 U.S. Dist. LEXIS 136631, 2025 WL 1984396, at *18 ("In the wrongful-termination context, irreparable injury and the availability of remedies at law tend to collapse into one another.").

The balance of the equities and the public interest weigh in favor of injunctive relief as well. *See generally Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) (noting that these factors merge where the government is a party). The public has a substantial interest "in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12, 426 U.S. App. D.C. 67 (D.C. Cir. 2016) (citation omitted). Congress restricted the circumstances under which NCUA Board members may be removed from office, and the President terminated the plaintiffs outside those circumstances. *See, e.g., Harris*, 775 F. Supp. 3d at 187 (noting the "substantial public interest in the for-cause removal protections Congress has given to certain members of independent agencies").

The government asserts that an injunction reinstating the plaintiffs "would raise grave separation-of-powers concerns and work a great and irreparable harm to the Executive." ECF No. 11-1 at 22. In the government's view, "the public interest is better served by an NCUA Board member who holds the President's confidence and, accordingly, will more effectively serve him in executing his duties as Chief Executive." *Id.* These arguments simply presume that the government is correct on the merits and that the President can remove NCUA Board members at will. As explained above, that is not correct. The plaintiffs are entitled to permanent injunctive relief.[12]

III. Conclusion

For these reasons, the plaintiffs' motion for summary judgment is granted, and the government's cross motion for summary judgment is denied. The plaintiffs' motion for preliminary injunction and motion for expedition are denied as moot.

The Court declares the terminations of Plaintiffs Todd M. Harper and Tanya F. Otsuka unlawful. Harper and Otsuka remain members of the NCUA Board and may be removed by the President prior to the expiration of their terms only for cause.

12. The plaintiffs' proposed order appears to seek relief that would enjoin the relevant defendants from removing Harper and Otsuka—or treating them as having been removed—without limitation. ECF No. 3-7. The Court will narrow this language to reflect that Harper and Otsuka may be removed for cause.

The Court further orders that Defendants Scott Bessent, Larry Fazio, Kyle S. Hauptman, and Trent Morse, as well as their subordinates, agents, and employees, are enjoined, during Harper's and Otsuka's terms as members of the NCUA Board, from removing Harper and Otsuka from their offices without cause or in any way treating Harper and Otsuka as having been removed from office, from impeding in any way their ability to fulfill their duties as members of the NCUA Board, and from denying or obstructing their authority or access to any benefits or resources of their offices. Those defendants and their subordinates, agents, and employees shall provide Harper and Otsuka with access to the necessary government facilities and equipment so that they may carry out their duties during their terms as members of the NCUA Board.

A separate order accompanies this memorandum opinion.

/s/ Amir H. Ali
AMIR H. ALI
United States District Judge

Date: July 22, 2025

APPENDIX F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED JULY 22, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-01294 (AHA)

TODD M. HARPER, *et al.*,

Plaintiffs,

v.

SCOTT BESSENT, *et al.*,

Defendants.

Filed July 22, 2025

ORDER

For the reasons stated in the accompanying memorandum opinion, Plaintiffs' motion for summary judgment, ECF No. 3, is granted, and Defendants' cross motion for summary judgment, ECF No. 11, is denied. Plaintiffs' motion for preliminary injunction, ECF No. 3, and motion for expedition, ECF No. 4, are denied as moot.

The Court declares the terminations of Plaintiffs Todd M. Harper and Tanya F. Otsuka unlawful. Harper and Otsuka remain members of the National Credit Union

Administration ("NCUA") Board and may be removed by the President prior to the expiration of their terms only for cause.

The Court further orders that Defendants Scott Bessent, Larry Fazio, Kyle S. Hauptman, and Trent Morse, as well as their subordinates, agents, and employees, are enjoined, during Harper's and Otsuka's terms as members of the NCUA Board, from removing Harper and Otsuka from their offices without cause or in any way treating Harper and Otsuka as having been removed from office, from impeding in any way their ability to fulfill their duties as members of the NCUA Board, and from denying or obstructing their authority or access to any benefits or resources of their offices. Those defendants and their subordinates, agents, and employees shall provide Harper and Otsuka with access to the necessary government facilities and equipment so that they may carry out their duties during their terms as members of the NCUA Board.

The Clerk of Court is directed to close the case.

/s/ Amir H. Ali
AMIR H. ALI
United States District Judge

Date: July 22, 2025