NO. 25A264

In the Supreme Court of the United States

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

Applicants,

v.

REBECCA KELLY SLAUGHTER, ET AL.

Respondents.

On Application to Stay the Judgment of the United States District Court for the District of Columbia

AMICUS BRIEF OF CHRISTIAN EMPLOYERS ALLIANCE IN SUPPORT OF APPLICATION TO STAY THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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INTEREST OF *AMICUS CURIAE*[1]

Officers of the United States cannot exercise substantial executive power without supervision from the President. If an official oversteps, he must answer to the President. The President's dependence on the people provides agency accountability, but only if the agency is accountable to the President. Agencies need that accountability.

Amicus Christian Employers Alliance and its members have felt firsthand agencies wielding executive power without political accountability. CEA is a nonprofit organization that advances its members' freedom to conduct their businesses consistent with their religious beliefs. Twice in two years, it has sued the Equal Employment Opportunity Commission for unilaterally trying to broaden federal statutes. In the first case, CEA successfully challenged EEOC's expansion of Title VII to require employers to provide insurance coverage for gender transitions. *Christian Emps. All.* v. *EEOC*, 719 F. Supp. 3d 912, 928 (D.N.D. 2024) (*CEA* v. *EEOC I*).

In the second—which remains pending—CEA is challenging EEOC's application of Title VII and the Pregnant Workers Fairness Act. This time, EEOC forced employers to use employees' self-selected pronouns and to allow males in female-only private spaces, like restrooms and locker rooms, and to facilitate elective abortions. *See* Complaint for Injunctive & Declaratory Relief ¶¶ 37–75, *Christian Emps. All.* v. *EEOC*, No. 1:25-cv-00007 (D.N.D. Jan. 15, 2025), Dkt. No. 1 (*CEA* v. *EEOC II* Compl.). In short, EEOC has wielded executive power to make monumental policy decisions on hotly contested issues, including gender transitions, pronoun use, female-only bathrooms, and abortion.

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

As a so-called independent agency, EEOC has done so without political accountability. That's a problem. It violates the separation of powers and Article II's vesting of the executive power in the President. Indeed, that is one of CEA's claims in its ongoing case against EEOC. *CEA* v. *EEOC II* Compl. ¶¶ 291–301. And that is why CEA has moved to intervene in *Samuels* v. *Trump*, where a onetime EEOC Commissioner also claims the President unlawfully removed her. *See* Proposed Intervenor-Defendants Choices Pregnancy Centers of Greater Phoenix, Inc. and Christian Employers Alliance's Motion to Intervene, *Samuels* v. *Trump*, No. 1:25-cv-01069-TSC (D.D.C. April 24, 2025), Dkt. No. 6. So CEA has an interest in this Court clarifying that the Constitution does not permit independent agencies that wield substantial executive power.

Moreover, CEA is interested here because CEA's members are regulated by the Federal Trade Commission. The FTC's powers touch most of the American economy, and so does CEA's membership. For example, the FTC enforces the Magnuson-Moss Warranty Act, which governs warranties on consumer goods, and CEA has members that manufacture and sell consumer goods. The FTC enforces privacy laws, and CEA has members that operate online platforms, apps, and services, including some covered by the FTC's Children's Online Privacy Protection Rule. The FTC enforces the Clayton Act and other antitrust laws, which affect many CEA members' businesses. Finally, the FTC has broad enforcement authority when it comes to consumer protection laws, truth-in-advertising regulations, and other statutes prohibiting misleading or deceptive trade practices—these broad regulatory functions can impact nearly every CEA member.

INTRODUCTION

This case is about whether a federal court can divert the President's executive power to someone not of the President's choosing—worse, someone from whom the President has deliberately withdrawn delegated power. This Court has emphasized that the President may "remove without cause executive officers who exercise [the executive] power on his behalf, subject to narrow exceptions." *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025) (per curiam). Whatever the fate of the "narrow exception[,]" *ibid.*, in *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), this Court should grant the Government's application for a stay. The district court ordered a former Commissioner of the Federal Trade Commission back into office, directing the rest of the FTC to act as if she still wields the executive power that the President withdrew. Even if an officer of the United States has wrongfully been fired (though Slaughter was not), an injunction returning her to office is not a remedy available in equity.

The FTC wields substantial executive power. Full stop. Whatever its role in 1935, it now investigates alleged violations of many consumer protection and antitrust statutes, brings enforcement actions against private persons, and issues regulations with the force of law. These are core executive functions that put the FTC outside the limited exception to the President's removal power recognized in *Humphrey's Executor*. As this Court said in *Seila Law*, the "conclusion that the FTC [does] not exercise substantial executive power has not stood the test of time." *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 216 n.2 (2020). This means FTC Commissioners must be accountable to the President and thus to the people.

While an FTC Commissioner, Slaughter pursued controversial and harmful policies—going so far as to promote "diversity, equity, and inclusion" (DEI) as an enforcement priority for the FTC. When the President removed Slaughter (along with Alvaro Bedoya) from the FTC, he explained her continuance in office was inconsistent

with his administration's policies and priorities. *See* App.43a–44a. The Constitution demands no more.

Yet Slaughter and Bedoya sued the President. Bedoya's claim became moot when he accepted another job. Slaughter pressed on. She demanded a declaration stating the President fired her illegally and she is still an FTC Commissioner, along with injunctive or mandamus relief forcing other executive-branch officials to treat her as such. The district court obliged, and the court of appeals refused to stay its judgment.

If the President cannot exercise his constitutional duty to supervise and remove officers in "independent" agencies like the FTC, there is no democratic accountability when these officials stray from the will of the people. Officers wielding such substantial executive power are accountable to the President, and he is accountable to us. The buck stops with him—not with unelected bureaucrats.

STATEMENT

Slaughter was first appointed to the FTC in 2018. App.43a. She does not share the President's policy goals. Most prominently, she favors using the FTC to push DEI initiatives and policies.

On inauguration day, President Trump issued an executive order directing all federal agencies to cease "illegal and immoral discrimination programs, going by the name 'diversity, equity, and inclusion' (DEI)." Exec. Order No. 14,151 of Jan. 20, 2025, Ending Radical and Wasteful Government DEI Programs and Preferencing, 90 Fed. Reg. 8339, 8339 (Jan. 29, 2025).

Slaughter has long been on record in favor of DEI, even going so far as to proclaim (using DEI jargon) that the FTC's *antitrust* enforcement "should be [ ]anti-

racist."[2] She thinks antitrust law shouldn't "be neutral in the face of systemic racism," and insists promoting anti-racism "is consistent with the FTC's mission and mandate."[3] So she argues the FTC should use its antitrust enforcement powers "as a tool for combatting structural racism."[4]

On his first day as Chair of the FTC, Chairman Andrew Ferguson began implementing the President's executive order. "DEI is Over at the FTC," the Chairman announced.[5] Slaughter criticized the Chairman's motion for authority to implement the President's order as an "[un]precedent[ed]" and "radical departure from agency practice," that "invites" "lawlessness," and suggested it was a prelude to "chicanery."[6] Bedoya, too, took umbrage. "Ferguson could have made his first public act as Chairman a motion to study the rising cost of groceries" or pursue other enforcement priorities, Bedoya complained; "Instead, he cancelled 'DEI.'"[7]

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[2] @RKSlaughterFTC, X (Sep. 9, 2020, at 11:28 PT), https://perma.cc/UK6N-93N5.

[3] Lauren Feiner, *How FTC Commissioner Slaughter Wants to Make Antitrust Enforcement Antiracist*, CNBC (Sep. 20, 2020, at 10:45 ET), https://www.cnbc.com/2020/09/26/ftc-commissioner-slaughter-on-making-antitrust-enforcement-antiracist.html, https://web.archive.org/web/20200927094614/https://www.cnbc.com/2020/09/26/ftc-commissioner-slaughter-on-making-antitrust-enforcement-antiracist.html.

[4] Rebecca Kelly Slaughter, Comm'r, FTC, *Antitrust at a Precipice: Remarks as Prepared for Delivery at the GCR Interactive: Women in Antitrust* 4 (Nov. 17, 2020), https://perma.cc/88FR-9MV5.

[5] Press Release, FTC, FTC Chairman Ferguson Announces that DEI is Over at the FTC (Jan. 22, 2025), https://perma.cc/U5YH-8DR3.

[6] *Statement of Commissioner Rebecca Kelly Slaughter Regarding the Motion to Delegate Authority to Chairman to Comply with January 2025 Executive Orders on DEI Programs and Associated Guidance* 3 & n.8, FTC File No. P859900 (Jan. 23, 2025), https://perma.cc/M9Y9-6M3M.

[7] *Dissenting Statement of Commissioner Alvaro M. Bedoya On the "Emergency" Motion to Delegate Authority to the Chairman to Comply with the Executive Orders on DEI Programs and Associated Guidance* 1, FTC File No. P859900 (Jan. 23, 2025), https://perma.cc/MLC9-PGYD.

On March 18, 2025, the President removed both Slaughter and Bedoya from office. *See* App.43a–44a; Complaint for Declaratory and Injunctive Relief (Compl.) ¶ 33, *Slaughter* v. *Trump*, No. 1:25-cv-00909-LLA (D.D.C. Mar. 27, 2025), Dkt. No. 1 and Compl. Ex. A, Dkt. No. 1-2. "As presently constituted, the FTC exercises substantial executive power," the President's letter explained. Compl. Ex. A. "The FTC issues subpoenas, 15 U.S.C. § 49, promulgate[s] binding rules, *id.* §§ 46, 57a, imposes injunctions on private parties, *id.* § 53, and issues final decisions in administrative adjudications, *id.* § 45(g)." *Ibid.* "An independent agency of this kind has 'no basis in history and no place in our constitutional structure,'" the President said. *Ibid.* (quoting *Seila Law*, 591 U.S. at 220). "Your continued service on the FTC is inconsistent with my Administration's priorities," the President concluded. *Ibid.* "Accordingly, I am removing you from office pursuant to my authority under Article II of the Constitution." *Ibid.*

Slaughter and Bedoya sued the President, Chairman Ferguson, Commissioner Holyoak, and the FTC's Executive Director, Robbins, arguing that Slaughter and Bedoya remain FTC Commissioners. App.44a–45a. They demanded injunctive and declaratory relief, or a writ of mandamus, that would allow them to once again exercise executive power from within an "independent" agency. App.44a–45a. The district court issued a declaratory judgment to that effect, along with injunctions against the FTC defendants (but not the President himself). App. 38a–81a. The D.C. Circuit refused to stay its judgment. App.1a–14a.

ARGUMENT

I. Executive officers serve at the behest of the President.

The Constitution vests the President with control over executive branch officials. This means the President may remove an officer for any reason or no reason at all—that is "the rule, not the exception." *Seila Law*, 591 U.S. at 228; *see Myers* v. *United States*, 272 U.S. 52 (1926) (holding Congress could not require the President to seek advice and consent from the Senate before removing a postmaster). That principle flows from the very structure of the Constitution and is reflected in the historical record.

Article II places executive power in the President: "The executive Power shall be vested in a President of the United States of America." U.S. Const. art. II, § 1. And it allows for no exceptions. The "'executive Power'—all of it—is 'vested in a President.'" *Seila Law*, 591 U.S. at 203 (quoting U.S. Const. art. II, § 1, cl. 1). And he alone is instructed by the Constitution to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3.

Of course, the President relies on "subordinate officers" for help. *Seila Law*, 591 U.S. at 204; *accord Collins* v. *Yellen*, 594 U.S. 220, 252 (2021). But those officers cannot wield executive power apart from the President. He must be able to "supervise" those "who wield executive power on his behalf." *Seila Law*, 591 U.S. at 204; *see also PHH Corp.* v. *CFPB*, 881 F.3d 75, 164 (D.C. Cir. 2018) (Kavanaugh, J., dissenting) ("To carry out the executive power and be accountable for the exercise of that power, the President must be able to supervise and direct those subordinate officers."). The President must directly or indirectly "by chain of command" control all officers wielding his executive power. *Morrison* v. *Olson*, 487 U.S. 654, 721 (1988) (Scalia, J., dissenting).

Under Article II's plain language, the "buck stops with the President." *Free Enter. Fund* v. *Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 493 (2010). Otherwise, the "entire 'executive Power' [would not] belong[ ] to the President alone." *Seila Law*, 591 U.S. at 213. And he would be unable to ensure the laws are faithfully executed. "The President cannot 'take Care that the Laws be faithfully executed' if he cannot oversee the faithfulness of the officers who execute them." *Free Enter. Fund*, 561 U.S. at 484. To do that, the President must be able to "hold[ ] [his] subordinates accountable for their conduct." *Id.* at 496. Officers logically "must fear and, in the performance of [their] functions, obey," only "the authority that can remove" them from office. *Seila Law*, 591 U.S. at 213–14 (alteration in original) (citation modified). That's why the "removal power helps the President maintain a degree of control over the subordinates he needs to carry out his duties as the head of the Executive Branch." *Collins*, 594 U.S. at 252.

This understanding is reflected in the historical record. "[T]he Framers thought it necessary to secure the authority of the Executive so that he could carry out his unique responsibilities." *Seila Law*, 591 U.S. at 223. The "weakness of the executive" needed to "be fortified." *Ibid.* (quoting The Federalist No. 51, at 350 (James Madison) (J. Cooke ed., 1961)). So the Framers thought it "essential" to create "an energetic executive"—one not bogged "down with the 'habitual feebleness and dilatoriness' that comes with a 'diversity of views and opinions.'" *Id.* at 223–24 (quoting The Federalist No. 70, *supra*, at 471 (Alexander Hamilton)). Instead, the executive would have "the '[d]ecision, activity, secrecy, and dispatch' that 'characterise the proceedings of one man.'" *Id.* at 224 (alteration in original) (quoting The Federalist No. 70, *supra*, at 472).

For that system to work, lesser officers wielding executive authority had to remain "subject to the ongoing supervision and control of the elected President." *Seila Law*, 591 U.S. at 224. The executive officials were to "assist the supreme Magistrate in discharging the duties of his trust." *Id.* at 213 (quoting 30 *Writings of George Washington* 334 (J. Fitzpatrick ed., 1939)). They could not wield executive power apart from the President: "'the lowest officers, the middle grade, and the highest' all 'depend, as they ought, on the President, and the President on the community.'" *Id.* at 224 (quoting 1 Annals of Cong. 499 (1789) (James Madison)).

Indeed, the Framers expressly recognized that the President's executive power included supervising his subordinates. Madison was clear on that: if "any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws." *Seila Law*, 591 U.S. at 213 (quoting 1 Annals of Cong. 463 (1789)). And he was not alone. As Publius, Hamilton wrote that executive officers "ought to be considered as the assistants or deputies of the Chief Magistrate" who are "subject to his superintendence." Aditya Bamzai & Saikrishna Bangalore Prakash, *The Executive Power of Removal*, 136 Harv. L. Rev. 1756, 1773 (2023) (quoting The Federalist No. 72, *supra*, at 434 (Alexander Hamilton)). Likewise, William Maclaine "spoke of the Chief Executive being responsible for the orders he gave to revenue 'deputies.'" *Ibid.* (citation modified). And antifederalists agreed that one man could better "superintend the execution of laws with discernment and decision, with promptitude and uniformity"—implying the man would direct others under him. *Ibid.* (citation modified). In short, the Framers widely believed that the President would oversee those exercising executive power.

Congress debated the removal of executive officers "extensively" in the summer of 1789. *Free Enter. Fund*, 561 U.S. at 492. The House at first settled on including language in a bill saying that the President could remove the Secretary of Foreign

Affairs. Bamzai & Prakash, *supra*, at 1774. But representatives worried that the "language might be misread as a legislative grant of removal authority when, in fact, a House majority believed that the President had a constitutional power to remove." *Ibid.* So the House changed the language to note that the President could remove without implying a Congressional grant of authority: "'Whenever the [officer] shall be removed by the President,' … the chief clerk shall have custody of papers." *Ibid.* (quoting 2 Cong. Rec. 3 (1789)). And the Senate approved the bill after rejecting amendments to the removal language. *Ibid.* As Madison later explained, the prevailing view tracked the Constitution's text and provided "the requisite responsibility and harmony in the Executive Department." *Free Enter. Fund*, 561 U.S. at 492 (citation modified). That view was that the "executive power included a power to oversee executive officers through removal." *Ibid.*

Presidential removal authority is also a democratic safeguard. Unlike agency officials, the President is elected. That's why his control of executive officers "is essential to subject Executive Branch actions to a degree of electoral accountability." *Collins*, 594 U.S. at 252. Indeed, the President is "the most democratic and politically accountable official in Government," being elected by the entire Nation. *Seila Law*, 591 U.S. at 224. And the "solitary nature of the Executive Branch" offers "a single object for the jealousy and watchfulness of the people." *Ibid.* (quoting The Federalist No. 51, *supra*, at 479). In other words, our system depends on the people holding the President accountable for executive action. But they cannot do so for so-called independent agencies. And that's a problem.

II. *Humphrey's Executor* does not control an agency that exercises substantial executive power.

A. As the Government puts it (at 17), the lower courts "improperly bound themselves to an expansive reading of *Humphrey's Executor* that this Court repudiated in *Seila Law*." *Seila Law* read *Humphrey's Executor* narrowly; it permits "Congress to give for-cause removal protections to a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions and was said not to exercise any executive power." 591 U.S. at 216. And even if the FTC in 1935 "possessed broader rulemaking, enforcement, and adjudicatory powers than the *Humphrey's* Court appreciated," the Court reasoned, "what matters is the set of powers the Court considered as the basis for its decision." *Id.* at 219 n.4. So the narrow *Humphrey's Executor* exception is limited to "multimember expert agencies that do *not* wield substantial executive power." *Id.* at 218 (emphasis added).

That does not describe "the characteristics of the [FTC]" today. *Id.* at 215. By any reckoning, Slaughter and Bedoya exercised substantial executive power as Commissioners of the FTC. The agency is empowered to prevent nearly any American business "from using unfair methods of competition … and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2). The FTC has other statutory enforcement authority, too—like its power to block mergers and acquisitions under the antitrust laws. It issues numerous rules and regulations, and it regularly investigates violations and brings enforcement actions. As the Government explains, these are core executive functions. *See* Appl. to Stay J. of D.D.C. and Req. for Admin. Stay (Appl.) at 12–16 (Sep. 4, 2025).

First, the FTC possesses broad enforcement and investigative powers over scores of consumer protection and antitrust laws. Investigating violations of the law and bringing enforcement actions are "quintessentially executive function[s]." *Trump* v. *United States,* 603 U.S. 593, 620–21 (2024) (discussing "investigation and

prosecution of crimes" (citation modified)); *accord Morrison*, 487 U.S. at 691 ("law enforcement functions" traditionally are executive); *id.* at 706 (Scalia, J., dissenting) ("Governmental investigation and prosecution of crimes is a quintessentially executive function.").

The FTC has investigative powers and, if it finds a violation, it can adjudicate enforcement action within the agency. During its administrative enforcement proceedings, the FTC may issue cease-and-desist orders and seek monetary penalties and damages for violations. 15 U.S.C. §§ 21, 45, 57; *cf. Seila Law*, 591 U.S. at 219 (agency head "may unilaterally issue final decisions awarding legal and equitable relief in administrative adjudications"). The FTC can also initiate civil enforcement actions in federal court. 15 U.S.C. §§ 13(b), 53(b). "Every year the FTC brings hundreds of cases against individuals and companies for violating consumer protection and competition laws that the agency enforces," and it does so on behalf of the United States.[8] The FTC is thus empowered "to seek daunting monetary penalties against private parties on behalf of the United States in federal court—a quintessentially executive power." *Seila Law*, 591 U.S. at 219. This is far beyond "submitting recommended dispositions to an Article III court," *id.* at 218–19—the function described as "quasi-judicial" in *Humphrey's Executor*, 295 U.S. at 628 (discussing FTC Act § 7 (codified at 15 U.S.C. § 47 (1914))).

The FTC's enforcement authority is a tool for implementing policy. President Biden, for example, touted the FTC's contributions to the "Reproductive Rights Task Force" he formed after this Court decided *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215 (2022).[9] To promote access to abortion, the White House

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[8] *See Legal Library: Cases and Proceedings*, FTC, https://perma.cc/3A7V-YVBH.

[9] *See* Exec. Order No. 14,076 of July 8, 2022 § 3, Protecting Access to Reproductive Healthcare Services, 87 Fed. Reg. 42053, 42053 (July 13, 2022).

proclaimed, "the FTC has taken several enforcement actions against companies for disclosing consumers' personal health information, including highly sensitive reproductive health data."[10] And as discussed above, Slaughter favors using the FTC's antitrust enforcement authority to promote DEI. *See supra* at 4–5.

Second, the FTC can issue regulations with the force of law. Today's FTC is not limited to "making investigations and reports thereon for the information of Congress." *Cf. Humphrey's Executor*, 295 U.S. at 628 (discussing FTC Act § 6 (codified at 15 U.S.C. § 46 (1914)). To the contrary, the FTC "possesses the authority to promulgate binding rules" implementing a jaw-dropping number of federal statutes. *Seila Law*, 591 U.S. at 218. It has jurisdiction over more than 70 laws, including the Identity Theft Act, Fair Credit Reporting Act, and Clayton Act.[11] Its regulations govern market participants throughout the economy. For example, the FTC issued and enforces the Telemarketing Sales Rule, 16 C.F.R. §§ 310.1–.9 (2010), the Children's Online Privacy Protection Rule, *id.* §§ 312.1–.13 (2013), and the Health Breach Notification Rule, *id.* §§ 318.1–.9 (2024). "Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law." *Bowsher* v. *Synar*, 478 U.S. 714, 733 (1986).

In sum, the FTC "may … issue final regulations, oversee adjudications, set enforcement priorities, initiate prosecutions, and determine what penalties to impose on private parties." *Seila Law*, 591 U.S. at 225. That is the very definition of taking care that the laws be faithfully executed.

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[10] White House, FACT SHEET: White House Task Force on Reproductive Healthcare Access Announces New Actions and Marks the 51st Anniversary of *Roe v. Wade* (Jan. 22, 2024), https://perma.cc/3KC7-D4PD; *see also* Kristin Cohen, *Location, Health, and Other Sensitive Information: FTC Committed to Fully Enforcing the Law Against Illegal Use and Sharing of Highly Sensitive Data* (July 11, 2022), https://perma.cc/2P6N-QFUV.

[11] *See What the FTC Doe*s, FTC, https://perma.cc/AS76-HMH4.

B. When a government agency adjudicates violations of the law and brings enforcement lawsuits, it is exercising executive power. *City of Arlington* v. *FCC*, 569 U.S. 290, 304 n.4 (2013); *cf. Seila Law*, 591 U.S. at 216 n.2. And even if some of the FTC's functions today could be described as "quasi-legislative" or "quasi-judicial," in the words of *Humphrey's Executor*, the agency also has "substantial executive power," *Seila Law*, 591 U.S. at 217–18. History does not support a delegation of such power to officials operating outside the chief executive's control. That means *Seila Law*, not *Humphrey's Executor*, controls.

Slaughter's core contention is that Congress could prohibit the President from removing FTC Commissioners from office under *Humphrey's Executor*. *See* Opp'n to Applicant's Req. for Admin. Stay at 2 (Sep. 5, 2025). As explained above, *Seila Law* clarifies that the *Humphrey's Executor* exception cannot extend to an agency that exercises substantial executive power. Going further, *Seila Law* explained that the FTC today does not fit within that narrow exception. Yet because the lower courts continue to wrongly apply *Humphrey's Executor* to agencies that exercise substantial executive power, this Court should take the earliest opportunity to expressly overrule that case—perhaps by granting certiorari before judgment, as the Government suggests (at 28–29).

III. Legal remedies for wrongful removal foreclose the district court's equitable relief.

The district court erred even if *Humphrey's Executor*—and not *Seila Law*—controls the constitutionality of removal limitations on FTC Commissioners. This is true for three reasons. *First*, Slaughter lacks a viable cause of action. *Second*, the availability of legal remedies forecloses equitable relief. *Third*, as this Court explained in *Wilcox*, the harm caused to the Government by the district court's reinstatement order far outweighs the harm to Slaughter.

A. Slaughter lacks a viable cause of action. Her primary claim is that the President violated the FTC Act, and thus acted ultra vires, when he removed her from office without cause. Compl. ¶¶ 39–43. She alternatively alleges the President violated "the separation of powers." Compl. ¶¶ 50–51. But neither the FTC Act nor any constitutional provision relevant to separation of powers creates a cause of action for wrongful removal. Causes of action to enforce the Constitution's structural requirements must be created by Congress. *See Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325–26 (2015).[12]

Since Slaughter has no statutory cause of action, she relies on an equitable cause of action "to prevent public officials from acting unconstitutionally" or in violation of statute. Compl. ¶ 56 (citing *Free Enter. Fund*, 561 U.S. at 491 n.2); *see also id.* ¶ 43 (alleging the President's actions are "*ultra vires* and a clear violation of law"). Such claims are improper where there is "an alternative path to judicial review." *Nuclear Reg. Comm'n* v. *Texas*, 605 U.S. 665, 682 (2025); *see also Bd. of Governors of Fed. Rsrv. Sys.* v. *MCorp Fin., Inc.*, 502 U.S. 32, 43–44 (1991).

Here, Congress marked out just such a path—a suit under the Tucker Act in the Court of Federal Claims. That is the proper avenue for a suit alleging breach of "any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1); *see id.* § 1346(a)(2). And that is how removal-power cases, like *Myers*, *Humphrey's Executor*, and *Wiener* v. *United States*, 357 U.S. 349 (1958), have come to this Court.

To be sure, the Court of Federal Claims generally "cannot entertain claims for injunctive relief or specific performance." *Kanemoto* v. *Reno*, 41 F.3d 641, 644–45 (Fed. Cir. 1994). The fact that a successful Tucker Act claim would result in monetary

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[12] Slaughter also alleges the President's failure to make findings violated the Administrative Procedures Act, Compl. ¶¶ 44–46, but the lower courts rightly did not rely on that theory. The President is not an agency whose actions are subject to review under the APA. *See Franklin* v. *Massachusetts*, 505 U.S. 788, 801 (1992).

damages does not render it inadequate. It is still an alternative means for judicial review—the difference in remedies does not change that. *Cf. Seminole Tribe of Fla.* v. *Fla.*, 517 U.S. 44, 74 (1996) ("Where Congress has created a remedial scheme for the enforcement of a particular federal right, we have … refused to supplement that scheme with one created by the judiciary.").

Indeed, that Congress made monetary relief available indicates "Congress's intent to foreclose equitable relief." *Armstrong*, 575 U.S. at 328 (citation modified). That is because the "express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Alexander* v. *Sandoval*, 532 U.S. 275, 290 (2001). And as the Government explains (at 21–22), Congress knows how to authorize judicial review and reinstatement for executive officials when it wants to. That Slaughter has eschewed the review mechanism provided by Congress does not give federal courts the authority to ignore "implied statutory limitations" on equitable causes of action. *Armstrong*, 575 U.S. at 327.

B. Injunctive relief is not available when an adequate remedy at law exists. The availability of damages under the Tucker Act not only forecloses an equitable cause of action, but also shows that the district court erred in awarding injunctive and declaratory relief. In addition to the authorities cited by the Government (at 19–23), this supports a stay of the judgment.

Equitable relief is available only when there is no adequate remedy at law. *See Sampson* v. *Murray*, 415 U.S. 61, 92 n.68 (1974). Monetary damages for lost wages would compensate Slaughter for the loss of her job. That is one reason specific performance is generally unavailable for breach of a contract for personal services. *See* 25 *Williston on Contracts* § 67:106 (4th ed. May 2025 update). The availability of damages renders the equitable remedy of reinstatement unavailable here. *See West* v. *Gibson*, 527 U.S. 212, 217 (1999) (reinstatement is an equitable remedy).

And to the extent Slaughter seeks something more than compensation—like the opportunity to exercise executive power in opposition to the President's policies—that claim too is likely to fail. Slaughter "has no private right to the powers of an FTC commissioner's office," as Judge Rao explained in dissent below. App.21a; *see id.* 21a–23a. And in any event, an injunction requiring FTC officials to "provide Ms. Slaughter with access to any government facilities, resources, and equipment necessary for her to perform her lawful duties," App.39a, cannot make her a presidentially appointed FTC Commissioner and does not give her actions legal weight.

Rather, unless the injunction runs against the President, it cannot endow Slaughter with executive power. That's because the "'executive Power'—all of it—is 'vested in a President.'" *Seila Law*, 591 U.S. at 203 (quoting U.S. Const. art. II, § 1, cl. 1. Yet, as the district court recognized, it could not properly "enjoin[ ] the President to make a formal [reinstatement]" returning Slaughter to office. App.73a (quoting *Severino* v. *Biden*, 71 F.4th 1038, 1042 (D.C. Cir. 2023)). Ordering the FTC defendants to act as if Slaughter is an FTC Commissioner does not make her one—not as to the President, the rest of the executive branch, or the regulated public. As this Court recently affirmed, injunctive relief runs against specific parties, not the world at large. *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2552 (2025). And the district court lacked equitable power to nullify the President's action removing Slaughter from office. *See Corner Post, Inc.* v. *Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 838 (2024) (Kavanaugh, J., concurring) (contrasting equity with judicial review under the APA). Its injunction against "subordinate officials" fails for the same reason: such an injunction cannot vest Slaughter with executive power. App.73a.

C. Finally, as the Government explains, the equities overwhelmingly support a stay. Appl. at 16–17, 22–23, 25–28. Even if Slaughter had a viable cause of action (she does not), and even if the district court had the equitable power to order Slaughter's return to office (it does not), the reinstatement order should be stayed. The Government explains (at 25) that it suffers "irreparable harm when courts transfer even some of [the] executive power to officers beyond the President's control." As this Court explained in *Wilcox*, "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." *Wilcox*, 145 S. Ct. at 1415. "The same is true on the facts presented here." *Trump* v. *Boyle*, 145 S. Ct. 2653, 2654 (2025).

CONCLUSION

The Court should grant the Government's application and stay the district court's judgment.

Respectfully submitted.

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