

In the
Supreme Court of the United States



TIMOTHY BARTON,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

**BRIEF OF AMICI CURIAE
YOUNG AMERICANS FOR LIBERTY, INC.;
SAVANNAH CHRISLEY; AND THE
PRIVATE PROPERTY RIGHTS INSTITUTE
IN SUPPORT OF PETITIONER**

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INTEREST OF THE AMICI CURIAE

YOUNG AMERICANS FOR LIBERTY, INC. (“YAL”)¹ is a 501(c)(4) nonprofit organization devoted to educating, training, and advancing the constitutional principles of individual liberty, limited government, and accountable self-rule at the state and federal level. Founded to engage and educate the next generation of citizens on America’s founding ideals, YAL operates on college campuses and in local communities nationwide to promote civic literacy, active citizenship, and respect for the rule of law. Its mission is to teach that self-government requires both popular consent and constitutional constraint — that the same design that guards freedom also guards legitimacy.²

YAL’s work focuses on constitutional education, youth leadership, and policy advocacy that translate founding principles into modern governance. It has participated in amicus briefs and public programs emphasizing that the separation of powers is not an academic diagram but the citizen’s first defense against unaccountable bureaucracy. Through its campus initiatives and constitutional training series, YAL encourages young Americans to see the branches of

¹ Pursuant to Supreme Court Rule 37.2(a), Amici Curiae provided timely notice of its intent to file this brief to counsel for all parties. No counsel for any party authored this brief in whole or in part, and no one other than Amici and its supporters made any monetary contribution to its preparation or submission.

² See *The Federalist No. 47* (James Madison) (noting that the structural allocation of powers both limits authority and preserves liberty).

government as a system of mutual restraint, not as instruments for executive or administrative expansion.³

This case directly implicates those interests. When the Securities and Exchange Commission invokes “equitable authority” beyond statutory boundaries and when federal courts enforce such authority without congressional warrant, the balance of power shifts from the people to an unelected bureaucracy. That shift violates both the Take Care Clause, which requires the President to “faithfully execute” the laws enacted by Congress,⁴ and the nondelegation principle, which forbids the transfer of legislative power to entities unanswerable to voters.⁵ YAL appears as *amicus curiae* to defend those constitutional boundaries and to highlight the broader danger of administrative government that acts without, or against, the consent of the governed.

YAL’s concern is generational and structural. It is fealty to the structure of the Constitution. When an agency regulates the people of the United States, its legitimacy derives solely from the enumerated powers

³ See *The Federalist No. 51* (James Madison) (“Ambition must be made to counteract ambition.”); Young Americans for Liberty, *Mission Statement* (2025) (describing programs aimed at advancing civic literacy and constitutional accountability).

⁴ U.S. Const. art. II, § 3 (“[The President] shall take Care that the Laws be faithfully executed.”).

⁵ *INS v. Chadha*, 462 U.S. 919, 951 (1983) (explaining that separation of powers preserves accountability to the people); *West Virginia v. EPA*, 597 U.S. ___, 142 S. Ct. 2587 (2022) (applying the major-questions doctrine to require clear congressional authorization).

of the Constitution, Congress’s lawful enactments, and the President’s duty of faithful execution. When either branch bypasses that design, policy may still be made—but self-government is lost. YAL files this brief to urge the Court to reaffirm that the Constitution vests sovereignty in the people, not in the administrative state; that government by delegation is not government by consent; and that liberty survives only where law, not discretion, rules.⁶

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⁶ See *The Federalist No. 84* (Alexander Hamilton) ¶ 9 (noting that written limits, faithfully observed, secure liberty).



SUMMARY OF ARGUMENT

This case presents not merely a question of administrative law but a test of constitutional accountability — whether government will remain bounded by the written Constitution or drift toward rule by unelected administrators. The Framers divided power among the legislative, executive, and judicial branches precisely so that no official could claim authority not traceable to the people’s consent. When agencies invent powers Congress never granted and when courts enforce those powers through “equity,” the Constitution’s first promise — government by consent — gives way to government by convenience.⁷

The Take Care Clause was designed to prevent that inversion. By requiring that the President “shall take Care that the Laws be faithfully executed,” Article II ensures that execution remains faithful to the people’s representatives, not to the Executive’s policy preferences or an agency’s self-made mandates.⁸ Faithfulness demands fidelity to text. When execution departs from statute, administration becomes power without accountability — the very form of government the American Revolution rejected.

The growth of the modern administrative state has strained that fidelity. Independent commissions

⁷ *The Federalist No. 47*) (James Madison) (“The accumulation of all powers ... may justly be pronounced the very definition of tyranny.”).

⁸ U.S. Const. art. II, § 3 (“[The President] shall take Care that the Laws be faithfully executed.”).

and enforcement agencies now claim powers once reserved to Congress and the President: to legislate by rule, prosecute by discretion, and adjudicate by their own tribunals. Such efficiency may appeal to managers, but liberty depends on limits, not convenience. Efficiency is the virtue of bureaucracy; fidelity is the duty of government.⁹

The SEC’s receivership practice exemplifies this constitutional drift. No statute authorizes it; no presidential directive commands it; yet it persists because it serves bureaucratic convenience. By granting review, this Court can reaffirm that neither necessity nor precedent can transform extra-statutory discretion into lawful power. *West Virginia v. EPA* and *Loper Bright v. Raimondo* show the path forward: major actions require major authorization, and statutory silence is not license for invention.¹⁰

For YAL and the generation it represents, this issue is not abstract. It teaches whether young Americans will inherit a republic of laws or a regime of administrators. The separation of powers is not only institutional but moral; it defines the boundaries of duty — what each officer may and may not do in the people’s name. As Madison warned, liberty depends on keeping each power “in its proper place.” When those places blur, citizens cannot know who governs

⁹ *INS v. Chadha*, 462 U.S. 919, 951 (1983) (separation of powers preserves accountability to the people).

¹⁰ *West Virginia v. EPA*, 597 U.S. ___, 142 S. Ct. 2587 (2022); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (major-questions doctrine requires clear congressional authorization).

them or how to hold that person to account. Self-government dies not in revolution but in delegation.¹¹

This Court has long served as the Constitution’s sentinel against that quiet surrender. In *Youngstown Sheet & Tube Co. v. Sawyer*, the Court reminded the nation that even well-intentioned acts exceeding lawful authority are forbidden by the Constitution. The same principle governs here: faithful execution requires lawful authorization, and lawful authorization requires Congress. By enforcing that sequence, the Court will preserve both the separation of powers and the liberty that future generations depend upon.¹²



ARGUMENT

I. The Take Care Clause Preserves Liberty by Making Execution Accountable

The first principle of American liberty is accountable execution. The Constitution grants the President — not independent agencies — the duty to “take Care that the Laws be faithfully executed.” U.S. Const. art. II, § 3. That command does not invite improvisation; it imposes responsibility. By tying execution to faithfulness, the Framers ensured that every exercise of

¹¹ *The Federalist No. 51* (James Madison) (“Ambition must be made to counteract ambition.”).

¹² *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (acts beyond statutory authority are constitutionally void).

governmental power could be traced to a specific statute and to the elected officials answerable for it.¹³

Before 1787, the Framers had witnessed how monarchs and colonial governors used administrative decrees to circumvent representative assemblies. Their answer was not to weaken the Executive but to bind it to the law. As Hamilton explained, “A feeble Executive implies a feeble execution of the government,” but that energy must be “directioned by law.” The Take Care Clause transformed that insight into a constitutional covenant: strength harnessed by duty. Without that harness, “energy” becomes autonomy, and autonomy is the seed of despotism.¹⁴

Modern administrative agencies invert this design. Created to assist in execution, they increasingly act as autonomous lawmakers and enforcers, insulated from both the President and the electorate. Their officials are neither removable at will nor constrained by congressional precision. The result is power exercised without accountability — a fourth branch the Constitution never ordained. In *Free Enterprise Fund v. Public Company Accounting Oversight Board*, this Court reaffirmed that such insulation “diffuses power in a way that the Constitution does not permit.” The same diffusion occurs when courts supply agencies with “equitable” remedies Congress never enacted.

¹³ U.S. Const. art. II, § 3; *The Federalist No. 47* (James Madison).

¹⁴ *The Federalist No. 70* (Alexander Hamilton) (energy in the executive must be directed by law).

Both arrangements displace the people's control over those who govern them.¹⁵

For YAL, this clause is not an antiquarian curiosity; it is the legal expression of the Founders' central moral lesson: that freedom requires responsibility channeled through law. Every time government acts outside statute, it teaches citizens that process can be bypassed when expedient. That lesson corrodes both civic trust and constitutional culture.¹⁶

Faithful execution is also a test of jurisdictional humility. The President executes the laws of the United States — not the preferences of foreign regulators, international bodies, or inter-agency compacts devised without Congress. The duty of faithfulness runs to the Constitution's electorate, not to any administrative consensus. When domestic agencies coordinate policy with outside entities beyond statutory mandate, they exchange democratic accountability for bureaucratic approval. That exchange violates the very sovereignty the Take Care Clause was written to preserve.¹⁷

This Court's precedents protect that sovereignty. In *Zivotofsky v. Kerry*, the Court held that the President alone speaks for the Nation in foreign affairs; Congress may not compel another voice. The corollary is equally

¹⁵ *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 496 (2010).

¹⁶ Young Americans for Liberty – *Civic Education Initiative Summary* (2024) (promoting constitutional literacy and lawful accountability).

¹⁷ U.S. Const. art. II, § 3; *see also West Virginia v. EPA*, 597 U.S. ____ (2022) (agencies may not expand authority absent clear congressional mandate).

true: agencies may not create their own policy through enforcement that transcends domestic law. In *Seila Law LLC v. CFPB*, the Court emphasized that “the entire executive power belongs to the President alone.” That exclusivity exists so that execution remains politically accountable and constitutionally traceable.¹⁸

Faithful execution therefore serves both liberty and legitimacy. It assures every citizen that each rule enforced against him emanates from a law he can read and a representative he can replace. When enforcement derives instead from administrative improvisation, sovereignty dissolves into management. The People become subjects of expertise rather than masters of government.¹⁹

The Take Care Clause is not self-executing; it relies on this Court to maintain its boundaries. *Youngstown Sheet & Tube Co. v. Sawyer* made clear that even emergencies cannot justify executive seizure beyond statutory authority. The same principle restrains agencies and the courts that assist them: faithful execution ends where written law ends. Reaffirming that limit will restore the accountability the Framers equated with freedom.²⁰

¹⁸ *Zivotofsky v. Kerry*, 576 U.S. 1 (2015); *Seila Law LLC v. Consumer Fin. Protection Bureau*, 591 U.S. ___, 140 S. Ct. 2183 (2020).

¹⁹ *INS v. Chadha*, 462 U.S. 919, 951 (1983) (separation of powers preserves accountability to the people).

²⁰ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

II. The Nondelegation Doctrine Protects the People's Right to Self-Government

The Constitution begins with three words that define both power and responsibility: “We the People.” From that premise follows an uncompromising rule—only the people’s elected representatives may write the laws that bind the citizen’s conduct. Legislative power is the engine of self-government; its diffusion into the administrative sphere is therefore not a question of efficiency but of legitimacy. The nondelegation doctrine exists to protect that legitimacy. It is the citizen’s guarantee that laws will be written in public view, by officials answerable to the electorate, and not by anonymous administrators wielding borrowed authority.²¹

The Founders understood that delegation destroys consent. In *The Federalist No. 62*, Madison warned that if laws become “so voluminous that they cannot be read, or so incoherent that they cannot be understood,” government ceases to be of the people. When agencies invent rules without Congress’s authorization, the problem is not merely complexity but ownership. The people cannot repeal a regulation drafted by a bureau they never elected. They cannot vote out an administrator who legislates from behind a desk. Delegation thus substitutes bureaucratic permission for democratic consent, transforming citizens into subjects of procedure rather than participants in governance.²²

²¹ *The Federalist No. 47* (James Madison) (division of powers is the foundation of liberty).

²² *The Federalist No. 62* (James Madison) ¶ 6; Young Americans for Liberty – *Constitutional Literacy Series* (2024) (promoting

This Court has never repudiated the nondelegation principle; it has only struggled to enforce it amid the expanding machinery of modern administration. In *Panama Refining Co. v. Ryan*, the Court invalidated a statute that gave the Executive unbounded power to prohibit petroleum shipments, holding that Congress must articulate an “intelligible principle” to guide enforcement. That phrase was not an invitation to infinite discretion; it was a warning that principles must be intelligible because the people must understand the rules that govern them. More recent decisions—*West Virginia v. EPA*, *Loper Bright v. Raimondo*, and *SEC v. Jarkesy*—reflect the Court’s gradual return to this foundational truth: the separation of powers protects the citizen’s right to know who governs him and under what authority.²³

Administrative agencies often justify broad discretion on the ground that Congress cannot foresee every condition of modern life. But the Constitution anticipated that problem and supplied the solution: legislation. Congress may adapt and legislate anew; what it may not do is cede to agencies the discretion to decide what the law shall be. Convenience cannot substitute for consent. As Justice Gorsuch observed in *Gundy v. United States*, “Under our Constitution, the people are sovereign, and the powers of the branches are subordinate to their authority.” When Congress

citizen ownership of government through lawmaking accountability).

²³ *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935); *West Virginia v. EPA*, 597 U.S. ___, 142 S. Ct. 2587 (2022); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024); *SEC v. Jarkesy*, 603 U.S. 109 (2024).

delegates legislative power, it abdicates the very sovereignty entrusted to it.²⁴

The SEC’s receivership regime demonstrates that abdication. No statute empowers the Commission to appoint judicial receivers to seize property and manage private enterprises. That practice arises not from legislation but from bureaucratic improvisation and judicial acquiescence, violating both Article I’s Vesting Clause and the core idea of self-government under law. Each receiver’s order operates as a miniature legislature—imposing new obligations, extinguishing old rights, and redistributing assets by decree. Such measures may appear to protect investors, but the Constitution does not measure legitimacy by outcomes. As this Court explained in *INS v. Chadha*, “Convenience and efficiency are not the primary objectives—or the hallmarks—of democratic government.”²⁵

When unelected officials wield legislative power, the citizen becomes a spectator to his own governance. His duties no longer flow from laws debated and enacted by accountable representatives but from rules proclaimed after the fact by those he cannot remove. The Founders recognized this as the very definition of tyranny. The remedy is not nostalgia but renewed enforcement of the constitutional text: Congress may authorize regulation, but it must define its boundaries. Courts may interpret statutes, but they may not fill

²⁴ *Gundy v. United States*, 588 U.S. ___, 139 S. Ct. 2116, 2135 (2019) (Gorsuch, J., dissenting).

²⁵ *INS v. Chadha*, 462 U.S. 919, 951 (1983).

silence with invention. Agencies may implement laws, but they may not create them.²⁶

Restoring the nondelegation principle will not paralyze government; it will purify it. It will return lawmaking to its proper forum—Congress—and accountability to its proper owner—the people. The same separation that safeguards liberty also safeguards legitimacy. By reaffirming that separation, this Court can preserve the only system of government compatible with a free Republic: one in which all power exercised in the people’s name originates from their consent. Anything less is administration without authorization—government without governance—rule without right.²⁷

III. Restoring the Separation of Powers Restores the Republic

The separation of powers is not a technical diagram of government; it is the architecture of liberty itself. Every freedom the Constitution protects depends upon it. When Congress legislates, the President executes, and the courts judge, the citizen knows both who governs and how to hold them accountable. When those lines blur, law loses its moral authority because

²⁶ U.S. Const. art. I, § 1 (vesting all legislative power in Congress); *The Federalist* No. 51 (James Madison) (“Ambition must be made to counteract ambition.”).

²⁷ Young Americans for Liberty – *Mission Statement* (2025) (reaffirming that law, not discretion, secures legitimate self-government).

power no longer answers to principle—it answers only to itself.²⁸

From the Founding onward, Americans understood that liberty could not survive consolidation. *The Federalist No. 51* teaches that “ambition must be made to counteract ambition.” The purpose of divided power is not to frustrate government but to keep it honest. Each branch, confined to its proper sphere, becomes both a servant of the people and a sentinel against its peers. That arrangement—not size, not wealth, not even written rights—is what distinguishes a republic from every other form of rule.²⁹

When agencies legislate by rulemaking and courts enforce those rules through extra-statutory equity, the constitutional gears slip. The government still moves, but it no longer moves lawfully. The resulting machine is efficient, silent, and unaccountable—precisely the kind of mechanism the Framers labored to prevent. The SEC’s receivership regime shows how far that drift has gone: a single agency now initiates enforcement, writes its own procedural code, and—through court-appointed surrogates—executes its own decrees. Such fusion may simplify administration, but it nullifies the citizen’s right to divided government under written law.³⁰

²⁸ *The Federalist No. 47* (James Madison) ¶ 6 (“The accumulation of all powers ... may justly be pronounced the very definition of tyranny.”).

²⁹ *The Federalist No. 51* (James Madison) (ambition must counteract ambition; divided power promotes honesty).

³⁰ *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 496 (2010).

This Court has repeatedly restored the Republic by re-drawing those lines. In *INS v. Chadha*, it invalidated a “legislative veto” that let Congress intrude upon execution. In *Free Enterprise Fund v. Public Company Accounting Oversight Board*, it struck down double insulation from presidential removal that made executive officers unanswerable to the President. In *West Virginia v. EPA* and *Loper Bright v. Raimondo*, it reaffirmed that agencies may not act on “major questions” without clear congressional authorization. Each decision served the same end: to remind government that structure is liberty.³¹

Restoring separation also restores legitimacy. Citizens will accept adverse outcomes when they believe those judgments arise from fair and lawful process. The growing distrust of institutions across American life is not a mystery; it is the predictable consequence of structural neglect and unaccountable bureaucratic abuses. When citizens can no longer locate responsibility, they withdraw confidence from all authority. The cure is not propaganda, but constitutional obedience.

The Republic is a covenant of restraint. Each branch’s limits are the other branches’ liberties—and the people’s security. The Court’s duty is not to innovate but to re-inscribe the original lines the Framers drew. By reaffirming that Congress alone legislates, the President alone executes, and the courts

³¹ *INS v. Chadha*, 462 U.S. 919 (1983); *Free Enterprise Fund*, 561 U.S. at 496; *West Virginia v. EPA*, 597 U.S. ___, 142 S. Ct. 2587 (2022); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

alone judge, the Court would return the nation to the only equilibrium consistent with self-government.³²

That restoration will not weaken governance; it will strengthen faith. The rule of law commands voluntary allegiance because it is predictable and principled. Once citizens see that even the government obeys the law, they obey it willingly. That is the genius of the American system: coercion replaced by consent, power constrained by honor, authority sustained by accountability.³³

Every generation of Americans faces a moment when administrative convenience tempts it to trade liberty for order. The Framers warned that this trade, once made, is never equal: “The accumulation of all powers, legislative, executive, and judiciary, in the same hands ... may justly be pronounced the very definition of tyranny.” The Court now stands where they once stood—called upon to defend the principle that keeps a government of laws from becoming a government of men.³⁴

³² U.S. Const. arts. I–III (vesting legislative, executive, and judicial powers in separate branches).

³³ *The Federalist No. 84* (Alexander Hamilton) ¶ 9 (written limits, faithfully observed, secure liberty).

³⁴ *The Federalist No. 47* (James Madison) ¶ 6; Young Americans for Liberty – *Mission Statement* (2025) (“Liberty depends on vigilance against the consolidation of power.”).



CONCLUSION

The Constitution endures because it divides power to preserve and protect the natural rights inherent to the people of the United States. That separation is not a relic of eighteenth-century design; it is the living shield of twenty-first-century liberty. Every time an agency acts without statute or a court enforces policy without law, the people lose a fraction of their authority over those who govern them. The injury is cumulative but curable—if this Court again declares that faithful execution ends where faithful authorization ends.³⁵

Young Americans for Liberty submits this brief consistent with its mission to educate and advance the ideals of the Constitution and to defend the operating principle of self-government: that all power exercised in the people's name must remain traceable to their consent. That consent is expressed through legislation by elected representatives and through execution by an accountable President. When execution detaches from law or when lawmaking is outsourced to bureaucratic discretion, the people are no longer self-governing; they are merely managed.³⁶

For YAL and the generation it represents, this case is a constitutional civics lesson written in real time. The Take Care Clause and the nondelegation doctrine

³⁵ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (faithful execution ends where lawful authorization ends).

³⁶ U.S. Const. art. I, § 1; *INS v. Chadha*, 462 U.S. 919, 951 (1983) (“Convenience and efficiency are not the primary objectives—or the hallmarks—of democratic government.”).

exist to prevent the quiet substitution of management for liberty. They bind energy to accountability, efficiency to legitimacy, and administration to consent. By granting certiorari and reaffirming those limits, this Court can teach by example that structure is not formality—it is freedom’s foundation.³⁷

By restoring those boundaries, the Court will not weaken government; it will renew trust in it. A generation that sees its leaders bound by law will remain bound by law itself. That is the civic covenant the Framers entrusted to every American, and it is the same covenant YAL teaches the next generation to preserve.

For these reasons, *Amici Curiae*, Young Americans for Liberty, respectfully urges the Court to grant the petition for a writ of certiorari and to reaffirm that the liberty of the people endures only when the powers of their government remain divided, defined, and faithfully executed.³⁸

³⁷ *The Federalist No. 51* (James Madison) (“Ambition must be made to counteract ambition.”); *The Federalist No. 84* (Alexander Hamilton) ¶ 9 (written limits, faithfully observed, secure liberty).

³⁸ Young Americans for Liberty – *Mission Statement* (2025) (committing to educate future leaders on constitutional accountability and civic responsibility).

Respectfully submitted,

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