No. 25A11

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Applicants

v.

MARY BOYLE, ET AL.,
Respondents.

OPPOSITION TO APPLICATION TO STAY THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

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INTRODUCTION

In May, President Donald J. Trump purported to terminate Mary Boyle, Alexander Hoehn-Saric, and Richard Trumka Jr. from their roles as Commissioners on the Consumer Product Safety Commission (CPSC). He did so without any stated justification and in violation of a statutory provision that forbids the President from terminating CPSC Commissioners absent neglect of duty or malfeasance in office.

On June 13, following summary judgment briefing and argument, the district court held that the purported terminations were unlawful and without legal effect. Agreeing with recent decisions of both the Fifth and Tenth Circuits, the court held that this Court's decision in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), squarely foreclosed the government's argument that the Commissioners' statutory tenure protections unconstitutionally infringe on the President's Article II removal authority. The court then evaluated the case's equities and the public interest and exercised its discretion to enter declaratory relief and to enjoin defendants Secretary of the Treasury, Scott Bessent; Director of the Office of Management and Budget, Russell Vought; and Acting Chairman of the CPSC, Peter A. Feldman, from giving effect to the Commissioners' unlawful terminations.

Three days later, the government appealed the district court's judgment to the Fourth Circuit and moved for a stay. Both the district court and a unanimous Fourth Circuit panel declined to stay the judgment while the appeal proceeds. As a result, Commissioners Boyle, Hoehn-Saric, and Trumka have been serving continuously in their roles since the district court entered judgment on June 13, four full weeks ago.

The government now asks this Court to disrupt the status quo and enter a stay that would prevent the Commissioners from serving in the roles that the district court held they are entitled to occupy and that they have in fact been occupying for the last month. The government cannot establish its entitlement to this extraordinary relief.

To begin, the government has not shown that it is likely to succeed on the merits of its appeal. After carefully examining the CPSC's "structure and function," the district court held that they "closely resemble[]" those of the agency described in *Humphrey's Executor* and that the CPSC's statutory tenure protections, like those upheld in *Humphrey's Executor*, are accordingly constitutional. App. 23a. Both federal courts of appeals to have considered the issue—the Fifth and the Tenth Circuits—recently reached the same conclusion, and within the last year this Court declined to review those decisions. Although the government resists the consensus view, stating repeatedly that the CPSC exercises significant executive power, it fails to identify any meaningful distinction between the CPSC's powers and the powers of the agency described in *Humphrey's Executor*. Instead, the government leans on this Court's decision in *Trump v. Wilcox*, 145 S. Ct. 1415 (2025), which stayed orders reinstating members of two *other* independent agencies. But the Court in *Wilcox*, while acknowledging *Humphrey's Executor*'s "recognized exception" to the President's removal power for the heads of certain multimember independent agencies, did "not ultimately decide" the merits question as applied to the agencies at issue there. *Id.* at 1415. And the government says nothing about why the CPSC more closely resembles those agencies than it resembles the agency in *Humphrey's Executor*.

The government is also unlikely to succeed on its challenge to the district court's remedy. Courts, including this Court, have long exercised their equitable powers to enjoin the President's subordinates from carrying out unlawful presidential commands, and the government offers no principled reason why that established remedy cannot apply in the context of an unlawful termination. Indeed, any other conclusion would nullify lawful tenure protections for independent agency heads by allowing the President to flout those statutory provisions at will. In any event, the government concedes that federal officeholders may be reinstated by a writ of mandamus, Stay Appl. 18, and the district court held in the alternative that the Commissioners are entitled to that remedy. Although the Commissioners raised mandamus in the district court, the government made no response and so has waived any challenge to the district court's alternative remedial holding on appeal.

Even apart from the merits, the government cannot establish the other factors necessary to support a stay. Given the Court's denial of review of opinions upholding the constitutionality of the CPSC Commissioners' tenure protections twice within the past year, there is no reasonable probability that it will grant certiorari to decide that constitutional issue in this case if the Fourth Circuit affirms the judgment in the Commissioners' favor. And although the government claims that it will suffer irreparable harm if the Commissioners continue to serve in their roles, the district court's order was in effect for nineteen days before the government sought emergency relief in this Court, and the government has identified no cognizable harm that it has suffered in the interim. While purporting to paint a picture of chaos at the agency,

the government simply describes the Commissioners performing official functions that the district court held they were lawfully entitled to perform and, in some instances, undoing actions that the CPSC unlawfully took without a quorum. The government also notes that this Court has warned against the disruption of repeatedly removing and reinstating officers during the pendency of litigation, yet granting its application here would have precisely that effect and make it likely that yet another reinstatement will be necessary at the end of the case. The Court should decline to open the door to such disruption—particularly where the Commissioners currently occupy the roles to which they were lawfully appointed and consensus authority in the courts of appeals favors the Commissioners on the merits.

Finally, this Court should deny the government's request for certiorari before judgment. The Court recently declined to take this extraordinary measure in *Wilcox*, and the government identifies no intervening events that call for this Court to take a different path here.

BACKGROUND

Statutory background

Congress enacted the Consumer Product Safety Act (CPSA) in 1972 to "protect the public against unreasonable risks of injury associated with consumer products." 15 U.S.C. § 2051(b)(1). To advance that aim, the Act established the CPSC, a body of five Commissioners who are nominated by the President and confirmed by the Senate and who have "background and expertise in areas related to consumer products and protection of the public from risks to safety." *Id.* § 2053(a). Among other things,

Commissioners are responsible for promulgating standards for consumer-product safety, *id.* § 2056, recalling unreasonably hazardous products from the market, *id.* § 2057, and conducting product-safety investigations and research, *id.* § 2076.

To ensure that the CPSC remains "unfettered by political dictates, self-interested industry pressure or blind consumer zeal," 122 Cong. Rec. S15211 (daily ed. May 24, 1976), Congress established it as an "independent regulatory commission," 15 U.S.C. § 2053(a), with statutory guardrails to protect the CPSC from undue political pressures. Congress ensured that each President would have the opportunity to influence, but not control, the composition of the CPSC by providing that Commissioners would serve staggered, seven-year terms, *id.* § 2053(b)(1), and that any Commissioner appointed to fill a vacancy created by the premature departure of a predecessor would be appointed only for the remainder of the predecessor's term, *id.* § 2053(b)(2). The CPSA specifies that "[n]ot more than three of the Commissioners shall be affiliated with the same political party." *Id.* § 2053(c). And Commissioners may be "removed by the President" before the end of their terms "for neglect of duty or malfeasance in office but for no other cause." *Id.* § 2053(a).

Factual and procedural background

Commissioners Boyle, Hoehn-Saric, and Trumka, each of whom has an extensive professional background in consumer-protection issues, were all nominated by President Joseph R. Biden Jr. and confirmed by the Senate to serve as CPSC Commissioners for terms that expire on October 27, 2025; October 27, 2027; and October 27, 2028, respectively. App. 3a–4a. It is undisputed that all three have

performed ably in their roles and have never been accused by either President Biden or President Trump of neglect of duty or malfeasance in office. *Id.* at 4a.

On May 8 and 9, 2025, almost four months after his inauguration, President Trump purported to terminate Commissioners Boyle, Hoehn-Saric, and Trumka. *Id.* In doing so, he offered no explanation and did not accuse any of the Commissioners of neglect of duty or malfeasance in office. *Id.*

The three Commissioners (Plaintiffs below and Respondents here) filed suit against President Trump, Secretary Bessent, Director Vought, and Acting Chairman Feldman, all in their official capacities. *Id.* at 5a. The complaint challenged the Commissioners' terminations as ultra vires and inconsistent with the CPSA's tenure protections. *Id.* The Commissioners sought a declaration that their terminations were unlawful and an injunction barring Secretary Bessent, Director Vought, and Acting Chairman Feldman from effectuating them. *Id.* at 5a–6a.

On June 13, following full merits briefing and argument on cross-motions for summary judgment, *see id.* at 5a, the district court granted the Commissioners' motion and denied the government's cross-motion, *id.* at 31a. "[A]greeing with several other courts," including the Fifth and Tenth Circuits, the district court held that the CPSA's statutory tenure protections are "not inconsistent with Article II." *Id.* at 14a. The court acknowledged that Article II "generally" confers authority on the President "to remove executive officials." *Id.* at 7a (quoting *Seila Law LLC v. CFPB*, 591 U.S. 197, 213 (2020)). But it noted that "the President's power of removal is not absolute," *id.*, and that *Humphrey's Executor*, which upheld statutory tenure protections for

members of the Federal Trade Commission (FTC) in 1935, creates an exception for "multimember bodies with 'quasi-judicial' or 'quasi-legislative' functions," *id.* at 8a (quoting *Seila Law*, 591 U.S. at 217). Explaining that "the CPSC closely resembles the 1935 FTC in both structure and function," the court held that the CPSC "qualifies for the *Humphrey's Executor* exception" and that the statutory "restriction against [the Commissioners'] removal … does not offend the President's Article II removal power." *Id.* at 23a. Because the President undisputedly violated that restriction, *id.* at 13a–14a, the court held that the Commissioners were entitled to relief, *id.* at 23a.

As to the form of relief, the district court found declaratory relief "appropriate" to "clarify and settle the parties' legal relationships." *Id.* at 24a. The court also enjoined Secretary Bessent, Director Vought, and Acting Chairman Feldman from effectuating the unlawful terminations, finding that the Commissioners had "suffered irreparable harm" from being "unlawfully barred from participating in ongoing, consequential decisions of the CPSC that will substantially impact Commission operations and its work on behalf of the public." *Id.* at 26a. The court noted that this harm could not "be redressed adequately through money damages" because, absent an injunction, the Commissioners "would be prevented from serving out the remainder of their limited terms and therefore forever lose the opportunity to fulfill the[ir] statutory duties." *Id.* at 27a. The court also held that an injunction was "favored by the balance of relevant hardships and d[id] not run counter to the public interest" because "[d]epriving th[e] five-member Commission of three of its sitting

members threatens severe impairment of its ability to fulfill its statutory mandates and advance the public's interest in safe consumer products." *Id.* at 28a.

Responding to the government's argument that the court "lack[ed] the equitable power to order [the Commissioners'] reinstatement," the district court explained that the argument "misconstrue[d] the equitable relief" that the Commissioners sought. *Id.* at 25a. The Commissioners "d[id] not seek to enjoin the President to reappoint them," but "only to enjoin the President's subordinates from obstructing their performance of their duties as CPSC Commissioners and their access to the resources necessary for such performance." *Id.* In any event, the court observed, "[e]ven if de facto reinstatement" of the sort the Commissioners sought was "unavailable as a form of equitable relief, it is available alternatively by a writ of mandamus." *Id.* at 29a. And under the circumstances of this case, the court concluded, "issuance of a writ of mandamus would be right and just." *Id.* at 30a.

Later that same day, June 13, the CPSC's General Counsel announced that Commissioners Boyle, Hoehn-Saric, and Trumka were "fully reinstated to the same position, with the same rights and privileges, as they held before the President terminated them." D. Ct. Dkt. 29-1 ¶ 2 & Exh. A. In the four weeks since then, the Commissioners have served in their roles without interruption, performing substantive agency work. *See id.* ¶¶ 3–7.

Three days later, on June 16, the government filed a notice of appeal to the Fourth Circuit and moved the district court for a stay pending appeal. D. Ct. Dkt. 27. The next evening, the government filed a motion in the Fourth Circuit requesting a

stay pending appeal and an administrative stay while the court of appeals considered the stay motion. App. Ct. Dkt. 13. The government requested that the Fourth Circuit issue a ruling on its administrative stay request by June 20, "so that the Solicitor General, if necessary, may seek emergency relief from the Supreme Court." *Id.* at 3.

On June 23, the district court denied the government's stay motion. App. 41a. The court reiterated its merits holding that the constitutionality of the CPSA's tenure protections is supported by this Court's precedent, persuasive authority from the Fifth and Tenth Circuits, and historical practice, *id.* at 36a–38a, and held that the government would not suffer irreparable harm absent a stay, *id.* at 38a–39a. Responding to the government's claim that the Commissioners were disrupting the work of the CPSC, the court observed that the evidence reflected only "official actions" the Commissioners had taken in "exercise of powers duly vested in them as CPSC Commissioners," as well as "differences of opinion … over substantive and procedural matters of policy" of the sort that "are to be expected of a multimember adjudicatory body that is bipartisan by design." *Id.* Finally, the court found that the balance of harms and the public interest weighed against a stay because "each day [the Commissioners] are deprived of the opportunity and resources necessary to perform the functions and duties they were duly appointed to perform as CPSC Commissioners is time lost that they—and the public—cannot regain." *Id.* at 39a–40a. As the court explained, the Commissioners have performed ably in their roles, such that the loss of their "abilities and expertise" would "pose[] a danger to the vital role the CPSC plays in ensuring the safety of consumer products." *Id.* at 40a.

The next week, on July 1, the Fourth Circuit denied the government's motion for an administrative stay and for a stay pending appeal. *Id.* at 42a. Judge Wynn separately concurred to emphasize that "[u]nder the governing law and legal standard" the answer to the question whether a stay is warranted is "resoundingly no." *Id.* at 44a. As he explained, the government's likelihood of success on the merits "has been … thoroughly foreclosed by existing case law," and the government had not shown that it would suffer irreparable harm from the "state of affairs that governed before May 8, 2025, and under which every administration has operated since the [CPSC] was established" more than 50 years ago. *Id.* at 46a–47a. In addition, because there had been "no … interruption in [the Commissioners'] work" since the district court entered its June 13 order, allowing them to continue in their roles while the appeal proceeds "preserves, rather than disrupts, agency operations." *Id.* at 47a–48a.

LEGAL STANDARD

A stay is "not a matter of right" but "an exercise of judicial discretion" that is "dependent upon the circumstances of the particular case," *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672–73 (1926), and it is the party seeking a stay that "bears the burden of showing that the circumstances justify an exercise of that discretion," *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). In considering a stay application, this 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 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

Where an applicant seeks a stay pending "proceedings in this Court," as the government does here, Stay Appl. 24, it must also show "a reasonable probability" that this Court will grant certiorari and "a fair prospect" of reversal. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). And where, as here, "a district court judgment is reviewable by a court of appeals that has denied a motion for a stay, the applicant seeking an overriding stay from this Court bears 'an especially heavy burden.'" *Edwards v. Hope Med. Grp. for Women*, 512 U.S. 1301, 1302 (1994) (Scalia, J., in chambers) (quoting *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers)).

ARGUMENT

I. The government has not established a likelihood of success on the merits.

A. The government is unlikely to show that the CPSA's tenure protections are unconstitutional.

The government does not dispute the district court's holding that the President's termination of Commissioners Boyle, Hoehn-Saric, and Trumka violated the CPSA's tenure protections. Instead, it argues that it is likely to prevail on its argument that these statutory protections violate the President's Article II power to remove executive officers. Like the district court, however, both courts of appeals to have considered this argument have rejected it. *See Leachco, Inc. v. CPSC*, 103 F.4th 748, 760–63 (10th Cir. 2024); *Consumers' Research v. CPSC*, 91 F.4th 342, 351–56

(5th Cir. 2024); *see also United States v. SunSetter Prods. LP*, 2024 WL 1116062, at *2–4 (D. Mass. Mar. 14, 2024) (reaching the same conclusion). As these courts have held, the constitutionality of the CPSA's tenure protections follows from *Humphrey's Executor*, a precedent that this Court has recently—and repeatedly—affirmed. *See Collins v. Yellen*, 594 U.S. 220, 250–51 (2021) (noting the opinion's continued vitality); *Seila Law*, 591 U.S. at 204 (declining to "revisit" the precedent); *Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 483 (2010) (same).

In *Humphrey's Executor*, this Court unanimously upheld a statutory provision barring the President from removing the members of the FTC except for "inefficiency, neglect of duty, or malfeasance in office." 295 U.S. at 620 (quoting 15 U.S.C. § 41); *see id.* at 631–32. As the Court held, "[t]he authority of Congress, in creating quasi legislative or quasi judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted." *Id.* at 629. In the case of "an administrative body created by Congress to carry into effect legislative policies embodied in [a] statute in accordance with the legislative standard therein prescribed," *id.* at 628, the Court found it "plain under the Constitution that illimitable power of removal is not possessed by the President," *id.* at 629: Congress has "power to fix the period during which" the members of such bodies "shall continue, and to forbid their removal except for cause in the meantime," allowing them to "maintain an attitude of independence against the [President's] will." *Id.*

As the district court found, and as the Fifth and Tenth Circuits have agreed, "the CPSC closely resembles the 1935 FTC in both structure and function." App. 23a;

Leachco, 103 F.4th at 760–63; *Consumers' Research*, 91 F.4th at 351–56. Like the 1935 FTC, the CPSC is "a multimember body of experts, balanced along partisan lines." *Seila Law*, 591 U.S. at 216; *see Humphrey's Executor*, 295 U.S. at 619–20 (describing the structure and partisan balance of the FTC); 15 U.S.C. § 2053(a) (providing that the CPSC "consist[s] of five Commissioners" with "background and expertise in areas related to consumer products and protection of the public from risks to safety"); *id.* § 2053(c) (providing that "[n]ot more than three [CPSC] Commissioners shall be affiliated with the same political party"). Like the 1935 FTC, the CPSC performs "quasi legislative and quasi judicial" functions. *Humphrey's Executor*, 295 U.S. at 629. On the legislative side, the 1935 FTC, like the CPSC, held "wide powers of investigation," *id.* at 621 (FTC); 15 U.S.C. § 2076 (CPSC), and the authority to issue substantive regulations. *Compare* Federal Trade Commission Act, Pub. L. No. 63-203, § 6(g), 38 Stat. 717, 722 (1914), *with* 15 U.S.C. § 2056(a) (empowering the CPSC to promulgate "consumer product safety standards"). On the judicial side, the 1935 FTC, like the CPSC, held authority to conduct administrative adjudications within the limited scope of its organic statute. *Compare Humphrey's Executor*, 295 U.S. at 620–21 (describing the FTC's power to issue a judicially enforceable cease-and-desist order upon finding that a party has engaged in an unfair method of competition), *with* 15 U.S.C. §§ 2064(c)–(d) (authorizing the CPSC to order remedial measures upon finding a substantial product hazard).

The government's argument that *Humphrey's Executor* likely does not apply here because the CPSC—presumably, in the government's view, unlike the 1935

FTC—exercises "substantial executive power" lacks merit. Stay Appl. 10. To start, the government is wrong to say that "this Court's precedents" establish that "the President must be able to remove, at will, members of multimember commissions that wield substantial executive power." *Id.* Rather, this Court has declined to uphold limits on the President's removal authority "when it comes to principal officers who, *acting alone*, wield significant executive power." *Seila Law*, 591 U.S. at 238 (emphasis added); *see Collins*, 594 U.S. at 251 (explaining that *Seila Law* stands for the proposition that *Humphrey's Executor* does not apply "to the novel context of an independent agency led by a single Director" because such an agency "lacks a foundation in historical practice and clashes with constitutional structure by concentrating power in a unilateral actor insulated from Presidential control" (quoting *Seila Law*, 591 U.S. at 204)). Here, in contrast, the district court found that "[t]he historical precedent for statutory removal restrictions among traditional multimember independent agencies" like the CPSC "gives strong indication" that the CPSA's tenure protections are constitutional. App. 23a; *see PHH Corp. v. CFPB*, 881 F.3d 75, 173 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting) (contrasting the "historical anomaly" of "a single-Director independent agency exercising substantial executive authority" with a long list of historically independent "multi-member commissions or boards," including the CPSC, dating back to 1887).

In fact, this Court's precedents signal that the exercise of the sort of executive authority that this Court has sometimes called "significant" is *not* dispositive of whether tenure protections for multimember agency heads are constitutional. In

Seila Law, this Court held that tenure protections for the lone Director of the Consumer Financial Protection Bureau (CFPB) violated the President's Article II powers. 591 U.S. at 204–05. But although the Court stated that the Director wielded "significant executive power," *id.* at 220, it noted that its constitutional holding did not "foreclose Congress from pursuing alternative responses to the problem—for example, converting the CFPB into a multimember agency," *id.* at 237 (plurality opinion). And one year later, the Court explained that "[c]ourts are not well-suited to weigh the relative importance of the regulatory and enforcement authority of disparate agencies, and we do not think that the constitutionality of removal restrictions hinges on such an inquiry." *Collins*, 594 U.S. at 253.

Rather than turning on the significance of a multimember agency's functions, this Court has explained that "Congress's ability to impose … removal restrictions 'will depend upon the character of the office,'" *Seila Law*, 591 U.S. at 215 (quoting *Humphrey's Executor*, 295 U.S. at 631), and specifically on whether the protected officers "closely resemble[] the FTC Commissioners" considered in *Humphrey's Executor*, *id.* at 217. The district court properly analyzed precisely this question and concluded that "[w]hile sharing the FTC's organizational features, the CPSC also performs functions similar or identical to those of the FTC which, in 1935, *Humphrey's Executor* described as 'quasi legislative and quasi judicial.'" App. 17a (quoting *Humphrey's Executor*, 295 U.S. at 629).

The district court's careful comparison of the functions and structure of the CPSC and those of the 1935 FTC belies the government's contention that the district

court "refus[ed] to consider the character of the CPSC's power" and that the court's holding would permit Congress to "deprive the President of control of the entire Executive Branch by converting every executive department or agency"—including those, like the Department of State, that look nothing like the 1935 FTC—"into an independent multimember commission." Stay Appl. 15. And, critically, the government identifies no error in the district court's conclusion that the CPSC closely resembles the 1935 FTC in all relevant respects. As for the agencies' structures, the government does not even attempt to draw any distinction between the structure of the CPSC and that of the 1935 FTC—a structure that the district court (just like the Fifth and Tenth Circuits) found to be "well-established in the history and tradition of the federal government." App. 22a (citing *Consumers' Research*, 91 F.4th at 354; *Leachco*, 103 F.4th at 762–63). As for the agencies' powers, the government emphasizes that the CPSC "may make rules, adjudicate cases, conduct investigations, and bring civil enforcement suits." Stay Appl. 14. Despite bearing the burden of establishing likelihood of success on the merits, however, the government does not explain how these powers differ materially from those of the 1935 FTC's or address the district court's thorough explanation of why they do not.

For example, the government cites the CPSC's "significant rulemaking authority," *id.* at 13, but fails to acknowledge that the FTC, too, had possessed significant authority "to make rules and regulations for the purpose of carrying out" the Federal Trade Commission Act since its inception 20 years before *Humphrey's Executor*, Pub. L. No. 63-203, § 6(g), 38 Stat. at 722; *see* App. 18a n.6 (observing that

"the FTC's rulemaking authority is plain on the face [of] the … Act, which is cited and heavily relied upon in *Humphrey's Executor*"). The government next references the CPSC's power to engage in administrative adjudications and order remedial measures, but the 1935 FTC's comparable powers were well known to the Court when it decided *Humphrey's Executor*. *See Humphrey's Executor*, 295 U.S. at 620–21 (describing the 1935 FTC's power to prevent "unfair methods of competition in commerce," including by issuing an administrative complaint, conducting a hearing, making factual findings and conclusions of law, and issuing a judicially enforceable cease-and-desist order if it determined that the law had been violated (quoting 15 U.S.C. § 45 (1914))); *see also Arrow-Hart & Hegeman Elec. Co. v. FTC*, 291 U.S. 587, 594–95 (1934) (acknowledging, one year before *Humphrey's Executor*, the FTC's power to order divestiture of stock). The government notes the CPSC's "investigative powers," including the subpoena power, Stay Appl. 13, without distinguishing them from the "wide powers of investigation" that *Humphrey's Executor* considered in connection with the 1935 FTC, 295 U.S. at 621; *see* Pub. L. No. 63-203, § 9, 38 Stat. at 722 (establishing the 1935 FTC's ability to subpoena private parties). And the government highlights the CPSC's "authority to initiate judicial proceedings against private parties," Stay Appl. 13–14, but again, *Humphrey's Executor* addressed the 1935 FTC's comparable power. *See* 295 U.S. at 620–21 (noting the FTC's authority to "apply to the appropriate Circuit Court of Appeals" for enforcement of its administrative cease-and-desist orders). Although the government is correct that the 1935 FTC, unlike the CPSC, could not prosecute *criminal* cases, Stay Appl. 14, the

CPSC's power in this respect is subject to the Attorney General's approval, 15 U.S.C. § 2076(b)(7)(B), and the Attorney General is subject to at-will removal, allowing the President to "attribute" any "failings" in the CPSC's criminal enforcement activities "to those whom he *can* oversee." *Free Enterprise Fund*, 561 U.S. at 496; *see Morrison v. Olson*, 487 U.S. 654, 692 (1988) (observing that the President "retain[ed] ample authority" over an officer who held "good cause" tenure protection but was subject to the Attorney General's oversight).[1]

Ultimately, the government fails to identify any distinctions between the CPSC and the 1935 FTC that justify its contention that the former's powers are "far more substantial" than the latter's. Stay Appl. 14. Instead, the government relies on a misreading of *Humphrey's Executor*, under which—in the government's view—the Court "viewed the 1935 FTC as a 'legislative' or 'judicial' aid" whose power was limited to making reports to Congress and making recommendations to courts. *Id.* at 11 (quoting *Humphrey's Executor*, 295 U.S. at 628). The passage from which the government selectively quotes, however, characterizes the 1935 FTC as "an administrative body created by Congress to carry into effect legislative policies embodied in the [Federal Trade Commission Act] in accordance with the legislative standard therein prescribed, *and* to perform *other* specified duties as a legislative or

[1] Moreover, the government has not demonstrated that it is likely to succeed in showing that any constitutional difficulty presented by the combination of the CPSC's criminal enforcement powers and its Commissioners' tenure protections could not be resolved by severing and invalidating the language in the CPSA authorizing the CPSC to bring criminal enforcement actions "through its own legal representative, with the concurrence of the Attorney General," such that all criminal actions would instead be authorized only "through the Attorney General." 15 U.S.C. § 2076(b)(7)(B).

as a judicial aid." 295 U.S. at 628 (emphases added). Rather than suggesting that the 1935 FTC's powers extended no further than its reporting functions, *Humphrey's Executor* cited those functions as examples of the FTC's role in "administering the provisions of the [Act] in respect of 'unfair methods of competition,' that is to say, in filling in and administering the details embodied by that general standard." *Id.* Just as the 1935 FTC was responsible for administering and implementing its organic statute by performing the various functions conferred on it by statute, the CPSC administers and implements the CPSA through its comparable statutory powers.

Finally, the government is wrong to contend that this Court's order granting a stay in *Wilcox* establishes that the government is likely to succeed on the merits here. *See* Stay Appl. 10. The Court in that case concluded that "the Government is likely to show that both the [agencies at issue there] exercise considerable executive power," but did "not ultimately decide … whether [either agency] falls within" the *Humphrey's Executor* exception. *Wilcox*, 145 S. Ct. at 1415. And although the government observes that the applicability of *Humphrey's Executor* "depend[s] upon the characteristics of the agency before the Court," *id.* at 11 (alteration in original; quoting *Seila Law*, 591 U.S. at 215), it makes little effort to analyze the powers of the agencies at issue in *Wilcox* and compare them to those of the CPSC. In contrast, the Fifth and Tenth Circuits (and the district court here) have held after detailed analysis of the CPSC's structure and function that they closely resemble those of an agency whose tenure protections this Court has held lawful—the 1935 FTC. The government

has not shown that the Fourth Circuit—or this Court, should it grant review of the issue despite having recently twice declined to do so—will likely hold otherwise.

B. The government is not likely to prevail on its remedial arguments.

The government has also not made the requisite strong showing that it is likely to succeed on its alternative argument that the district court abused its discretion by enjoining Secretary Bessent, Director Vought, and Acting Chairman Feldman from effectuating terminations that the court concluded were unlawful. As the district court observed, the D.C. Circuit has held that such a remedy is available. *See* App. 25a (citing *Severino v. Biden*, 71 F.4th 1038, 1042–43 (D.C. Cir. 2023); *Swan v. Clinton*, 100 F.3d 973, 980 (D.C. Cir. 1996)). This Court has likewise recognized that such a remedy can be proper. *Delgado v. Chavez*, 140 U.S. 586, 591 (1891) (affirming the grant of equitable relief in favor of "certain parties showing themselves to be *de facto* commissioners to compel [a public official] to respect their possession of the office, discharge his duties …, and not assume to himself judicial functions, and adjudicate against the validity of their title"); *cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584, 589 (1952) (affirming a judgment enjoining a subordinate officer from implementing a Presidential directive that exceeded his constitutional authority). So, too, have other courts. *See Priddie v. Thompson*, 82 F. 186, 192 (D.W.V. 1897) (entering "an injunction … to restrain [a United States] marshal … from any interference or molestation with [the deputy marshal] in the possession of the office"). The government does not identify any court that has reached a contrary conclusion.

The government chiefly contends that, although *Humprey's Executor* establishes that "*Congress* may sometimes restrict the [President's] removal power by statute," Article II precludes "*courts*" from giving effect to a valid statutory removal restriction by ordering reinstatement. Stay Appl. 16; *see id.* at 17 (arguing that reinstatement presents "constitutional concerns"). Our government, however, consists of "three coequal branches," *Clinton v. Jones*, 520 U.S. 681, 699 (1997), and the government does not explain why Congress may impose a restriction through its legislative power but the courts may not effectuate the same restriction through their judicial power. The government's position would also abrogate the merits holding of *Humphrey's Executor*, rendering statutory tenure protections for multimember agencies impotent. Under the government's theory, the President could terminate independent agency heads at will so long as he provided them with backpay. *Humphrey's Executor*, though, held that Congress may limit the President's ability to use his "power of removal" to exert "coercive influence" over "the independence of a commission." 295 U.S. at 629–30. Transforming a statutory guarantee of agency independence into a severance-pay provision would make Congress's permissible judgment, embodied in a statute signed into law by the President, entirely ineffectual.

The government further argues that a court may not use its equitable powers to "restrain an executive officer from making a wrongful removal of a subordinate appointee." Stay Appl. 16–17 (quoting *White v. Berry*, 171 U.S. 366, 377 (1898)). Even setting aside the fact that the district court's injunction does not restrain the President but only his subordinate officers, the government overlooks that courts—

including this Court—have historically granted reinstatement as a remedy for the unlawful termination of a federal official. *See, e.g.*, *Vitarelli v. Seaton*, 359 U.S. 535, 546 (1959) (holding that an unlawfully discharged employee of the Department of the Interior was "entitled to the reinstatement which he seeks"); *Pelicone v. Hodges*, 320 F.2d 754, 757 (D.C. Cir. 1963) (holding that an unlawfully discharged employee of the Department of Commerce was "entitled to reinstatement to Government service"); *Berry v. Reagan*, 1983 WL 538, at *6 (D.D.C. Nov. 14, 1983) (enjoining the President from "preventing or interfering" with the service of unlawfully terminated members of the U.S. Commission on Civil Rights); *Paroczay v. Hodges*, 219 F. Supp. 89, 95 (D.D.C. 1963) (declaring that an unlawfully terminated Department of Commerce employee was "entitled to be reinstated to his position" and "retain[ing] jurisdiction … so that a mandatory injunction can issue" if needed); *cf. Aviel v. Gor*, 2025 WL 1600446, at *2 (D.C. Cir. June 5, 2025) (Katsas, J., concurring) (noting the *en banc* D.C. Circuit's view that the government is unlikely to show that "reinstatement is rarely if ever an available remedy for unlawfully removed officials").[2]

Regardless, whatever the scope of the district court's equitable powers, the court here held in the alternative that it would grant relief pursuant to its mandamus

[2] With one exception, the cases that the government cites describe limits on federal courts' equitable powers with respect to *state* officers and proceedings. *See Walton v. House of Representatives*, 265 U.S. 487, 489 (1924); *Harkrader v. Wadley*, 172 U.S. 148, 165 (1898); *In re Sawyer*, 124 U.S. 200, 212 (1888); *see also Baker v. Carr*, 369 U.S. 186, 231 (1962) (describing *Walton* and *Sawyer* as "h[olding] that federal equity power could not be exercised to enjoin a state proceeding to remove a public officer"). The sole exception, *White v. Berry*, 171 U.S. 366 (1898), applied *Sawyer* to a federal officer but did not explain its basis for doing so, *id.* at 376–78.

powers, App. 29a–30a, and even the cases cited by the government recognize that a court may use its mandamus power to reinstate an unlawfully terminated official. *See White*, 171 U.S. at 377; *Sawyer*, 124 U.S. at 212; *see also* Stay Appl. 18 (acknowledging that "this Court has approved the use of mandamus to try the title to judicial or local offices"). Although the government states that it is "unaware of any precedent (from before this Administration) for using mandamus to reinstate an executive officer removed by the President," Stay Appl. 18, it cites no cases holding that such a remedy is *not* available, and makes no argument as to why it would not be. Indeed, in the district court, the government did not address mandamus at all, despite the Commissioners raising it as a basis for relief. *See* D. Ct. Dkt. 18-1 at 20–21. The Fourth Circuit has "repeatedly held" that "issues raised for the first time on appeal generally will not be considered," *Muth v. United States*, 1 F.3d 246, 250 (4th Cir. 1993), and the government cannot carry its burden of showing that the court of appeals is likely even to *consider* its challenge to the district court's alternative remedial holding, let alone that this challenge is likely to succeed on the merits.

Likewise, the government has failed to preserve its new argument that the district court's remedy is impermissible absent a "statutory provision that provides … that courts may restore CPSC members whom the President has removed without cause." Stay Appl. 16. The government did not make this argument in the district court or in its stay application in the court of appeals. In any event, the argument is meritless. Although the government is correct that this Court "has required 'clear and explicit language' before assuming that Congress has sought to burden the

President's removal power," *id.* (quoting *Shurtleff v. United States*, 189 U.S. 311, 315 (1903)), the CPSA contains such language. *See* 15 U.S.C. § 2053(a) (stating that CPSC Commissioners may be removed "for neglect of duty or malfeasance in office *but for no other cause*" (emphasis added)). The government provides no support for its view that Congress, after placing a lawful constraint on the executive, must further dictate precisely how a district court can remedy a violation of that constraint.

II. The government cannot establish the other stay factors.

The Court should decline to exercise its discretion to grant a stay because the government also cannot show that the other required factors warrant such relief.

A. Despite accepting that it must demonstrate a "reasonable probability of obtaining certiorari," Stay Appl. 10, the government fails to acknowledge that *within the last year* this Court has twice denied petitions for certiorari presenting the question whether the CPSA's tenure protections violate Article II. *See Leachco, Inc. v. CPSC*, 145 S. Ct. 1047 (Jan. 13, 2025); *Consumers' Research v. CPSC*, 145 S. Ct. 414 (Oct. 21, 2024). Although the government observes that this Court has "granted certiorari to consider the validity of restrictions on the President's removal power" as regards *other* agencies, Stay Appl. 18, it gives no reason why this Court should revisit its conclusion, made less than six months ago, that the issue does not merit review as to *this* agency. Meanwhile, the government offers a single sentence contending that "the remedial question" independently warrants review "given the serious separation-of-power concerns raised by court orders reinstating removed officers," *id.*,

but it fails to explain why an order enforcing a statutory provision raises such concerns if the underlying statute is consistent with the separation of powers.

B. The government's actions belie its claim that it is likely to suffer irreparable harm absent a stay. For almost four months prior to their terminations, Commissioners Boyle, Hoehn-Saric, and Trumka served under President Trump, who made no effort to remove them and voiced no dissatisfaction with their performance. When removing them, the President offered no explanation and identified no harm from their service. And in opposing the Commissioners' motion for summary judgment in the district court, the government identified no specific harm, asserting only general concern over whether the President would be able to "implement[] his electoral mandate." D. Ct. Dkt. 21-1 at 25. Then, after the Commissioners returned to work on June 13 following the district court's order, and after the Fourth Circuit did not act on the government's request for a ruling by June 20 on its motion for an administrative stay, the government waited to seek relief from this Court until July 2. The government's lack of urgency reflects its lack of irreparable harm.

Before this Court, the government claims that the Commissioners have caused disruption since the district court's judgment by acting "quickly and aggressively to undo almost every action taken by the two Commissioners who have retained the President's trust." Stay Appl. 19. Adverbs aside, however, the evidence reflects that the Commissioners have respected and effectuated the district court's holding that their terminations were "without legal effect," App. 32a, by suspending actions taken by only two of the five Commissioners—actions that were beyond the CPSC's lawful

authority because they were taken without the three-member quorum that the CPSA requires. *See* D. Ct. Dkt. 31-4 at 4 (citing 15 U.S.C. § 2053(d)). In other words, the Commissioners took steps to undo the effect of the unlawful terminations and to return the agency to its lawful status quo ante.[3]

The need for such action following the district court's judgment underscores that the government's fears about "[t]he prospect of mass invalidation and revalidation of the CPSC's actions" do not weigh in favor of a stay. Stay Appl. 20. That prospect, after all, exists just as much if this Court *grants* a stay and it is later determined—consistent with the district court's holding, which the Fourth Circuit declined to disturb—that the Commissioners' terminations were without legal effect. The potential uncertainty that hangs over actions taken by an independent commission while the status of its leadership remains legally contested is surely why this Court warned against "the disruptive effect of the repeated removal and reinstatement of officers during the pendency of … litigation." *Wilcox*, 145 S. Ct. at 1415. Here, that factor weighs against a stay, where the Commissioners are currently serving in their roles, as they have been in the four weeks since the district court entered judgment.

[3] The government mischaracterizes the record when it claims that the Commissioners have "acted to prevent the CPSC" from implementing an Executive Order. Stay Appl. 19. The record shows that the Commissioners enforced the requirement that onboarding staff to implement the Executive Order—like other agency business—requires a quorum and that the staff onboarded in their absence thus lacked proper authorization. D. Ct. Dkt. 31-4 at 5–6.

To the extent that the government claims that there is now "dysfunction" at the CPSC because Acting Chairman Feldman regards the reinstated Commissioners as having taken "procedurally improper" actions, Stay Appl. 22, the dispute involves "differences of opinion … over substantive and procedural matters of policy internal to the CPSC" that "are to be expected of a multimember adjudicatory body that is bipartisan by design" and that "preexisted this litigation." App. 39a. Specifically, Acting Chairman Feldman appears to contend that because "Congress has vested the agency's 'executive and administrative functions'" in him, he has authority to override the Commissioners' official acts. Stay Appl. 2 (quoting 15 U.S.C. § 2053(f)(1)). The same CPSA subsection on which Acting Chairman Feldman relies, however, goes on to state that "[i]n carrying out any of [these] functions … the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make." 15 U.S.C. § 2053(f)(2). Any claimed "dysfunction," then, stems from the Acting Chairman's adherence to a novel and incomplete statutory interpretation, the merits of which lie beyond the scope of the government's appeal.

Finally, although the government claims that the President's inability to assert total "control of the agency" is an irreparable harm, Stay Appl. 19, that consequence flows from Congress's lawful decision to establish the CPSC as an independent agency. As Judge Wynn explained, the court's order requires only that the President abide by the "state of affairs … under which every administration has operated since the [CPSC] was established in 1972." App. 46a–47a. In any event, as the district court

recognized, President Trump will have the opportunity to appoint Commissioner Boyle's successor when her term expires on October 27 and, "at that point, possibly create a majority on the [CPSC] aligned with his political preferences." *Id.* at 21a n.8. The government has not identified any pressing reason why the President must exert his will over the agency in the intervening three months.

C. As against the speculative harm to the government in the event that the district court's order remains in effect during the government's appeal, the district court found that a stay would substantially injure the Commissioners, who were appointed to serve fixed terms that will be irretrievably lost if they are barred from their lawfully held offices. App. 39a–40a. And it found that this harm, in turn, will create broader injury by depriving the public of the expertise and oversight that the Commissioners have brought to bear on consumer safety. *See id.* at 40a (noting that "[t]here is no dispute" that the Commissioners have "performed their duties … ably" and brought to their roles "substantial expertise in the field of consumer protection"). The government claims that "the authority to evaluate [the Commissioners'] job performance belongs to the President, not to the courts," Stay Appl. 20–21, but it overlooks that the President has never accused the Commissioners of neglect of duty or malfeasance in office, or disputed the high quality of their work in their roles.

Moreover, although the government finds "no good reason to think that accountability to the President would somehow endanger the CPSC's ability to protect consumers," *id.* at 21, Congress thought otherwise. In establishing the CPSC as a "multimember body of experts, balanced along partisan lines," *Seila Law*, 591

U.S. at 216, Congress made the legislative judgment that public safety would best be served by collaboration between a diverse set of experts in their fields, each of whom holds the freedom to state his or her genuine views without fear of reprisal. And while it is true, as the government points out, that "the people elected the President," Stay Appl. 21 (citation omitted), so, too, did they elect the Congress that made the determination that the CPSC would most effectively serve the public good if the Commissioners were not beholden to political vicissitudes.

The government once again relies on the *Wilcox* order, claiming that this Court held as a categorical matter that the balance of equities always favors the executive when the government seeks a stay pending appeal of a judgment reinstating unlawfully terminated independent agency heads. *Id.* at 20. This Court, though, has long acknowledged that the decision whether to grant a stay requires the "exercise of judicial discretion" based on "the circumstances of the particular case." *Nken*, 556 U.S. at 433 (quoting *Virginian Ry. Co.*, 272 U.S. at 672–73). As the party seeking a stay, the government bears the burden of showing that the specific circumstances of *this* case merit this Court's "intrusion into the ordinary processes of administration and judicial review." *Id.* at 427 (citation omitted). The government has failed to do so.

III. Certiorari before judgment is unwarranted.

This Court should reject the government's request that it grant certiorari before the Fourth Circuit has had an opportunity to rule. Such a grant "is an extremely rare occurrence," *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 n.* (1976) (Rehnquist, J., in chambers), reserved for cases of "such imperative public importance

as to justify deviation from normal appellate practice and to require immediate determination in this Court," S. Ct. R. 11. As the government acknowledges, Stay Appl. 23, this Court recently denied a request for certiorari before judgment in *Wilcox*. The only subsequent development that the government identifies is that courts have continued to resolve challenges to allegedly unlawful terminations on the basis of existing law. Rather than creating a "cloud of uncertainty," *id.*, courts have been issuing reasoned judgments that have been subject to appellate review in the ordinary course. Here, for example, the district court concluded after full merits briefing and argument that the tenure protections in the CPSA are constitutional—a conclusion that aligns with reasoned decisions from the Fifth and Tenth Circuits. The Fourth Circuit's consideration of whether to follow or depart from that consensus will have a material bearing on whether the issue merits this Court's review.

CONCLUSION

The application for a stay should be denied.

Respectfully submitted,

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