No. 25A

In the Supreme Court of the United States

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

v.

REBECCA KELLY SLAUGHTER, ET AL.

APPLICATION TO STAY THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND REQUEST FOR ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Donald J. Trump, President of the United States; Andrew N. Ferguson, Chairman, Federal Trade Commission; Melissa Holyoak, Commissioner, Federal Trade Commission; and David B. Robbins, Executive Director, Federal Trade Commission.

Respondents (plaintiffs-appellees below) are Rebecca Kelly Slaughter and Alvaro M. Bedoya.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Slaughter v. *Trump*, No. 25-cv-909 (July 24, 2025)

United States Court of Appeals (D.C. Cir.):

Slaughter v. *Trump*, No. 25-5261 (September 2, 2025)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Donald J. Trump, President of the United States, et al.—respectfully requests that this Court stay the judgment issued by the U.S. District Court for the District of Columbia (App., *infra*, 38a-39a) pending appeal to the U.S. Court of Appeals for the D.C. Circuit and any further proceedings in this Court. The Solicitor General also respectfully requests an immediate administrative stay of the judgment to prevent ongoing irreparable injury. Finally, the Solicitor General respectfully requests that this Court treat this application as a petition for a writ of certiorari before judgment and grant the petition.

In this case, the lower courts have once again ordered the reinstatement of a high-level officer wielding substantial executive authority whom the President has determined should not exercise any executive power, let alone significant rulemaking and enforcement powers. On multiple prior occasions—with respect to the National Labor Relations Board (NLRB), Merit Systems Protection Board (MSPB), and Con-

sumer Products Safety Commission (CPSC)—this Court has granted emergency stays of lower-court injunctions attempting to reinstate such senior executive officials. This Court held that the government was "likely to show that both the NLRB and MSPB exercise considerable executive power" and recognized that the government faces irreparable harm "from an order allowing a removed officer to continue exercising the executive power." *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025). When lower courts tried to confine this Court's order to the NLRB and MSPB, this Court rebuked those courts for disregarding the controlling force of this Court's emergency orders in like cases. See *Trump* v. *Boyle*, 145 S. Ct. 2653 (2025).

Now, a split panel of the D.C. Circuit has refused to stay the district court's injunction compelling the immediate reinstatement of a Commissioner of the Federal Trade Commission (FTC) whom President Trump removed in March 2025. Both rulings are incorrect. On the merits, the FTC "exercise[s] executive power in a similar manner" to those other agencies, so this Court's previous orders "squarely control" this case as well. See *Boyle*, 145 S. Ct. at 2654. Yet the district court dismissed *Wilcox*, stating that it "will not upend its own analysis on the basis of a procedural order" that "does not cite any substantive case law to support" its analysis. App., *infra*, 79a. The D.C. Circuit refused to stay that order, even though this case is "virtually identical" to *Wilcox* and *Boyle*. App., *infra*, 15a (Rao, J., dissenting). Like the NLRB, MSPB, and CPSC, the FTC exercises "considerable executive power," *Wilcox*, 145 S. Ct. at 1415—for instance, it brings enforcement suits for injunctions and civil penalties, promulgates binding rules, enters binding adjudicatory orders, conducts pre-enforcement investigations, and even exercises significant foreign-affairs authority. On the equities, as in *Wilcox* and *Boyle*, "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive

power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Ibid.* And as in *Wilcox* and *Boyle*, a stay also is "appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers." *Ibid.*

Because this case concerns the same agency (the FTC) and the same statutory removal restriction (15 U.S.C. 41) that were at issue *Humphrey's Executor*, 295 U.S. 602 (1935), the lower courts reasoned that they were bound by that decision. But in fact, they applied an overly expansive reading of *Humphrey's Executor* that this Court repudiated in *Seila Law LLC* v. *Consumer Financial Protection Bureau*, 591 U.S. 197 (2020). *Seila Law* explained that the holding of *Humphrey's Executor* rested on the "New Deal-era FTC," "the 1935 FTC," or "the FTC (as it existed in 1935)"—an agency that the Court understood to function solely as "a legislative or judicial aid" that exercised "'no part of the executive power.'" *Seila Law*, 591 U.S. at 215, 218. The modern FTC has amassed considerable executive power in the intervening 90 years—power that equals or exceeds that of the NLRB, MSPB, and CPSC. The lower courts erred, therefore, by treating *Humphrey's Executor* as binding while ignoring this Court's equally binding explication of *Humphrey's Executor* in *Seila Law*. And that error—an unduly expansive reading of *Humphrey's Executor* that ignores this Court's more recent precedents—is the very same error that formed the basis of the orders that this Court stayed in *Wilcox* and *Boyle*.

Once again, this Court should intervene. "Lower court judges may sometimes disagree with this Court's decisions, but they are never free to defy them." *NIH* v. *APHA*, No. 25A103, slip op. 1 (Aug. 21, 2025) (Gorsuch, J., concurring in part and dissenting in part). This case is indistinguishable from *Wilcox* and *Boyle*, and the lower courts should have treated it so.

STATEMENT

1. In 1914, Congress enacted the Federal Trade Commission Act, ch. 311, 38 Stat. 717 (15 U.S.C. 41 *et seq.*). The Act establishes the Federal Trade Commission, an agency that consists of five members appointed by the President with the advice and consent of the Senate. See 15 U.S.C. 41. Members serve staggered seven-year terms, and no more than three members may be affiliated with the same political party. See *ibid.* Under the Act, a member "may be removed by the President for inefficiency, neglect of duty, or malfeasance in office." *Ibid.* *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), upheld the constitutionality of those removal restrictions based on the nature of "the New Deal-era FTC" and "the set of powers the Court considered as the basis for its decision"—namely, making "reports and recommendations to Congress" and submitting "recommended dispositions" to courts. See *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 218, 219 n.4 (2020).

Since 1935, the FTC has assumed major additional powers. The FTC today executes the FTC Act and many other statutes, including parts of the Sherman Act, 15 U.S.C. 1 *et seq.*; Clayton Act, 15 U.S.C. 12 *et seq.*; Lanham Act, 15 U.S.C. 1051 *et seq.*; Packers and Stockyards Act, 1921, 7 U.S.C. 181 *et seq.*; Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*; and Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 *et seq.* In total, the FTC "has enforcement or administrative responsibilities under more than 80 laws." FTC, *Legal Library: Statutes*, https://ftc.gov/legal-library/browse/statutes.

The FTC today exercises vast executive authority under the statutes it administers. For example, the agency exercises:

- Enforcement authority, including the power to bring civil suits seeking injunctions and civil penalties. See, *e.g.*, 15 U.S.C. 45(m)(1)(A), 53(b), 57b.

- Rulemaking authority, including the power to issue rules prohibiting unfair or deceptive acts or practices (consumer-protection violations). See, *e.g.*, 15 U.S.C. 57a.
- Adjudicatory authority, including the power to issue judicially enforceable orders directing businesses to cease and desist from unfair methods of competition (antitrust violations) or unfair or deceptive acts or practices. See, *e.g.*, 15 U.S.C. 45(b)-(c).
- Authority to provide investigative assistance to, and negotiate international agreements with, foreign law-enforcement agencies. See 15 U.S.C. 46(j).

2. In 2018, President Trump, with the advice and consent of the Senate, appointed respondent Rebecca Slaughter to the FTC. See App., *infra*, 43a. In 2024, President Biden, with the advice and consent of the Senate, reappointed her, this time to a term expiring in 2029. See *ibid.*

In March 2025, the Deputy Director of the White House Office of Presidential Personnel sent respondent an email containing a letter from President Trump. See App., *infra*, 43a. The letter stated: "I am writing to inform you that you have been removed from the Federal Trade Commission, effective immediately. * * * Your continued service on the FTC is inconsistent with my Administration's priorities. Accordingly, I am removing you from office pursuant to my authority under Article II of the Constitution." *Ibid.*

Respondent sued the President, the Chairman of the FTC, another Commissioner, and the FTC's Executive Director (applicants) in the U.S. District Court for the District of Columbia. See App., *infra*, 44a. Respondent claimed that her removal violated the Act and sought declaratory and injunctive relief restoring her to office.

See *ibid.*[1]

In July 2025, the district court granted summary judgment to respondent, rejecting the government's argument that the FTC's tenure protection violates Article II. App., *infra*, 40a-81a. The court concluded that *Humphrey's Executor* established the constitutionality of the FTC's removal protections. See *id.* at 54a-57a. The court accepted that "the FTC has acquired immense new authority" since *Humphrey's Executor* but determined that those new powers do not provide a "relevant basis on which to distinguish" that precedent. *Id.* at 63a-64a (emphasis omitted). The court dismissed this Court's stay order in *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2024), stating that "the order does not cite any substantive case law" and that the district court would not "upend its own analysis on the basis of a procedural order that fails to address *Humphrey's Executor*." App., *infra*, 79a.

The district court issued a declaratory judgment that the President's removal of respondent was "unlawful" and "without legal effect" and that respondent "remains a rightful member" of the FTC. App., *infra*, 38a. The court also issued an injunction prohibiting applicants (other than the President) from "interfering with" respondent's "right to perform her lawful duties as an FTC Commissioner." *Id.* at 39a. The court rejected the government's argument that courts lack the power to issue declaratory or injunctive relief restoring removed executive officers. See App., *infra*, 72a-74a.

The district court denied a stay pending appeal. See App., *infra*, 31a-37a. The court distinguished the stay order in *Wilcox* on the ground that it involved "'the *NLRB*

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[1] Alvaro Bedoya, another FTC Commissioner removed by President Trump, joined respondent's suit. See App., *infra*, 44a. But Bedoya later submitted a resignation letter that eliminated any remaining claim to office, and the district court dismissed his claim as moot. See *id.* at 45a-47a. Though he is nominally a respondent here, see Sup. Ct. R. 12.6, we use the term "respondent" to refer to former Commissioner Slaughter.

and *MSPB*,'" while this case involves "the *FTC*." *Id.* at 34a (emphasis in original). The court likewise distinguished this Court's stay order in *Trump* v. *Boyle*, 145 S. Ct. 2653 (2025), on the ground that it involved the CPSC. See App., *infra*, 34a n.3.

4. The D.C. Circuit granted an administrative stay almost immediately after the district court issued its decision. See App., *infra*, 30a. More than a month later, on September 2, the court of appeals, by a 2-1 vote, dissolved the administrative stay, denied the government's motion for a stay pending appeal, and denied expedited briefing on the merits. *Id.* at 1a-29a. The government had asked the court of appeals to extend its administrative stay for seven days to provide time to seek review in this Court, see C.A. Doc. 2127731, at 3 (July 29, 2025); the court also denied that request.

The court of appeals determined that the government was unlikely to succeed on the merits because "*Humphrey's Executor* controls this case." App., *infra*, 3a. The court distinguished this Court's stay orders in *Wilcox* and *Boyle* on the ground that upholding the removal provisions in those cases would have required "an *extension* of *Humphrey's Executor* to a new context," while "the present case involves the exact same agency, the exact same removal provision, and the same exercises of executive power already addressed" in *Humphrey's Executor*. *Id.* at 10a. In a footnote, the court rejected the argument that federal courts lack the authority to reinstate removed officers, stating that the en banc D.C. Circuit had rejected that contention in *Harris* v. *Bessent*, No. 25-5037, 2025 WL 1021435 (Apr. 7, 2025), stay granted sub nom. *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025). See App., *infra*, 10a n.1.

Turning to the equities, the court of appeals concluded that the "calculus in this case differs" from the calculus in *Wilcox* and *Boyle*. See App., *infra*, 12a. The court reasoned that, because respondent "is the sole remaining Democrat on a Commission with a governing majority of three Republicans," this case does not raise the

concern that "the reinstatement of the removed officers could affect the agency's composition in a way that would empower it to take meaningful regulatory actions that conflict with the President's agenda." *Ibid.*

Judge Rao dissented, emphasizing that lower courts "are required to exercise [their] equitable discretion in accordance with th[is] Court's directives" in *Wilcox* and *Boyle*. App., *infra*, 15a; see *id.* at 15a-29a. "Even recognizing that *Humphrey's Executor* remains binding" on the D.C. Circuit, Judge Rao deemed the government "likely to succeed in its challenge to the district court's remarkable injunction." *Id.* at 17a. She "assum[ed]" without deciding that respondent's removal "was unlawful" but concluded that "the district court nonetheless lacked the power to issue the injunction" reinstating her, because "[s]uch injunctive relief is unprecedented and creates a direct confrontation with the President over his core Article II powers." *Ibid.* She also concluded that the balance of equities favors the government, observing that this Court's "recent stay decisions in similar removal cases must inform" a lower court's analysis of the equities. *Id.* at 27a.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay a district court's judgment pending review in the court of appeals and in this Court. See, *e.g.*, *McHenry* v. *Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025). To obtain such relief, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," the Court balances the equities and weighs the relative harms. *Ibid.*

In *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025), this Court determined that those factors justified staying a district court's judgments countermanding the President's

removal of members of the NLRB and MSPB. In *Trump* v. *Boyle*, 145 S. Ct. 2653 (2025), it determined that *Wilcox* "squarely controlled" its decision and required it to stay a district court's judgment countermanding the President's removal of members of the CPSC. *Id.* at 2654. This latest instance of lower-court resistance to this Court's orders should fare no differently. It is a "basic tenet of our judicial system" that, "[w]hatever their own views," lower-court judges are "duty-bound to respect" this Court's decisions. *NIH* v. *APHA*, No. 25A103, slip op. 4 (Aug. 21, 2025) (Gorsuch, J., concurring in part and dissenting in part).

A. The Government Is Likely To Succeed On The Merits

The most critical stay factor is usually the applicant's likelihood of success on the merits. See *Ohio* v. *EPA*, 603 U.S. 279, 292 (2024). Here, that likelihood is easily established. This Court concluded that the government was likely to succeed on the merits in challenging reinstatement of NLRB, MSPB, and CPSC heads in *Wilcox* and *Boyle*. The government is at least as likely to succeed as to the FTC here. See Appl. at 12-31, *Wilcox*, *supra* (No. 24A966); Appl. at 10-18, *Boyle*, *supra* (No. 25A11). Like those agencies, the modern FTC exercises substantial executive power. Under this Court's cases, the President must be able to remove, at will, members of multimember commissions that exercise substantial executive power. Moreover, even if the FTC's powers differed in some meaningful way, this Court's precedents establish that district courts lack the power to issue injunctions or declaratory judgments countermanding the President's removal of executive officers. *Humphrey's Executor* aside, district courts cannot compel reinstatement of agency heads and allow them to purport to exercise executive power when the President has determined they should exercise none.

1. Article II empowers the President to remove FTC members at will

a. Article II vests the "executive Power" in the President and directs him to "take Care that the Laws be faithfully executed." U.S. Const. Art. II, § 1, Cl. 1; *id.* § 3. The executive power "includes the ability to supervise and remove the agents who wield executive power in [the President's] stead." *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 238 (2020). The President's power to remove executive officers whom he has appointed "follows from the text of Article II," "was settled by the First Congress," and has been "confirmed" by this Court many times. *Id.* at 204; see *Boyle*, 145 S. Ct. at 2654; *Wilcox*, 145 S. Ct. at 1415; *Trump* v. *United States*, 603 U.S. 593, 621 (2024); *Collins* v. *Yellen*, 594 U.S. 220, 250-256 (2021); *Seila Law*, 591 U.S. at 213-232; *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 577, 492-508 (2010); *Myers* v. *United States*, 272 U.S. 52, 108-176 (1926).

In *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), this Court nonetheless held that Article II allowed Congress to grant tenure protection to members of "the New Deal-era FTC." *Seila Law*, 591 U.S. at 218. "Because the Court limited its holding to 'officers of the kind here under consideration,'" the applicability of that decision "depend[s] upon the characteristics of the agency before the Court." *Id.* at 215 (quoting *Humphrey's Executor*, 295 U.S. at 632). "Rightly or wrongly, the Court viewed the FTC (as it existed in 1935) as exercising 'no part of the executive power.'" *Ibid.* (quoting *Humphrey's Executor*, 295 U.S. at 628). The Court instead viewed the 1935 FTC as a "legislative" or "judicial" aid—an entity that acted "as a legislative agency" by "making investigations and reports thereon for the information of Congress," "as an agency of the judiciary" by making recommendations to courts "as a master in chancery," and "quasi-legislatively" and "quasi-judicially" by conducting

agency adjudications concerning "unfair methods of competition." *Humphrey's Executor*, 295 U.S. at 628.

This Court has since described *Humphrey's Executor* as a narrow "exceptio[n]" to the "general rule" of "unrestricted removal"—one that represents "'the outermost constitutional limi[t] of permissible congressional restrictions'" on the President's power to remove principal executive officers. *Seila Law*, 591 U.S. at 215, 218. The Court has confined that exception to agencies with the same characteristics as "the 1935 FTC"—"a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions and was said not to exercise any executive power." *Id.* at 216, 218. The Court has refused to extend that exception to "multimember expert agencies" that "wield substantial executive power." *Id.* at 218 (emphasis added); see *Collins*, 594 U.S. at 252 ("Th[e] purposes [of the removal power] are implicated whenever an agency does important work."). The Court has noted, moreover, that *Humphrey's Executor*'s "conclusion that the FTC did not exercise executive power has not withstood the test of time." *Seila Law*, 591 U.S. at 216 n.2.

Applying those principles, this Court concluded in *Wilcox* that the government was likely to succeed on the merits because it was "likely to show that both the NLRB and MSPB exercise considerable executive power." 145 S. Ct. at 1415. The Court then determined that *Wilcox* "squarely controlled" the stay application in *Boyle* because the CPSC "exercises executive power in a similar manner as the [NLRB]." 145 S. Ct. at 2654.

Seila Law and *Collins* thus establish that the President has the power to remove, at will, any principal officers who exercise "substantial" or "important" executive power. *Wilcox* and *Boyle* further establish that the government is likely to show that agencies such as the NLRB, MSPB, and CPSC meet that test because of the

"considerable" executive power they exercise—and that their members accordingly fall outside the *Humphrey's Executor* exception.

b. The modern FTC—like the agencies at issue in *Seila Law*, *Collins*, *Wilcox*, and *Boyle*, but unlike the New Deal-era FTC as understood in *Humphrey's Executor*—exercises "substantial" or "considerable" executive power. Then-Judge Kavanaugh accordingly included the FTC (along with the NLRB, MSPB, and CPSC) in a list of "agencies exercising substantial executive authority." *PHH Corp.* v. *CFPB*, 881 F.3d 75, 173 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting).

First, unlike the 1935-era FTC, the modern FTC exercises broad power to initiate judicial proceedings against private parties. For instance, after *Humphrey's Executor* was decided, Congress for the first time granted the FTC the power to file civil suits asking courts to award injunctions preventing violations of "any provision of law enforced by the [agency]," 15 U.S.C. 53(b); civil penalties for violations of FTC rules or orders, 15 U.S.C. 45(m); and "such relief as the court finds necessary to redress injury to consumers," including the "refund of money or return of property," 15 U.S.C. 57b(b). The power to seek remedies "against private parties on behalf of the United States in federal court" is a "quintessentially executive power not considered in *Humphrey's Executor*." *Seila Law*, 591 U.S. at 219. "A lawsuit is the ultimate remedy for a breach of the law, and it is to the President * * * that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.'" *Buckley* v. *Valeo*, 424 U.S. 1, 138 (1976) (per curiam).

Next, while *Humphrey's Executor* did not discuss rulemaking authority at all, the modern FTC wields significant rulemaking authority. For example, it may issue "rules which define with specificity acts or practices which are unfair or deceptive acts or practices" under the FTC Act. 15 U.S.C. 57a(a)(1)(B). The FTC also possesses

rulemaking authority under a host of statutes that post-date *Humphrey's Executor*, including the Wool Products Labeling Act of 1939, 15 U.S.C. 68d(a); the Fur Products Labeling Act of 1951, 15 U.S.C. 69f(b); the Textile Fiber Products Identification Act of 1958, 15 U.S.C. 70e(c); the Hobby Protection Act of 1973, 15 U.S.C. 2101(c); the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6294; the Hart-Scott Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a(d); the Telephone Disclosure and Dispute Resolution Act of 1992, 15 U.S.C. 5711; the Energy Policy Act of 1992, 42 U.S.C. 13232; the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994, 15 U.S.C. 6102; the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6502(b)(1); the Fairness to Contact Lens Consumers Act of 2003, 15 U.S.C. 7607; the Energy Independence and Security Act of 2007, 42 U.S.C. 17021(b); and the Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3053. That authority to "promulgate binding rules" implementing federal statutes is a form of "significant executive power." *Seila Law*, 591 U.S. at 218, 220.

The modern FTC also wields far more significant adjudicatory authority than the 1935 FTC in *Humphrey's Executor*. The 1935 FTC could issue cease-and-desist orders, but they lacked binding effect until courts granted injunctions enforcing them. See *Humphrey's Executor*, 295 U.S. at 620-621. FTC orders thus functioned as little more than "recommended dispositions," *Seila Law*, 591 U.S. at 218, prompting the Court to view the 1935 FTC's functions as "predominantly quasi-judicial and quasi-legislative," *Humphrey's Executor*, 295 U.S. at 624. But under an amendment enacted after *Humphrey's Executor*, FTC cease-and-desist orders can become final and enforceable even without a separate court-ordered injunction. See 15 U.S.C. 45(g), (*l*); Wheeler-Lea Act, ch. 49, § 3, 52 Stat. 113-114 (1938). Moreover, statutes enacted since *Humphrey's Executor* empower the FTC to award other remedies in adminis-

trative proceedings. For example, the Horseracing Integrity and Safety Act of 2020 allows the FTC to impose sanctions such as "lifetime bans from horseracing" and "changes to the order of finish in covered races." 15 U.S.C. 3057(3)(A); see 15 U.S.C. 3057(d) and 3058(b) (authorizing a private entity to propose the sanctions in the first instance but providing for de novo review before the FTC). And the Energy Policy and Conservation Act of 1975 empowers the FTC to impose civil penalties for violations of certain rules. See 42 U.S.C. 6303(a). The power to "unilaterally issue final decisions" in "administrative adjudications" is a "significant executive power" not addressed in *Humphrey's Executor*. *Seila Law*, 591 U.S. at 219-220.

In addition, the modern FTC exercises significant powers to investigate potential violations of the law. While the agency in *Humphrey's Executor* "act[ed] as a legislative agency" by "making investigations and reports thereon for the information of Congress," 295 U.S. at 628, the modern FTC investigates potential lawbreakers so that it can determine whether to bring enforcement proceedings. It may, among other things, issue subpoenas and civil investigative demands, see 15 U.S.C. 49, 57b-1; require entities to file reports or to answer specific questions, see 15 U.S.C. 46(b); review mergers and acquisitions before they may be consummated, see 15 U.S.C. 18a; and review certain agreements among manufacturers of pharmaceutical drugs, see Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, § 1112, 117 Stat. 2461. The power to investigate persons "'who violate the law'" for the purpose of determining whether to pursue enforcement action falls within "'the special province of the Executive Branch'" and "implicates 'conclusive and preclusive' Presidential authority." *Trump*, 603 U.S. at 620-621; see *Seila Law*, 591 U.S. at 206 (describing an agency's authority to "conduct investigations" and "issue subpoenas" as "potent enforcement powers").

Finally, the modern FTC exercises substantial foreign-relations powers. The FTC may provide investigative "assistance" to a "foreign law enforcement agency." 15 U.S.C. 46(j)(1). The agency, with the approval of the Secretary of State, also may "negotiate and conclude" "international agreement[s]" concerning cooperation with "foreign law enforcement agenc[ies]." 15 U.S.C. 46(j)(4). Such international activities fall squarely within the President's Article II power to manage the United States' "foreign affairs." *American Insurance Ass'n* v. *Garamendi*, 539 U.S. 396, 414 (2003). The "conduct of foreign negotiations" "falls peculiarly within the province of the executive department," *The Federalist* No. 72, at 486 (Jacob E. Cooke ed. 1961) (Alexander Hamilton); the "transaction of business with foreign nations is executive altogether," *Opinion on the Powers of the Senate* (Apr. 24, 1790), *in* 6 *The Works of Thomas Jefferson* 49, 50 (Paul Leicester Ford ed. 1904); and the President is "the sole organ of the nation in its external relations, and its sole representative with foreign nations," 10 Annals of Cong. 613 (1800) (statement of Rep. John Marshall). As the dissenters in *Seila Law* agreed, *Humphrey's Executor* does not permit removal restrictions "in areas like war and foreign affairs." 591 U.S. at 275 n.6 (opinion of Kagan, J.); see *id.* at 273 ("foreign relations and war"); *id.* at 280 n.9 ("foreign affairs or war").

In short, the modern FTC exercises far more substantial powers than the 1935 FTC, which (as understood in *Humphrey's Executor*) could only submit reports to Congress, submit recommendations to courts, and issue cease-and-desist orders that could only be enforced by courts. See 295 U.S. at 620, 628. The modern FTC's powers instead resemble the NLRB's and CPSC's. Each of those agencies may bring civil enforcement suits, promulgate binding rules, and issue binding adjudicatory orders. See Appl. at 15-17, *Wilcox*, *supra* (No. 24A966); Appl. at 13-14, *Boyle*, *supra* (No. 25A11). In fact, the FTC's foreign-affairs-related responsibilities mean that the FTC

exercises even more executive power than the NLRB, CPSC, or MSPB. The government is therefore likely to show that the modern FTC, like the agencies in *Wilcox* and *Boyle*, falls outside the *Humphrey's Executor* exception and within the "general rule" of at-will removal. *Seila Law*, 591 U.S. at 215.

c. The lower courts identified no persuasive reason for refusing to follow *Wilcox* and *Boyle*—cases that Judge Rao's dissent correctly described as "virtually identical" to this one. App., *infra*, 15a. The district court discounted the *Wilcox* stay order on the ground that it "does not cite any substantive case law," *id.* at 79a; stated that it would "not upend its own analysis" based on "a procedural order," *ibid.*; and even relied on the analysis in the very orders that *Wilcox* had already stayed, see *id.* at 57a (citing *Wilcox* v. *Trump*, 775 F. Supp. 3d 215 (D.D.C. 2025), and *Harris* v. *Bessent*, 775 F. Supp. 3d 164 (D.D.C. 2025)). That was error. This Court's stay orders, while "not conclusive as to the merits," "squarely contro[l]" the issuance of interim relief "in like cases," which at a minimum should have required the district court to stay its order here. *Boyle*, 145 S. Ct. at 2654. In nonetheless substituting its "own analysis" for this Court's decisions, App., *infra*, 79a, the district court subverted "the hierarchy of the federal court system created by the Constitution and Congress," *NIH*, slip op. 4 (Gorsuch, J., concurring in part and dissenting in part). The district court compounded its error by invoking "repudiated [lower court] decision[s] to reach a different conclusion on an equivalent record." *Id.* at 3.

The court of appeals, for its part, confined *Wilcox* and *Boyle* to "the NLRB, MSPB, and CPSC," refusing to apply those decisions to the modern FTC. App., *infra*, 11a. But *Wilcox* and *Boyle* "squarely contro[l]" stay applications concerning the reinstatement of removed executive officers, not just with respect to the specific agencies involved, but with respect to any other agency that "exercises executive power in a

similar manner." *Boyle*, 145 S. Ct. at 2654. "Just as binding as a holding," after all, "is the reasoning underlying it." *NIH*, slip op. 2 (Gorsuch, J., concurring in part and dissenting in part) (brackets omitted); see *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44, 66-67 (1996) (courts are bound by both "the result" and "the rationale" of this Court's decisions). The FTC exercises executive power in a similar manner to the agencies in *Wilcox* and *Boyle*: It brings judicial enforcement actions, makes legislative rules, and issues binding adjudicatory orders. And the court of appeals did not suggest that the FTC's executive power is somehow less "considerable" than that of the NLRB, MSPB, or CPSC. See *Wilcox*, 145 S. Ct. at 1415.

d. The court of appeals and district court emphasized that they were bound by *Humphrey's Executor*. See App., *infra*, 5a, 54a. But they improperly bound themselves to an expansive reading of *Humphrey's Executor* that this Court repudiated in *Seila Law*. *Seila Law* explained that *Humphrey's Executor* considered only the "New Deal-era FTC," "the 1935 FTC," or "the FTC (as it existed in 1935)." *Id.* at 215, 218. The Court explained that "the contours of the *Humphrey's Executor* exception depend upon the characteristics of the agency before the Court" and on "the set of powers the Court considered as the basis for its decision." *Id.* at 215, 219 n.4 (quoting *Humphrey's Executor*, 295 U.S. at 632). And it noted that, "[r]ightly or wrongly," *Humphrey's Executor* viewed the 1935 FTC as "a legislative or judicial aid" that exercised "'no part of the executive power.'" *Seila Law*, 591 U.S. at 215, 218 (quoting *Humphrey's Executor*, 295 U.S. at 632). By contrast, the modern FTC exercises substantial or considerable executive power.

Contrary to the lower courts' suggestion, *Humphrey's Executor* does not mean that Article II permits tenure protections for any agency named the "Federal Trade Commission," no matter how much more executive power the FTC accumulates. No

one would argue that the FTC Act's removal provisions could remain constitutional under *Humphrey's Executor* if Congress reconfigured the multimember FTC as an agency led by a single commissioner. So too, *Humphrey's Executor* does not control this case because Congress has transformed the FTC from an agency that "performed legislative and judicial functions and was said not to exercise any executive power," *Seila Law*, 591 U.S. at 216, into an agency that wields "substantial executive power," *id.* at 218.

The court of appeals also insisted that, though *Humphrey's Executor* did not say so, the 1935 FTC possessed the power to "promulgate rules and regulations" and to "investigate potential violations of federal law." App., *infra*, 6a. But *Seila Law* rejected that argument, explaining that courts should take *Humphrey's Executor* "on its own terms." 591 U.S. at 219 n.4. "Perhaps the FTC possessed broader rulemaking, enforcement, and adjudicatory powers than the *Humphrey's* Court appreciated. Perhaps not." *Ibid.* "Either way, what matters is the set of powers the Court considered as the basis for its decision, not any latent powers that the agency may have had not alluded to by the Court." *Ibid.* Because the modern FTC exercises significant executive power beyond "the set of powers the Court considered as the basis for its decision," *ibid.*, it falls outside the *Humphrey's Executor* exception.

In any event, even accepting the court of appeals' understanding of the 1935 FTC's authority, the executive power wielded by the FTC has expanded greatly since then. For example, since 1935, the FTC has acquired the power to file suits seeking injunctions and civil penalties, to make rules under dozens of new statutes, to unilaterally issue final orders that take effect even without judicial enforcement, to review mergers before they are consummated, to provide investigative assistance to foreign agencies, and to negotiate international agreements. See pp. 12-15, *supra*. This

Court has recognized that expansion of the FTC's authority. See, *e.g.*, *AMG Capital Management, LLC* v. *FTC*, 593 U.S. 67, 72 (2021) ("In the 1970s Congress authorized the Commission to seek additional remedies in court"); *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 348 (1963) ("Congress in 1950" "explicitly enlarged the FTC's jurisdiction," granting it greater "remedial power over corporate acquisitions"). The lower courts, too, conceded that the FTC has acquired new executive power since 1935, including the power "to seek monetary penalties," App., *infra*, 8a, and the power "to seek injunctive relief," *id.* at 64a.

The court of appeals stated that the modern FTC possesses less power to seek civil penalties than the agency in *Seila Law*, the Consumer Financial Protection Bureau (CFPB). See App., *infra*, 8a. But *Seila Law* sets out a "general rule" of at-will removal, and *Humphrey's Executor* establishes a narrow "exceptio[n]" to that rule. *Seila Law*, 591 U.S. at 215. The relevant question, therefore, is whether the modern FTC differs from the 1935 FTC, not whether it differs from the CFPB. It does: Among other things, the modern FTC can seek civil penalties, while the 1935 FTC could not. Any comparison with the CFPB is beside the point.

Humphrey's Executor, therefore, does not control this case. The general rule of at-will removal established by *Seila Law* and *Collins* controls, and *Wilcox* and *Boyle* make clear that the FTC is subject to that rule.[2]

2. A court lacks the power to issue equitable relief restoring a removed executive officer

Even accepting the court of appeals' erroneous premise that this case "involves the exact same agency, the exact same removal provision, and the same exercises of executive power" as *Humphrey's Executor*, App., *infra*, 10a, this Court should still

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[2] To the extent this Court concludes that *Humphrey's Executor* remains controlling, this Court should overrule it after full briefing and argument.

grant a stay because this case involves a different remedy. See App. 17a (Rao, J., dissenting). *Humphrey's Executor* arose out of a suit for back pay, the remedy traditionally sought by officers claiming wrongful removal. See *Bessent* v. *Dellinger*, 145 S. Ct. 515, 516-518 (2025) (Gorsuch, J., dissenting). In this case, by contrast, the district court granted injunctive and declaratory relief restoring respondent to office. See App., *infra*, 38a-39a. As Judge Rao correctly determined, the government is likely to succeed on the independent ground that the district court's reinstatement of respondent exceeded its remedial authority. See *id.* at 17a-20a (Rao, J., dissenting).

Article II precludes a court from ordering the reinstatement of an executive officer removed by the President. The President's removal power is "'conclusive and preclusive,'" which means that it "may not be regulated by Congress *or reviewed by the courts*." *Trump*, 603 U.S. at 620-621 (emphasis added). Although *Humphrey's Executor* held that *Congress* may sometimes restrict the removal power by statute, this Court has never held that *courts* may restrain the removal of executive officers through injunctions or declarations. Permitting judicial reinstatement orders would substantially extend *Humphrey's Executor*. Unlike a back-pay order, a reinstatement order compels the President to entrust executive power to someone he has removed—a far greater intrusion. In debates leading to the Decision of 1789, members of the First Congress argued against requiring the Senate's consent for removals precisely because of the risk that such a procedure would "forc[e]" officers on the President "whom he considered as unfaithful," *Myers*, 272 U.S. at 124 (quoting Rep. Benson); "saddl[e]" officers "upon the President" "against [his] will," *id.* at 132 (quoting Rep. Sedgwick); and "compe[l]" the President to act through officers "in whom he can have no confidence," *ibid.* (quoting Rep. Boudinot). The district court's remedies pose similar risks.

The district court's remedies also lacked clear statutory authorization. This Court has required "an express statement by Congress" to authorize judicial remedies that could burden the President's Article II powers. *Franklin* v. *Massachusetts*, 505 U.S. 788, 801 (1992). Relatedly, the Court has required "very clear and explicit language" before assuming that Congress has sought to burden the President's removal power. *Kennedy* v. *Braidwood Management, Inc.*, 145 S. Ct. 2427, 2448 (2025); see *Shurtleff* v. *United States*, 189 U.S. 311, 315 (1903). Thus, when Congress wants to authorize reinstatement of removed officers, it says so. The statute in *Morrison* v. *Olson*, 487 U.S. 654 (1988), for example, stated that a removed independent counsel "may obtain judicial review of the removal" and "may be reinstated or granted other appropriate relief by order of the court." Independent Counsel Reauthorization Act of 1987, § 2, 101 Stat. 1305; see *Morrison*, 487 U.S. at 663-664. But the lower courts cited no statutory provision that provides, much less clearly, that courts may restore FTC members whom the President has removed without cause.

In addition, the district court's order violated traditional principles of equity, which constrain a court's issuance of injunctions and declaratory judgments. See *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2551 (2025) (injunctions); *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-319 (1999) (injunctions); *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293, 300 (1943) (declaratory judgments). This Court has repeatedly held that "a court of equity [may] not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee, nor restrain the appointment of another." *White* v. *Berry*, 171 U.S. 366, 377 (1898); see *Baker* v. *Carr*, 369 U.S. 186, 231 (1962); *Walton* v. *House of Representatives*, 265 U.S. 487, 490 (1924); *Harkrader* v. *Wadley*, 172 U.S. 148, 165 (1898); *In re Sawyer*, 124 U.S. 200, 212 (1888). Indeed, "[n]o principle in the law of

injunctions, and perhaps no doctrine of equity jurisprudence, is more definitely fixed or more clearly established than that courts of equity will not interfere by injunctions to determine questions concerning the appointment of public officers or their title to office." 2 James L. High, *Treatise on the Law of Injunctions* § 1312, at 863 (2d ed. 1880). And because a declaratory-judgment suit is "'essentially an equitable cause of action,'" "the same equitable principles relevant to the propriety of an injunction must be taken into consideration by federal district courts in determining whether to issue a declaratory judgment." *Samuels* v. *Mackell*, 401 U.S. 66, 70, 73 (1971). The lower courts emphasized that they were bound by *Humphrey's Executor*, but they were equally bound by this Court's cases establishing that "a court of equity," unless authorized "by express statute," "has no jurisdiction * * * over the appointment and removal of public officers." *Sawyer*, 124 U.S. at 210.

At a minimum, the district court abused its discretion in granting equitable relief. A court's decision to grant or deny an injunction or a declaratory judgment is an "act of equitable discretion." *eBay Inc.* v. *MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); see *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286 (1995). Given that orders reinstating removed executive officers present obvious and serious constitutional concerns, the prudent exercise of equitable discretion requires, at the very least, that the President's removal decisions remain in effect while litigation remains ongoing. See App., *infra*, 26a-27a (Rao, J., dissenting) (a stay is warranted "while the merits of the removal, and the ongoing validity of *Humphrey's Executor*, continue to be litigated"); cf. *Myers*, 272 U.S. at 123-125 (even members of the First Congress who believed that the removal of executive officers required Senate consent agreed that the President could suspend the officers pending the Senate's final decision).

The district court stated that, "if injunctive relief were to become unavailable,"

it would award a writ of mandamus. App., *infra*, 80a n.12. But a court may grant mandamus only if the applicant has a "clear and indisputable" right to relief. *United States ex rel. Bernardin* v. *Duell*, 172 U.S. 576, 582 (1899). For the reasons discussed above, respondents' right to relief is, at a minimum, unclear. See pp. 10-19, *supra*. In addition, this Court has approved the use of mandamus to try the title only to judicial or local offices. See *Ex parte Hennen*, 13 Pet. 230, 256 (1839) (mandamus to reinstate court clerk); *Marbury* v. *Madison*, 1 Cranch 137, 168 (1803) (mandamus to reinstate justice of the peace in the District of Columbia). We are unaware of any precedent (from before this Administration) for using mandamus to reinstate an executive officer removed by the President. That the requested remedy "is without a precedent" "is of much weight against it." *Mississippi* v. *Johnson*, 4 Wall. 475, 500 (1867).

B. The Other Factors Support Relief From The District Court's Order

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. As in *Wilcox* and *Boyle*, those factors heavily favor a stay.

1. As this Court determined when granting stays in *Wilcox* and *Boyle*, the issues raised by this case are certworthy. The question whether the President may remove FTC members at will warrants the Court's review; the Court has often granted certiorari to consider the validity of restrictions on the President's removal power. See *Collins*, 594 U.S. at 236; *Seila Law*, 591 U.S. at 209; *Free Enterprise Fund*, 561 U.S. at 488. The remedial question, too, warrants this Court's review, given the serious separation-of-powers concerns raised by judicial reinstatement of removed officers. See p. 20, *supra*. Finally, the "interim status" of the removals—that is, whether respondents may continue to exercise executive power "while the parties

wait for a final merits ruling"—"*itself* raises a separate question of extraordinary significance" that should be resolved by this Court. *Labrador* v. *Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring).

2. As this Court recognized in *Wilcox* and *Boyle*, the government suffers serious irreparable harm when a district court reinstates a removed principal executive officer. See *Wilcox*, 145 S. Ct. 1415. A reinstatement order harms the Executive Branch by "allowing a removed officer to continue exercising the executive power" over the President's objection. *Ibid.* It also subjects the agency to "the disruptive effect of the repeated removal and reinstatement of officers during the pendency of th[e] litigation." *Ibid.* And it exposes the agency to the risk that regulated parties could seek to overturn its actions on the ground that its structure violates Article II. See *Collins*, 594 U.S. at 259 (recognizing that, if "the President had attempted to remove [an agency head] but was prevented from doing so by a lower court decision," the removal restriction "would clearly cause harm" that could entitle a challenger to judicial relief).

Experience shows that judicially reinstated officers can seriously disrupt the President's policy agenda. For example, a reinstated Special Counsel sought, and a reinstated MSPB member unilaterally granted, a stay of the firing of roughly 6000 employees at the Department of Agriculture, all without even giving the affected agency an opportunity to comment. See Appl. at 34, *Wilcox*, *supra* (No. 24A966). Similarly, almost immediately after three commissioners removed from the CPSC won reinstatement from a district court, the commissioners convened a meeting over the objection of the CPSC's Acting Chairman and purported to nullify most decisions the agency had taken since their removal, to reinstate a notice of proposed rulemaking that the agency had recently withdrawn from the Federal Register, and to fire

staff members who had been detailed to the agency for the purpose of facilitating compliance with an Executive Order. See Appl. at 7-8, *Boyle*, *supra* (No. 25A11). This Court should not give respondent the opportunity to cause similar chaos.

The court of appeals stated that, because respondent "is the sole remaining Democrat on a Commission with a governing majority of three Republicans," her reinstatement will not irreparably harm the government. App., *infra*, 12a. But under Article II, "the 'executive Power'—all of it—is 'vested in a President.'" *Seila Law*, 591 U.S. at 203. The President and the government suffer irreparable harm when courts transfer even some of that executive power to officers beyond the President's control. "It is not for [courts] to determine * * * how much of the purely executive powers of government must be within the full control of the President. The Constitution prescribes that they *all* are." *Morrison*, 487 U.S. at 709 (Scalia, J., dissenting); see App., *infra*, 28a (Rao, J., dissenting).

The court of appeals' functionalist analysis of the equities also fails on its own terms. The court assumed partisan bloc voting on the FTC, but that assumption conflicts with *Humphrey's Executor*'s view of the FTC as a "non-partisan" "body of experts." 295 U.S. at 624. The FTC's three Republican members may disagree among themselves, and if they do, respondent's vote could be dispositive. Moreover, case-specific recusals are common, meaning that respondent could have the power to block agency action when recusals leave the agency with only two active Commissioners. In addition, FTC members exercise some powers unilaterally. For example, "if the Commission passes a resolution authorizing the use of compulsory process, then individual commissioners are authorized to issue civil investigative demands and subpoenas." App., *infra*, 13a n.2. Regulated parties could argue, moreover, that even when respondent does not act unilaterally and her vote is not decisive, her reinstate-

ment renders the FTC's actions invalid. Cf. *Williams* v. *Pennsylvania*, 579 U.S. 1, 14 (2016) (holding that a judge's wrongful failure to recuse is structural error "even if the jurist is on a multimember court and the jurist's vote was not decisive").

The court of appeals' contrary analysis is internally inconsistent. See App., *infra*, 23a (Rao, J., dissenting). If respondent's presence makes no difference to the FTC's decisions, it is hard to see how respondent could claim that she suffers irreparable harm from her removal or that the extraordinary remedy of reinstatement is warranted. Conversely, if her presence does make a difference, the government suffers irreparable harm from her reinstatement. Either way, respondent has no right to an injunction, and the government is entitled to a stay.

3. Finally, the balance of the equities favors the government. Respondent's removal deprives her of her employment and salary, but such harms ordinarily are not considered irreparable. See *Sampson* v. *Murray*, 415 U.S. 61, 92 n.68 (1974). The district court nonetheless found that respondent faces irreparable harm because she "lost the ability to influence federal decision-making" at the FTC, App., *infra*, 75a, but as Judge Rao observed, that rationale lacks merit, see *id.* at 21a-23a. A public official's "loss of political power" is not a judicially cognizable harm, much less the type of irreparable harm that can justify issuing an injunction. *Raines* v. *Byrd*, 521 U.S. 811, 821 (1997). The notion that public officials "have a separate private right, akin to a property interest, in the powers of their offices" "is alien to the concept of a republican form of government." *Barnes* v. *Kline*, 759 F.2d 21, 50 (D.C. Cir. 1984) (Bork, J., dissenting). At bottom, respondent's claim to irreparable injury from her inability to continue wielding executive power is precisely the problem. Under Article II, executive power belongs to the President, not respondent.

In all events, "the Government faces greater risk of harm from an order allow-

ing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Wilcox*, 145 S. Ct. at 1415. The court of appeals sought to distinguish *Wilcox* on the ground that "Supreme Court precedent establishes the wrongfulness of the removal" here, App., *infra*, 12a, but *Wilcox* explicitly referred to "a wrongfully removed officer," 145 S. Ct. at 1415. "The Court's equitable judgment was that—even assuming the removals were unlawful—the government faced the greater harm from reinstatement. The same equitable judgment must be applied here." App., *infra*, 28a (Rao, J., dissenting).

The district court also found it "unclear how removing a Commissioner who has dutifully fulfilled her public-service role will benefit the public interest." App., *infra*, 78a. Under Article II, however, the authority to evaluate respondents' job performance belongs to the President, not the district court. The President removed respondent because he determined that her "continued service on the FTC is inconsistent with [his] Administration's priorities." *Id.* at 43a-44a. Courts have no power to second-guess that presidential judgment.

Lastly, the court of appeals and district court emphasized the public interest in adhering to this Court's precedents. See App., *infra*, 13a, 78a. But the lower courts approached this Court's precedents "like a picky child [approaches] the dinner table." *SEC* v. *Jarkesy*, 603 U.S. 109, 160 (2024) (Gorsuch, J., concurring). They adopted a broad interpretation of *Humphrey's Executor*, but ignored or discounted (1) the Court's decision in *Seila Law* limiting *Humphrey's Executor* to "the set of powers the Court considered as the basis for its decision," *Seila Law*, 591 U.S. at 219 n.4; (2) the Court's decisions in *Wilcox* and *Boyle* allowing the President to remove members of agencies that "exercise considerable executive power," *Wilcox*, 145 S. Ct. at 1415; and (3) the Court's precedents recognizing that courts of equity have no power "to restrain

or relieve against proceedings for the removal of public officers," *White*, 171 U.S. at 376. The public has an interest in evenhanded adherence to this Court's precedents, and that interest supports granting a stay here.

C. This Court Should Issue An Administrative Stay While It Considers This Application

In *Wilcox*, the Chief Justice granted an administrative stay of the district court's judgments pending the Court's resolution of the government's application. See *Wilcox* v. *Trump*, No. 24A966, 2025 WL 1063917 (Apr. 9, 2025). An administrative stay is equally warranted here. The President removed respondent on March 18, 2025. See Compl. ¶ 33. The district court then reinstated her on July 17, see App., *infra*, 38a-39a, but the court of appeals promptly issued an administrative stay on July 21, see *id.* at 30a, and that stay remained in effect until the court dissolved it on September 2, see *id.* at 1a. In short, the status quo for the last five and a half months, except for a few days, has been one in which respondent has been out of office. As in *Wilcox*, an administrative stay would preserve the status quo while this Court decides whether to grant relief. An administrative stay would also avoid the kind of disruption that reinstated officers have caused in previous cases. See pp. 24-25, *supra*.

D. This Court Should Grant Certiorari Before Judgment

In addition to granting a stay, this Court should consider construing this application as a petition for a writ of certiorari before judgment and grant the petition. If it does, the Court should review the following questions: (1) whether 15 U.S.C. 41 violates the separation of powers by prohibiting the President from removing a member of the Federal Trade Commission except for "inefficiency, neglect of duty, or malfeasance in office"; and (2) whether the district court's order restoring respondent to office exceeded the court's remedial authority.

This Court did not grant similar requests in *Wilcox* and *Boyle*, but recent developments have strengthened the case for the Court's intervention. As this case illustrates, lower courts have continued to reinstate removed executive officers despite the Court's decisions in *Wilcox* and *Boyle*. They have made clear that, regardless of "recent developments on [this] Court's emergency docket," they will adhere to their expansive and incorrect interpretation of *Humphrey's Executor*. App., *infra*, 3a. And they have explained that they will persist in that adherence "unless and until" this Court grants certiorari and overrules that decision. *Id.* at 12a; see *id.* at 34a-35a n.3 ("If the Supreme Court determines that [*Wilcox*'s] logic applies to an FTC Commissioner * * * it must say so itself."). Thus, "further percolation in the lower courts is not particularly useful." *Boyle*, 145 S. Ct. at 2655 (Kavanaugh, J., concurring).

In addition, the Fifth Circuit recently held in *Space Exploration Technologies Corp.* v. *NLRB*, No. 24-50627, 2025 WL 2396748 (Aug. 19, 2025), that the NLRB's statutory tenure protection violates Article II. Based in part on that determination, the Fifth Circuit concluded that a regulated party was entitled to a preliminary injunction prohibiting the NLRB from conducting an administrative adjudication. See *id.* at *2. As that decision shows, uncertainty about the continued status of *Humphrey's Executor* and the constitutionality of statutory removal protections is disrupting the work of federal agencies. And the "downsides of delay in resolving the status of [*Humphrey's Executor*] outweigh the benefits of further lower-court consideration." *Boyle*, 145 S. Ct. at 2655 (Kavanaugh, J., concurring).

CONCLUSION

This Court should stay the judgment of the U.S. District Court for the District of Columbia pending the resolution of the government's appeal to the U.S. Court of Appeals for the D.C. Circuit and pending any proceedings in this Court. The Court should also enter an administrative stay of the district court's judgment.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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