No. 25A312

In The

Supreme Court of the United States

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

v.

LISA D. COOK, MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT.

ON APPLICATION TO STAY THE PRELIMINARY INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT COLUMBIA AND REQUEST FOR ADMINISTRATIVE STAY

BRIEF OF *AMICI CURIAE* EXPERTS ON LAW, FINANCE, AND ECONOMICS IN OPPOSITION TO THE APPLICATION TO STAY THE PRELIMINARY INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND REQUEST FOR ADMINISTRATIVE STAY

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are professors in law, finance, and economics, including four Nobel Laureates in Economic Sciences, with expertise in financial regulation, the Federal Reserve, and macroeconomics who have published extensive research on those subjects. They urge that the Court deny the Government's application for a stay of the District Court's judgment pending appeal. Granting the application could seriously harm monetary and financial stability even if the Court ultimately declines to fully embrace the Government's constitutional theory. Indeed, any ruling that markets could construe as abrogating the independence of the Federal Reserve System, even if temporarily or with respect to only some of its functions, could set the stage for significant market turmoil and undermine the credibility of Federal Reserve officials in ways that might not be easily reversed.

Judith A. Chevalier is the William S. Beinecke Professor of Finance and Economics and Faculty Director for the Program on Social Enterprise, Innovation, and Impact at the Yale School of Management. Professor Chevalier's research is in the areas of both finance and industrial organization. Her research focuses on the impacts of new technologies on firms, individuals, and policy.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

design, including administrative and constitutional law relevant to those topics. He previously served as General Counsel of the Securities and Exchange Commission, as a monitor for the Department of Justice of a large systemically important financial institution, advised the Department of Treasury and the Federal Reserve Board, and as a partner focused on financial institutions at Wachtell Lipton Rosen & Katz before coming to Harvard.

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Claudia Goldin is the Henry Lee Professor of Economics and the Lee and Ezpeleta Professor of Arts & Sciences at Harvard University. She received the 2023 Nobel Memorial Prize in Economic Sciences for her work advancing understanding on women's labor-market outcomes. She was the director of the NBER's Development of the American Economy program and is co-director of its Gender in the Economy group. She is the former president of the American Economic Association and

Economic History Association, and a member of the National Academy of Sciences, American Philosophical Society, and Econometric Society. Her other awards include the 2008 R.R. Hawkins Award for the most outstanding scholarly work in all disciplines of the arts and sciences.

Jeffrey N. Gordon is the Richard Paul Richman Professor of Law at Columbia Law School. Professor Gordon teaches and writes extensively on a variety of business-law subjects, including the regulation of financial institutions. He is the co-author of *Principles of Financial Regulation* (2016), which addresses the challenges facing regulators of financial institutions and markets in an interconnected and evolving global financial system, particularly the challenges in maintaining financial stability. Before becoming an academic, Professor Gordon served as an attorney for the U.S. Department of the Treasury in Washington, D.C.

Oliver Hart is the Lewis P. and Linda L. Geyser University Professor at Harvard University. He received the Nobel Memorial Prize in Economic Sciences in 2016. His research centers on the roles that ownership structure and contractual arrangements play in the governance and boundaries of corporations. He is a Fellow of the American Academy of Arts and Sciences, the British Academy, and a member of the National Academy of Sciences. He was made a Knight Bachelor in the King's Birthday Honours List, 2023.

Simon Johnson is the Ronald A. Kurtz (1954) Professor of Entrepreneurship and head of the Global Economics and Management Group at the MIT Sloan School of Management and co-director of MIT's Stone Center. He received the 2024 Nobel

Memorial Prize in Economic Sciences for studies on how institutions are formed and affect prosperity. He currently co-chairs the CFA Institute Systemic Risk Council and is a Research Associate at NBER, Fellow at the Center for Economic Policy and Research, and was previously chief economist and director of the Research Department at the International Monetary Fund, a member of the Congressional Budget Office's Panel of Economic Advisors, a member of the FDIC's Systemic Resolution Advisory Committee, chaired the Global Vulnerabilities Working Group at the U.S. Treasury's Office of Financial Research, and was a Fannie Mae board director.

Kathryn Judge is the Harvey J. Goldschmid Professor of Law at Columbia Law School. Her research focuses on banking, financial crises, regulatory design, and central banking. She is co-chair of the Better Markets Academic Advisory Board. She has previously served as an editor of the *Journal of Financial Regulation*, as a member of the Financial Stability Task Force co-sponsored by the Brookings Institution and the Chicago Booth School of Business, and as a member of the Financial Research Advisory Committee (FRAC) to the Office of Financial Regulation.

Paul Krugman is an economist and recipient of the 2008 Nobel Memorial Prize in Economic Sciences for his work on international trade with increasing returns to scale. His work formed the core of what is known as "new trade theory" and "new economic geography." He has written 22 books, ranging from undergraduate textbooks to popular treatises to monographs aimed at a professional audience. In addition to the Nobel Prize, he was awarded the John Bates Clark Medal by the American Economic Association, the Adam Smith Award, and numerous other professional accolades.

Lev Menand is an associate professor of law at Columbia Law School, where he teaches financial institutions and administrative law. He has written extensively on money and banking, including a book, *The Fed Unbound: Central Banking in a Time of Crisis* (2022). Professor Menand previously served as senior adviser to the deputy secretary of the Treasury and as an economist at the Federal Reserve Bank of New York, where he helped to develop econometric models for the Federal Reserve System's first Comprehensive Capital Assessment and Review.

Barry Nalebuff is the Milton Steinbach Professor at the Yale School of Management. His research focuses on the application of game theory to business strategy. He is the author of seven books on game theory, including *Thinking Strategically*, *The Art of Strategy*, and *Co-opetition*. He is a graduate of MIT, a Rhodes Scholar, and Junior Fellow at the Harvard Society of Fellows.

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INTRODUCTION AND SUMMARY OF ARGUMENT[2]

Amici curiae urge the Court to deny the Government's application for a stay pending appeal. A large body of research demonstrates that the government's capacity to maintain price stability, fight inflation, and promote economic growth depends on governance structures that impose modest but meaningful limits on the

[2] Throughout this brief, unless otherwise indicated, emphases were added to quotations, while internal citations, footnotes, brackets, ellipses, and the like were omitted from them.

power of outside actors, such as the President, to direct monetary policy. These structures include provisions that tenure members of multi-member boards like the Federal Reserve Board and authorize the President to remove them only for cause. In May, this Court recognized the long historical pedigree and presumptive constitutionality of this legal framework. *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025) ("The Federal Reserve is a uniquely structured . . . entity that follows in the distinct historical tradition of the First and Second Banks of the United States").

Were the Court to grant the Government's application, it would immediately call into question the Board's independence from the President. The Government claims that the statutory "for cause" requirement is satisfied by the President's mere allegation that a Board Member has engaged in misconduct and that removal follows immediately. It also claims the President has the (1) sole power to determine what "cause" is sufficient, regardless of the alleged conduct's nature, timing, and relation to Board duties; (2) without an opportunity for the Member to contest these allegations' factual basis or legal sufficiency before an impartial fact-finder; and (3) without meaningful judicial review.[3] What the Government proposes is little more than "say so" removal. Its standard would render illusory the statutory scheme's "for cause" protections for members of the Board.

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[3] Public reporting indicates the existence of evidence that calls into question critical aspects of the President's allegations. *See* Nick Timiraos, *Documents Show Lisa Cook Described Property as Second Home*, WALL. ST. J. (Sept. 13, 2025), https://perma.cc/63HE-D3JC. This public factual dispute illustrates why adopting the Government's arguments here would hollow out the "for cause" protections that enable Board independence.

The resulting loss of independence would have profound implications not only for the Fed's ability to regulate monetary expansion in the banking and financial system, but also for the separation of powers. If subject to presidential direction, the Fed's emergency lending and open-market authorities would give the President unprecedented control over the nation's finances, potentially threatening Congress's power over appropriations.

The *de facto* subordination of the Federal Reserve Board to the President would also create acute risks to economic and financial stability. This past spring, stock markets experienced significant volatility, and bond markets faced technical breakdowns. The Treasury market in particular teetered. Such gyrations could prove mild relative to the dysfunction that might result in an environment where the country lacks a central bank focused on the long-term health of the economy.

Finally, granting a stay could create the perception that a President could undercut Fed independence by carefully choosing the timing of an attempted removal, regardless of how this Court ultimately rules on the merits.

For these reasons, the Court should proceed with extreme caution in addressing the process by which the President shows sufficient "cause" to justify removing a Member of the Federal Reserve Board. It should deny the Government's application for a stay pending appeal.

ARGUMENT

Congress created the Federal Reserve System to maintain price stability and promote economic growth. Research demonstrates that its capacity to achieve monetary expansion consistent with the economy's long-run potential to increase production depends on governance structures that impose modest but meaningful limits on the President's power to direct its policies. These structures include provisions that tenure the members of its seven-person Board—that is, granting them a fixed term of office[4]—and authorize the President to remove them only "for cause."

Granting a stay in this case could significantly hollow out the removal standard and seriously jeopardize the Fed's long-term credibility, regardless of the Court's ultimate ruling. The Government argues that the statutory "for cause" provision requires a mere allegation of misconduct and that removal follows immediately. It also contends that the President has the sole power to determine what "cause" is sufficient, regardless of the alleged conduct's nature, timing, and relation to Board duties. This interpretation would render the "for cause" protection and any related Fed independence illusory. To water down the statute's "for cause" removal provisions as the Government now advocates would functionally convert the Governors' appointments to ones "at pleasure" of the President and would thus write a statute that the enacting Congress would not have passed.

I. Central-bank independence is an essential component of monetary policy and long-term economic growth.

The economy's long-term health requires a central bank with a measure of independence. Modern economies depend on long-term investments, and the level of

[4] *See Marbury* v. *Madison*, 5 U.S. 127, 172–73 (1803) ("[T]he applicant has, to that commission, a vested legal right, of which the executive cannot deprive him. He has been appointed to an office, from which he is not removable at the will of the executive; and being so appointed, he has a right to the commission.").

long-term investment is tied to expectations that prices will remain stable.[5] When price stability is lost, long-term investment becomes more expensive, growth slows—and those adverse effects are hard to reverse. Deflationary spirals can be similarly destructive. Monetary instability has famously contributed to democratic erosion and collapse around the world.[6] Fed independence is a form of "precommitment" in which the government can promote long-term monetary and economic stability by adopting long-term strategies that might conflict with the short-term interests of some officials, like the President.[7]

The central goal of monetary policy is to maintain expansion of the broad money supply at a rate that maximizes long-term economic growth. It has long been recognized that achieving this goal requires careful institutional design, with officials insulated from short-term pressures that could undermine confidence that the central bank will adopt the appropriate stance. Indeed, to generate expectations that monetary policy will not be excessively expansionary over the long term, nations have relied on institutions that are independent of close executive control. This innovation dates to the Bank of England Act in 1694, which created an investor-owned

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[5] *Benefits of Price Stability*, EUROPEAN CENTRAL BANK, https://perma.cc/95QW-5TQZ (last visited Sept. 24, 2025).

[6] *See generally* J. BRADFORD DELONG, SLOUCHING TOWARDS UTOPIA: AN ECONOMIC HISTORY OF THE TWENTIETH CENTURY (2022).

[7] *See generally* JON ELSTER, ULYSSES UNBOUND: STUDIES IN RATIONALITY, PRECOMMITMENT, AND CONSTRAINTS (2000) (discussing precommitment and its utility in various contexts); THOMAS C. SCHELLING, THE STRATEGY OF CONFLICT (1981).

corporation (the Bank of England) to expand the money supply, providing one of the foundations of modern financial capitalism and the industrial revolution.[8]

When Congress created the first and second Banks of the United States (in 1791 and 1816) and the National Banking System (in 1863), it followed these principles, separating day-to-day control over the expansion of the money supply from the President. In 1913, when Congress created the Federal Reserve System to provide for a more elastic currency and a more effective supervision of the banking system, it was also careful to maintain a degree of separation from the President. The initial governance structure dispersed authority among 12 Federal Reserve Banks, federally chartered banking corporations partly owned and controlled by a subset of the country's investor-owned banks.

This geographically diffuse structure, designed to insulate monetary policy from partisan political control, contributed to policy failures in the early 1930s, leading to an unprecedented banking collapse and the Great Depression.[9] In August 1935—relying on the Court's *Humphrey's Executor* decision, decided just three months earlier—Congress centralized control over monetary policy in a new body, the Federal Open Market Committee (FOMC), with the Fed's public Board of Governors

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[8] *See* Lev Menand, *The Logic and Limits of the Federal Reserve Act*, 40 YALE J. ON REG. 197, 254 (2023); MORGAN RICKS, GANESH SITARAMAN, SHELLEY WELTON & LEV MENAND, NETWORKS, PLATFORMS, AND UTILITIES: LAW AND POLICY 819–20 (2022); GEOFFREY M. HODGSON, THE WEALTH OF A NATION: INSTITUTIONAL FOUNDATIONS OF ENGLISH CAPITALISM (2023).

[9] *See* MILTON FRIEDMAN & ANNA SCHWARTZ, MONETARY HISTORY OF THE UNITED STATES, 1867–1960 (1963); Gary Richardson, *The Great Depression, 1929–41*, FEDERAL RESERVE HISTORY (2013), https://perma.cc/BM6Q-5TAE.

holding a majority of seats.[10] To promote long-term decision-making and independence from the President, Congress also converted the Board members' terms to 14 years; authorized the President to remove them only "for cause"; and eliminated *ex officio* positions on the Board for the Secretary of the Treasury and Comptroller of Currency, both officials who serve at the pleasure of the President.[11]

A. Central-bank independence is the solution to what economists call "the time-inconsistency problem."

Recent decades have seen the rise of an entire economic literature on "central-bank independence," or CBI, demonstrating the relationship between independent monetary policy and a healthy economy. In this literature, CBI is widely understood as the antidote to a dilemma that economists have dubbed the "time-inconsistency problem." That problem arises from the fact that central-bank policies operate over an extended time frame, but a non-independent central bank can face pressures to quickly stimulate the economy for partisan political reasons.[12]

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[10] *See* Gary Richardson & David Wilcox, *How Congress Designed the Federal Reserve to be Independent of Presidential Control*, 39 J. OF ECON. PERSP. 221, 223–25, 229 (2025) [hereinafter *How Congress Designed the Federal Reserve*]. Five FOMC members are Reserve bank presidents or first vice presidents appointed to their positions by the boards of directors of the Reserve banks, subject to Board of Governors approval. 12 U.S.C. § 263(a). For a more detailed description of the Fed's structure, *see* THE FED EXPLAINED: WHAT THE CENTRAL BANK DOES 6–13 (2020), https://perma.cc/6KV2-ZTDC [hereinafter "THE FED EXPLAINED"].

[11] 12 U.S.C. § 242.

[12] *See* Christopher Crowe & Ellen E. Meade, *The Evolution of Central Bank Governance around the World*, 21 J. ECON. PERSPECTIVES 69 (2007).

To put it more simply: There are times when a political leader will prioritize short-term economic activity over long-term price stability.[13] A President may, for example, want unemployment to go down and economic activity to increase in the run-up to an election or may seek to strengthen an immediate political position, even if those outcomes are unsustainable and will cause more economic harm than good. More accommodative monetary policy can achieve such effects but also increases the risk of higher levels of future inflation.

The cure for the time-inconsistency problem is to lengthen the decision-making horizon of central bankers by shielding them from certain forms of outside pressure. Research, theory, and evidence all confirm that a central bank's ability to control inflation hinges on its ability to formulate and implement monetary policy over reasonable time frames without undue outside interference. Consequently, nearly all advanced (and many developing) economies now have independent central banks that set monetary policy without being subject to direction by outside officials.[14]

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[13] *See Trump Says Fed Chair Powell Should Make Big Rate Cut Now*, REUTERS (Sep. 10, 2025), https://perma.cc/KT3Q-5J7H; Ines Ferré, *Trump Again Calls on 'Slow Moving' Fed to Cut Rates as Markets Continue Tumble*, YAHOO! FINANCE (Apr. 7, 2025), https://perma.cc/HT44-DW46 (reporting President Trump calling for Fed to cut rates after markets decline in response to tariff announcement: "'This would be a PERFECT time for Fed Chairman Jerome Powell to cut Interest Rates,' Trump said in a post on his social media app Truth Social on Friday. 'He is always "late," but he could now change his image, and quickly.'").

[14] *See generally* Alex Cukierman, Steven B. Webb & Bilin Neyapti, *Measuring the Independence of Central Banks and Its Effect on Policy Outcomes*, 6 WORLD BANK ECON. REV. 353, 375–76 (1992) (concluding that a central bank's "legal independence is systematically and inversely related to inflation in industrial . . . countries"); Ana Carolina Garriga & Cesar M. Rodriguez, *Central Bank Independence and Inflation Volatility in Developing Countries*, 78 ECON. ANALYSIS 1320, 1320 (2023) (finding that

Empirically, greater regulatory and supervisory independence is associated with improved financial stability.[15]

This is not just an abstract theory. There is a robust body of evidence showing that lower levels of central-bank independence are correlated with higher levels of inflation.[16] Experience in the United States has also borne out these concerns.[17]

The correlation between CBI and low inflation exists "only in the presence of multiple constitutional checks and balances."[18] CBI does not imply lack of accountability. But it does require some degree of insulation from day-to-day control by officials in other parts of the government.

Indeed, as economists have shown through formal models and empirical studies, public belief in the Fed's independence from immediate political pressures is

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CBI not only is "linked with lower levels of inflation in developed and developing countries" but also "directly and unconditionally associated with . . . reduction of [inflation] volatility," defined as "the prospect that the market's psychology switches abruptly from fears of inflation to concerns about deflation, and back again").

[15] *See* Nicolò Fraccaroli, Rhiannon Sowerbutts & Andrew Whitworth, *Does Regulatory and Supervisory Independence Affect Financial Stability?*, 170 J. BANKING & FIN. 107318, at p. 2 (2025).

[16] *See* nn.14–15, *supra*.

[17] Burton A. Abrams, *How Richard Nixon Pressured Arthur Burns: Evidence from the Nixon Tapes*, 20 J. ECON. PERSPECTIVES 177, 178 (2006) [hereinafter *Nixon Pressure*]; *see also* Catherine L. Mann, The Great Moderation 20 Years On—and Beyond, Address to the Annual Conference of the Society of Professional Economists (Nov. 14, 2024), https://perma.cc/KKT4-7WC2.

[18] Cristina Bodea & Raymond Hicks, *Price Stability and Central Bank Independence: Discipline, Credibility, and Democratic Institutions*, 69 INT'L ORGS. 35, 37 (2015) [hereinafter *Stability and Independence*].

crucial to the Fed's effectiveness in preventing high levels of inflation. "[I]f the public *believes* that the central bank is free from interference and that the law [governing the bank] is unlikely to change swiftly and without debate, it will also lower inflationary expectations, leading to price stability above and beyond the control of the money supply."[19] As a result, doubts about the constitutional viability of the design and independence of the Federal Reserve may not only roil markets but also trigger knock-on effects that are hard to predict and that may prove hard to contain. Concerns that the Fed's operations could be subject to interference by other executive-branch officials, whether warranted or unwarranted, could undermine the Fed's credibility, creating a heightened risk of financial instability and persistently higher levels of inflation.[20]

Far from jeopardizing democratic accountability, this limited form of insulation enables democracies to adopt widely agreed-upon policies, like price stability. "Delegation of monetary policy to an independent central bank in democracies allows the bank to actually behave in a conservative fashion that is reflected directly in lower rates of money supply growth [or other restrictive policies]. That is, the central bank can increase interest rates or target the exchange rate or money supply to ensure, most prominently, price stability, regardless of short-term

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[19] *Id.*

[20] *See generally* Alberto Alesina & Lawrence H. Summers, *Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence*, 25 J. MONEY, CREDIT & BANKING 151 (1993).

government pressure."[21] CBI therefore promotes democratic values by allowing the government to create the conditions that allow economies to thrive and individuals living in those economies to exercise meaningful choice in their lives.

CBI is at least as important here, in the world's largest economy, as in any other nation. An infamous case of CBI breakdown in this country involved President Nixon's pressuring of Fed Chairman Arthur Burns to pursue an expansionary monetary policy in the run-up to the 1972 presidential election. That policy helped Nixon get reelected, but it also "helped to trigger an extremely costly inflationary boom-bust cycle" that took a decade to resolve.[22] Any hint that the United States is abandoning its commitment to CBI could shake confidence in the American economy.

B. Maintaining the credibility of Fed independence is crucial to containing systemic banking risks.

Protecting central-bank officials from the threat of immediate removal because of policy differences also is critical to combatting moral hazard[23] and helping to contain systemic banking risks. Congress has sought to control those risks by enacting a system of checks and balances designed to control the immediate impulse to "bail out" a failing financial institution in response to political pressure to avoid the pain of an institution's default and curb losses to uninsured depositors.

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[21] *Stability and Independence* at 37.

[22] *Nixon Pressure* at 187.

[23] "Moral hazard" refers to the extra risk that people and entities take on because they believe that they are insured against resulting losses.

Fed independence plays an integral role in this system of checks and balances. In the "resolution" of a failing bank, the FDIC protects insured depositors but is otherwise mandated to resolve the bank with the "least possible cost to the deposit insurance fund."[24] This may mean imposing losses on sophisticated creditors who receive higher yields for bearing greater risk and who are presumed to have the capacity to monitor the bank's risk-taking.

There may be intense pressure to protect these sophisticated creditors, either to avoid local economic fallout or political pushback. Yet making such bailouts commonplace would erode the discipline on which banking-system stability depends. In that event, we would predictably see more risk-taking and more bailouts.

To avoid this, Congress devised a scheme that critically relies on the independence of multiple regulators, including the Fed. Under that scheme—known as "the systemic-risk exception"—the FDIC *can* depart from the "least possible cost" framework, but only after the relevant agencies make an "emergency determination" that such help is necessary to avoid "serious adverse effects on economic conditions or financial stability."[25] Invoking the systemic-risk exception requires not only a determination by the Secretary of the Treasury, but also a supermajority vote of the Board of the FDIC *and* of the Governors of the Federal Reserve.[26]

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[24] 12 U.S.C. § 1823(c)(4).

[25] *Id.*

[26] 12 U.S.C. § 1823(c)(4)(G).

Protecting against excessive bailouts, shielding the "least possible cost" scheme from erosion, and resisting political pressure all depend on one thing: the credible independence of the regulatory agencies that must sign off on any invocation of the systemic-risk exception—namely, the FDIC and the Fed. But that independence would be shattered—and Congress's careful cabining of the systemic-risk exception would collapse into short-term considerations—if the President could easily remove the board members of those agencies. The likely consequence would be more risk-taking and more ongoing threats to financial stability.[27]

C. Fed independence furthers the constitutional separation of powers by protecting Congress's power of the purse.

As this Court noted in May, the Federal Reserve follows in a distinct historical tradition that dates to the establishment of the Bank of the United States by the First Congress. That tradition is concerned with ensuring that the executive cannot use control over the money supply to overwhelm Congress's appropriations powers. As demonstrated in its responses to the 2007–2009 Financial Crisis and 2020 COVID-

[27] Similarly, Congress created a "triple key" approach for invoking the "Orderly Liquidation Authority" in the Dodd Frank Act of 2010. *See* Dodd-Frank Act § 203(a), 12 U.S.C. § 5383(a). Triggering "Orderly Liquidation Authority" ("OLA") moves a failing financial firm into a special proceeding that is likely to reduce creditor losses through use of Treasury resources. The alternative would be a bankruptcy proceeding. Before triggering the special proceeding, the Secretary of the Treasury must obtain the agreement of a supermajority of the Board of Governors and of either the FDIC Board (in most cases) or the Securities Exchange Commission (in the case of a securities firm). In short, to minimize politicization of the OLA decision, Congress required concurrence by two independent financial regulatory agencies. If board members could be easily removed, the agencies' independence would collapse and market participants could foresee that political pressure would substitute for sound financial management. This, too, would produce more risk-taking and thus an on-going threat to financial stability.

19 pandemic,[28] the Fed plays a critical role as a "lender of last resort" to banks and nonbanks during periods of financial distress.

Former Federal Reserve Chair and Great Depression expert Ben Bernanke has described collateralized lending as "[t]he most important tool that central banks (like the Fed) have for fighting financial panics."[29] It enables the Fed to deter bank runs, quell the need for fire sales, smooth market functioning, and otherwise promote credit creation.[30] Accordingly, the Fed has the power to create facilities that direct money to private parties and to use the Federal Reserve System balance sheet to acquire the securities of the U.S. Government and private parties.[31] The relevant statutes confine some of these powers to "unusual and exigent circumstances" and impose additional requirements limiting when and how this lending can take place.[32] But given the difficulty of judicial review, a President with control over the Federal Reserve Board might be able to deploy funds to favored parties or for favored purposes. Such lending,

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[28] *See* THE FED EXPLAINED at 31–33 (discussing measures used to respond to 2007–2009 financial crisis), 34 (2020 COVID-19 pandemic).

[29] Ben S. Bernanke, *Fed Emergency Lending*, BROOKINGS (Dec. 3, 2015), https://perma.cc/52N9-RXLV.

[30] *See* THE FED EXPLAINED 49–55.

[31] *See, e.g.*, 12 U.S.C. §§ 343(3) (emergency credit facilities authorities); 347c (permitting Reserve banks, subject to Board regulations, to lend to individuals, partnerships, or corporations); 347b (governing "discount window" lending to member banks); 353–59 (allowing Reserve banks, subject to Board regulation, to purchase and sell U.S. government and federal agency securities on the open market).

[32] *See, e.g.*, 12 U.S.C. § 343(3)(A) (emergency lending authorities may be exercised in "unusual and exigent circumstances . . . by the affirmative vote of not less than five members"). Many of these powers, *supra* n.31, are not limited to emergencies.

which is a form of money creation, would impair Congress's control of the power of the purse.

In other words, presidential control over the Fed confers not only control over interest-rate policy, but also control over the balance sheet of the Federal Reserve System—in a way that could disrupt the separation of powers. It could also have profoundly destabilizing effects on the economy. Regardless of whether these powers were actually exercised in this manner, markets could anticipate their potential use, undermining Fed independence and credibility.[33]

In resolving this dispute, the Court may encounter arguments that there is a constitutionally relevant distinction between the Fed's interest-rate policy decisions and its role regulating and supervising financial institutions.[34] But these arguments

[33] Indeed, without a robust version of "for cause" removal that adequately protects the independence of the Federal Reserve Board, this Court may be obliged to strike down the entirety of Title II of the Banking Act of 1935. Establishing and protecting the independence of the Federal Reserve Board were critical elements to the Congressional grant of extensive new power to the Board in the centralized conduct of monetary policy. *See How Congress Designed the Federal Reserve* 222–30. The 1935 Act (i) removed the Secretary of the Treasury and the Comptroller of the Currency from the Board, depriving the President of direct oversight and influence; (ii) lengthened and staggered Board Members' terms to limit the influence of a single President; and (iii) critically, provided for removal "for cause" only. *Id.* The Act cleared a logjam only after a "for cause" limitation on presidential removal power was validated in *Humphrey's Executor*. *Id.* at 229; *see Seila L. LLC v. CFPB*, 591 U.S. 197, 234 (2020) (noting "traditional rule" that a statute is not severable if "the statute created in its absence is legislation that Congress would not have enacted").

[34] Exec. Order No. 14,215, 90 FED. REG. 10,447 (Feb. 24, 2025), https://perma.cc/JD4H-YEA5.

overlook the way in which these activities overlap and the Court should avoid addressing them here.[35]

II. Granting a stay could seriously damage Fed independence and credibility regardless of the Court's ultimate ruling on the merits.

"The propriety of [a stay's] issue is dependent upon the circumstances of the particular case." *Nken* v. *Holder*, 556 U.S. 418, 433 (2009). In determining whether to grant a stay, the Court often considers the realistic effects of a grant or denial. *See, e.g.*, *Alabama Ass'n of Realtors* v. *Dep't of Health & Hum. Servs.*, 594 U.S. 758, 765–66 (2021) (denying stay in part because government's opportunity to distribute certain funds reduced its stay interests and it had failed to act to extend program); *Hollingsworth* v. *Perry*, 558 U.S. 183, 195 (2010) (considering realistic implications, including "difficult . . . to reverse" harm of failing to grant stay on parties and other individuals).

This Court has recognized the potentially "disruptive effect of the repeated removal and reinstatement of officers during the pendency of [] litigation." *Wilcox,* 145 S. Ct. at 1415. Granting a stay would implicate that potential disruption particularly acutely here. A stay based on the Government's porous removal standard

[35] For example, when conducting interest rate policy, the Fed also regulates financial institutions. Under its current implementation framework, when the Fed changes its target for the federal funds rate—the rate at which depository institutions lend to each other—it effects this adjustment through amending a rule. *See* 90 Fed. Reg. 3615. And when the Board regulates capital requirements and leverage ratios, these rules also impact the rate of monetary expansion in the banking system. *See* Menand, *The Logic and Limits of the Federal Reserve Act*, 40 YALE J. ON REG. at 240–50. Were the Court to suggest that the President could constitutionally direct and control Fed rulemaking with respect to the regulation of financial institutions, it could significantly damage monetary-policy independence and credibility.

would undermine the Fed's independence, credibility, and ability to carry out its mandate, even if the Court ultimately rules for the Respondent on the merits.

Throughout this litigation, the Respondent has been performing her duties as a member of the Federal Reserve Board. Looming over the stay briefing in the Court of Appeals was an upcoming FOMC meeting. During that meeting, the Respondent and other FOMC members reviewed the Federal Reserve's monetary-policy stance and voted on interest-rate targets.[36] The Government made no secret of the fact that it sought a stay to prevent her from participating in that meeting.[37] Uncertainty about whether the Respondent was eligible to participate, generated by a stay, could have disrupted FOMC's critical operations. It could also have destabilized domestic and foreign markets.[38]

Because the Court of Appeals denied the stay, this did not come to pass. But it very well could have—and could in the future. Here, the Government did not apply for a stay from this Court before the conclusion of the FOMC meeting. But granting a stay now could create at least the perception that a President could undercut Fed independence in the future by carefully choosing the timing of an attempted removal.[39] This could degrade the Fed's credibility in ways that are very difficult or

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[36] *Id.*

[37] Kevin Breuninger, *Trump asks appeals court to let him fire Lisa Cook before next week's Fed meeting*, CNBC (Sept. 11, 2025), https://perma.cc/MU7U-W6LN.

[38] *See id.*; Howard Schneider, *Fed's credibility is an asset whose decline could be costly*, REUTERS (Aug. 26, 2025), https://perma.cc/Y7BS-RA6C.

[39] *Stability and Independence* at 37. That would be especially true here, where the asserted basis for cause is a mere allegation of conduct that occurred prior to the

costly, if not impossible, to reverse.

CONCLUSION

The Government's application should be denied.

Respectfully submitted,

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Respondent's service on the Board. A merits ruling would be hard-pressed to dispel such a perception definitively. The facts underlying a claimed "cause" for removal are often unclear in emergency procedural postures—as is the case here. *See* Lindsay Whitehurst & Christopher Rugaber, *Fed Governor Lisa Cook claimed 2nd residence as 'vacation home,' undercutting Trump fraud claims*, ASSOC. PRESS (Sept. 12, 2025), https://perma.cc/D34N-AHS5. The precise bounds of "cause" are also contested. Markets could believe future stays would be granted based on such uncertainties.