No. 25A312

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, Applicant,

v.

LISA D. COOK, Respondent.

BRIEF OF AMICI CURIAE FORMER GOVERNMENT OFFICIALS AND ADVISORS OPPOSING THE STAY APPLICATION

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IDENTITY AND INTEREST OF AMICI

Amici are lawyers, retired jurists, scholars, and former public officials elected as Republicans, appointed by Republicans, or who served in Republican administrations. Together, they have many hundreds of years of public service. They are united by their shared reverence for the history and tradition of American institutions, and by their commitment to liberty, limited government, and the rule of law.

Amici write because they fear that the Administration's unprecedented attempt to remove a Federal Reserve Governor threatens the separation of powers that defines our constitutional order. Amici deeply value stability, consistency, and continuity—the qualities that Congress intended to assure by providing the Fed with substantial independence, and which have helped make the United States economy the strongest in the world. Amici know that there is nothing conservative about the Administration's break with 225 years of tradition underlying the Federal Reserve's independence.

Amici are:

- Donald Ayer, Deputy Attorney General under President George H.W. Bush (1989-90); Principal Deputy Solicitor General (1986-1988); U.S. Attorney for the Eastern District of California, appointed by President Ronald Reagan (1982-86); Assistant U.S. Attorney, N.D. California (1977-79).

- Richard Bernstein, Attorney, Appointed by the Supreme Court to argue in *Carmell v. Texas*, 529 U.S. 513 (2000) and *Montgomery. Louisiana*, 577 U.S. 190 (2016).
- Ty Cobb, Special Counsel to the President in the Trump Administration (2017 -2018); Assistant U.S. Attorney for the District of Maryland (1980-1986).
- Tom Coleman, Assistant Attorney General of Missouri (1969-1972); Missouri State Representative (1973-1976); Representative of the 6th Congressional District of Missouri (1976-1993) (R).
- Barbara Comstock, Representative of the 10th Congressional District of Virginia (2015-2019) (R).
- Mickey Edwards, Representative of the 5th Congressional District of Oklahoma (1977-1993) (R).
- John J. Farmer, Jr., New Jersey Attorney General (1999-2002) (R); Assistant U.S. Attorney for the District of New Jersey (1990-1994).
- John Giraudo, Attorney Advisor in the Department of Justice Office of Legal Counsel during the Reagan Administration (1986-1989).
- James C. Greenwood, Representative of the 8th Congressional District of Pennsylvania (1993-2005) (R).
- Bob Inglis, Representative of the 4th Congressional District of South Carolina (1993-1999; 2005-2011) (R).

- Philip Allen Lacovara, Deputy Solicitor General in the Nixon Administration; President Ronald Reagan's representative on the DC Judicial Nomination Commission.
- J. Michael Luttig, Circuit Judge, United States Court of Appeals, appointed by President George H.W. Bush (1991-2006); Assistant Attorney General, Office of Legal Counsel and Counselor to the Attorney General in the Bush Administration (1990-1991); Assistant Counsel to the President in the Reagan Administration (1981-1982).
- John McKay, U.S. Attorney for the Western District of Washington, appointed by President George W. Bush (2001-2007).
- Carter G. Phillips, Assistant to the Solicitor General during the Reagan Administration (1981-1984).
- Alan Charles Raul, Associate Counsel to the President (1986-1988); General Counsel, Office of Management and Budget (1988-1989); General Counsel, U.S. Department of Agriculture (1989-1993); Vice Chairman, Privacy and Civil Liberties Oversight Board (2006-2008).
- Claudine Schneider, Representative of the 2nd Congressional District of Rhode Island (1981-1991) (R).
- Robert Shanks, Deputy Assistant Attorney General, Office of Legal Counsel in the Reagan Administration (1981-1984).
- Christopher Shays, Representative of the 4th Congressional District of Connecticut (1987-2009) (R).

- Fern M. Smith, Judge of the U.S. District Court for the Northern District of California, appointed by President Ronald Reagan (1988-2005).
- David Trott, Representative of the 11th Congressional District of Michigan (2015-2019) (R).
- Stanley A. Twardy, Jr., United States Attorney for the District of Connecticut, Appointed by President Ronald Reagan (1985-1991); Chief of Staff to Connecticut Governor Lowell P. Weicker, Jr. (1991-1993).
- James T. Walsh, Representative of the 27th Congressional District of New York (1989-2009) (R).
- William Joseph Walsh, Representative of the 8th Congressional District of Illinois (2011-2013) (R).
- William F. Weld, Governor of Massachusetts (1991-1997) (R); Assistant Attorney General for the Criminal Division (1986-1988).
- Christine Todd Whitman, Governor of New Jersey (1994-2001) (R); Administrator of the Environmental Protection Agency in the George W. Bush Administration (2001-2003).

SUMMARY OF ARGUMENT

Amici write to show why equitable principles, history, tradition, and longstanding interpretive canons militate against the Administration's stay request.

First, the public interest would be injured by the Administration's unprecedented attempt to break from our long tradition of monetary policy independence. Amici are committed to stability, consistency, and continuity—the same values that interim equitable relief is designed to protect. But the Administration would upend two different status quos: Governor Lisa Cook's service on the Federal Reserve Board, which continues uninterrupted, and a history, going back to 1791, of insulating the Federal Reserve and its predecessors from political interference. The Administration's defiance of history and tradition would threaten the strength and stability of the U.S. and global economies.

Second, the Administration cannot show a likelihood of success on the merits. Its case depends on the meaning of "for cause" in the Federal Reserve Act's 12 U.S.C. § 242. But traditional canons of statutory interpretation support Governor Cook's position that § 242's "for cause" protection is best understood as a specific legal standard embodying a robust cause requirement subject to appropriate process and judicial review.

The Federal Reserve Act grew out of a consistent tradition, dating back before the Founding, of insulating monetary policy from executive interference. That tradition explains the structure of the Act, whose overlapping protections against political interference mean nothing without the "for cause" linchpin. This Court

should read the Act in light of that structure and history; in light of consistent executive practice, which provides powerful evidence that the Act's original public meaning included robust protections for Fed Governors; in light of the presumption of judicial review, which defaults to Article III review of executive action when a statute is silent; and in light of the canon of constitutional avoidance, which is implicated by the Administration's frontal attack on both legislative and judicial checks and balances.

ARGUMENT

I. The equities militate against a stay, which would upend the status quo and injure the public interest.

The extraordinary remedy of interim equitable relief is appropriate only where an applicant can show—among other things—that the equities weigh heavily in its favor. *See, e.g., Trump v. International Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (since "[t]he purpose of . . . interim equitable relief is . . . to balance the equities as the litigation moves forward," this Court examines not only likelihood of success on the merits and irreparable harm to the applicant but also "the relative harms" and "the interests of the public at large"), *and see Nken v. Holder*, 556 U.S. 418, 434 (2009). Here, even setting aside potential harm to Governor Cook herself, the equities weigh decisively against the Administration's desired relief, which would end Federal Reserve independence and threatens to wreak havoc on the global financial system.

A. The Administration seeks to upend the status quo.

The Administration wants to upend the status quo, abruptly removing Governor Cook from the Federal Reserve Board—and threatening the stability of the nation's monetary policy and the world economy.

This Court has previously held that a stay is appropriate "to avoid the disruptive effect of the repeated removal and reinstatement of officers during the pendency of th[e] litigation." *Trump v. Wilcox*, 145 S. Ct. 1415 (2025). Here, that principle militates against a stay, which would have precisely the disruptive effect that *Wilcox* feared. Governor Cook began serving on the Board in 2022, and was appointed to a full 14-year term in 2023. *See* Memorandum Opinion, *Cook v. Trump,*

1:25-cv-02903-JMC (D.D.C. Sep. 9, 2025), ECF No. 27 at 4. She still serves, since the Board of Governors has not effectuated the President's removal demand. *See, e.g.*, Resp. to Mot. for Temporary Restraining Order, *Cook v. Trump*, 1:25-cv-02903-JMC (D.D.C. Aug. 29, 2025), ECF No. 12 (expressing the Board's "interest in a prompt ruling by [the district court] to remove the existing cloud of uncertainty" and the Board's "intent to follow any order" issued by that court). Just days ago, she attended the most recent Board of Governors policy meeting.[1] Granting the Administration's application, then, would contravene the fundamental purpose of a stay—which, properly deployed, "simply suspends judicial alteration of the status quo." *Nken*, 556 U.S. at 429 (cleaned up) (quoting *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers)).

Tacitly acknowledging that the interim relief it seeks conflicts with a stay's basic purpose, the Administration insists—citing Justice Kavanaugh's concurrence in *Labrador v. Poe*, 144 S. Ct. 921, 931 (2024)—that stay applications are resolved with reference to the *Nken* factors rather than by applying "a blanket rule of preserving the status quo." App. 38. That is true as far as it goes, but it does not go very far. Justice Kavanaugh observed that the "status quo" means different things in different contexts. 144 S. Ct. at 930. In the context of *Labrador*, for instance, "status quo" might have meant "the situation on the ground *before* enactment of the new law," "the situation *after* enactment of the new law, but before any judicial

[1] *See* Sam Sutton & Kyle Cheney, *Trump Asks the Supreme Court to Let Him Fire Federal Reserve Board Member Lisa Cook*, POLITICO (Sept. 18, 2025), https://perma.cc/6ACX-9PBS.

injunction," "the situation after any district court ruling on a preliminary injunction," or "the situation after a court of appeals ruling on a stay or injunction." *Id.* Justice Kavanaugh recognized that each of those definitions can be defensible, and any might apply in an appropriate case. *See id.* So a blanket rule may be impossible. But Judge Kavanaugh's concurrence nowhere questioned *Nken*'s foundational observation that the purpose of a stay is to preserve *some* status quo—appropriately, and contextually, defined.

Here, granting the relief sought would alter the status quo however it is defined. Preserving the pre-presidential pronouncement status quo means leaving Governor Cook in office. Preserving the pre-judicial action status quo *also* means that Governor Cook keeps her job pending a merits resolution. Likewise with preserving the post-preliminary injunction status quo, or the post Court of Appeals status quo. And, perhaps most relevantly as this Court considers the public interest: granting the stay would upend a 225-year status quo, sanctioned by history, that protects Fed monetary policy stability by fending off political interference. See *infra.* pp. 14-18.

B. Upending the status quo would injure the public interest.

Allowing the President to remove Governor Cook at his discretion would expose U.S. monetary policy, and the entire world economy, to profound instability.

The Fed's independence is the bedrock of global confidence in U.S. financial leadership.[2] Undermining that independence could trigger lasting doubt in the

[2] *See* CFR Editors, *What Is the U.S. Federal Reserve?*, COUNCIL ON FOREIGN RELATIONS (Sept. 16, 2025), https://perma.cc/F5HV-6GJX.

stability of American institutions.[3] Allowing Governor Cook to be removed now, without even full merits review, would send an unmistakable signal that the Federal Reserve is vulnerable to political control—especially if, as the Administration urges, "cause" means nothing more than a President's unreviewable whim.[4] On the Administration's reading, after all, the President could replace the entire Board, claiming a pretextual cause that no court could gainsay. The unprecedented disruption—and the very real threat of further, ongoing disruption, at least every four years—would deeply injure the public interest, inflicting harms that preclude the Administration from coming close to demonstrating that the equities favor relief. *Cf. United States v. Am. Tobacco Co.*, 221 U.S. 106, 187 (1911) (declining to enter proposed permanent injunctive relief because the contemplated remedies "might inflict infinite injury upon the public by leading to a stoppage of supply and a great enhancement of prices" or otherwise "do grievous injury to the public").

The downstream consequences of Governor Cook's removal would be monumental. Economic and policy experts have emphasized that interference with the Fed's independence would reverberate far beyond the United States.[5] Governor Cook's other Amici have explained, "Sectors that pay close attention to the Federal

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[3] *See id.*

[4] *Cf.* Tatyana Deryugina et al., *An Open Letter from Economists in Support of Governor Lisa Cook and Federal Reserve Independence*, Economists' Open Letter (Sept. 2, 2025), https://perma.cc/28CM-F23X (protecting the Federal Reserve's independence is "not merely a legal formality; it is a practical mechanism, designed to ensure that monetary policy cannot be misused for political gain at the expense of what's best for the economy").

[5] *See, e.g.*, Theo Leggett, *US Fed Loss of Independence a Serious Danger, Says Lagarde*, BBC NEWS (Sept. 1, 2025) (noting that the head of the European Central Bank has warned that if President Donald Trump were to undermine the independence of the US Federal Reserve, it would represent a 'very serious danger' to the global economy"), https://perma.cc/49AA-QF76.

Reserve—including the financial markets, the public, employers, and lenders—are watching the current dispute over the President's removal of Governor Cook to judge how credible the Fed will be going forward." Brief of Amici Curiae Former Treasury Secretaries, Federal Reserve Board Chairs and Governors, Council of Economic Advisers Chairs, and Economists in Opposition to the Application To Stay the Preliminary Injunction at 24, *Trump v. Cook*, No. 25A312 (Sept. 25, 2025). As experts from the Council on Foreign Relations recently observed, "Eroding trust in the central bank's autonomy has implications far beyond any single administration. It threatens the role of the dollar as the world's reserve currency."[6]

Even the perception that the Fed's independence is compromised could erode market confidence, potentially raising U.S. Treasury yields—an outcome with far-reaching consequences for global financial markets.[7] The dollar itself could weaken dramatically, losing its position as the global reserve currency and sending inflationary shocks worldwide.[8]

The Administration nowhere disputes that those harms could and would follow from Governor Cook's removal. *See, e.g.*, App. 16 (asserting only that "[t]he *public's* interest in the independence of the Federal Reserve Board does not somehow establish that *Cook* has a private property right to the office of Governor"). It makes

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[6] Roger W. Ferguson Jr. & Maximilian Hippold, *The Fed Is in Uncharted Waters Ahead of Key September Rate Decision,* COUNCIL ON FOREIGN RELATIONS (Aug. 27, 2025), https://perma.cc/R5WB-ZT3V.

[7] Heather Stewart, *What Trump's Move to Fire Fed Governor Means for Central Bank's Independence*, THE GUARDIAN (Aug. 25, 2025), https://perma.cc/VS5L-PK5Y.

[8] Dennis Snower, *Ripples Presaging a Financial Tsunami*, VOXEU – CEPR (Sept. 19, 2025), https://perma.cc/2C6E-AQ7Z.

only two feeble attempts to explain how the public interest and balance of the equities support its application. Neither convinces.

First, the Administration misstates the record. Citing *Wilcox*, the Administration argues that "the government faces a serious risk of irreparable harm when a district court reinstates a removed principal executive officer." App. 36. This purported harm, the Administration says, outweighs any harm faced by Governor Cook. App. 37-38. But, as noted above, the "disruptive effect of . . . repeated removal and reinstatement" invoked by the Court in *Wilcox*, 145 S. Ct. 1415, would follow from a grant of the Administration's stay request, not its denial. And "the government," writ large, faces no such risk. Congress did not authorize this removal. The harm to Congress' scheme will come if the Administration wins. Meanwhile, the Administration thinks the judiciary has nothing to say about any of this. So only one branch of a three-part government faces the prospect of disappointment.

Second, the Administration plays a shell game, substituting a merits argument for an argument about the equities. It invokes the President's own determination that Governor Cook should be removed, asserting that "the President may reasonably determine that interest rates paid by the American people should not be set by a Governor who appears to have lied about facts material to the interest rates she secured for herself." App. 5.[9] In essence, the Administration claims both that courts may not interrogate the President's purported "cause" and also that courts must

[9] While the introduction to the Administration's application alludes to "the public's interest in ensuring that an ethically compromised member does not continue wielding its vast powers," App. 5, the argument that follows entirely fails to address how the public interest supports issuance of a stay.

accept the President's say-so in evaluating whether the Administration has met its burden with respect to the other elements it must establish for interim equitable relief. *See also* App. 37 (arguing that "the district court improperly substituted its own judgment for the President's" in assessing relative harm). That reasoning collapses the final stay factors into the Administration's merits argument and defies the constitutional separation of powers. The President should not decide for this Court whether the equities weigh in his favor.

Granting a stay would deeply harm the public interest and upend both the status quo in this case—Governor Cook is in office now—and the long-term status quo of Fed independence. Under traditional equitable principles, the Court should deny the Administration's application.

II. History, tradition, and venerable canons of statutory interpretation all cut against the Administration on the merits.

History going back to the First Bank of the United States sanctions the Federal Reserve's unique independence, backed by a robust "for cause" protection that insulates Governors from at-whim removal. Presidential practice across nineteen administrations, in a tradition unbroken until August of this year, honored that independence—which, in turn, served the congressional purpose of a stable monetary policy that has undergirded U.S. economic success. And the availability of judicial review to check presidential overreach protects that independence.

The Administration's merits case casts aside history, traditional practice, the presumption of judicial review, and the constitutional separation of powers. But those values and institutions show why 12 U.S.C. § 242's "for cause" protection must be

read robustly, to prevent policy-based and pretextual removals and to ensure the availability of review.

A. 225 years of history and tradition evidence the robust substance of § 242's *for cause* protection–and undercut the Administration's Due Process argument.

Congress has insulated the Fed and its predecessors from political interference since the birth of our constitutional order. The Administration would upend that "unique" arrangement, sanctioned by 225 years of a "distinct" history and tradition. *Wilcox*, 145 S. Ct. 1415 ("The Federal Reserve is a uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States."); *Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 467 n. 16 (2024) (Alito, J., dissenting) ("The Board … is a unique institution with a unique historical background … For Appropriations Clause purposes, the funding of the Federal Reserve Board should be regarded as a special arrangement sanctioned by history."); Brett M. Kavanaugh, *Separation of Powers During the Forty-Fourth Presidency and Beyond*, 93 Minn. L. Rev. 1454, 1474 (2009) ("To be sure, in some situations it may be worthwhile to insulate particular agencies from direct presidential oversight or control—the Federal Reserve Board may be one example, due to its power to directly affect the short-term functioning of the U.S. economy by setting interest rates and adjusting the money supply.").

Start even before the Founding. The Framers at the Constitutional Convention believed "that tyranny follows mixing power over the purse with power over the sword." Lawrence Lessig & Cass R. Sunstein, *The President and the Administration*,

94 Colum. L. Rev. 1, 29 n.137 (1994). So they denied the President the power of the purse—including the powers, vested only in Congress, to borrow money and to regulate the money supply. U.S. Const. art. 1, § 8. Since control over the public fisc was not understood as an executive function, the Founding-era Congress moved quickly to keep the President's hands off the treasury. As one scholar put it, "Congress at first believed the Treasury Department should be closely associated with it, ... occupying a status different from that of State and War." *Id*. at 28 (citing Leonard D. White, *The Federalists: A Study in Administrative History* 55, 118-19 (1948)). Congress—presaging the protections for Federal Reserve Governors—even "shield[ed] the Comptroller (an office within Treasury) from presidential direction." *Id*. at 27.

No surprise, then, that Congress insulated our original banks from executive control.[10] The First Bank of the United States, chartered in 1791, was run by twenty-five directors, elected by the shareholders. Aditya Bamzai & Peter M. Shane, *The Removal Question: A Timeline and Summary of the Legal Arguments*, 78 Stan. L. Rev. Online 64, 69–70 (2025). Since the United States could never be more than a minority shareholder—it was "statutorily barred from subscribing to more than one-fifth of the Bank stock"—the government could never dominate the bank's direction or control its policy. *Id*. Congress chose a different mechanism for insulating the Second Bank of the United States, chartered in 1816, but the outcome was the same. The President

[10] Monetary policy is still not seen as an executive function. *See, e.g.*, *Consumers' Rsch. v. Consumer Prod. Safety Comm'n*, 98 F.4th 646, 657 (5th Cir. 2024) (Oldham, J., dissenting) ("The Fed's most important responsibility is administration of the money supply, . . . [which] is not an executive function.").

could name only five of the Bank's twenty-five directors. *Id.* at 70. Here, too, the President could never dictate the Board's direction.

Congress built the Federal Reserve System to uphold that tradition of independence. The President could not control the First and Second Banks, and he would not be able to control the Fed, either. The Federal Reserve Act, passed in 1913, insulates the Fed by giving its seven Governors stagged 14-year terms. 12 U.S.C. § 242. Bank assessments, not annual appropriations, fund the Board. *Id.* at §§ 243, 244. Neither Congress (through the Congressional Review Act) nor the Government Accountability Office can review the Fed's rules or audit its deliberations. 12 U.S.C. § 3910(a)(3); 5 U.S.C. § 807. And, unlike executive branch agencies, the Board litigates independently, 12 U.S.C. § 248(p), and speaks to Congress independently, without approval or intermediation by any "officer or agency of the United States." 12 U.S.C. § 250. Governors survive presidential administrations, promoting stability and continuity and minimizing the likelihood that any President will have the opportunity to exert too much control over the Board.

But, without robust removal protections for Governors, that insulated structure is not yet airtight. What if a new President—or a sitting President, eager for a short-term economic boost—simply tries to clean house, and start over with a slate of handpicked (and likeminded) Governors? Congress thought of that, too. That is where § 242's "for cause" protection comes in: it is the only bar to wholesale presidential control over the Fed's membership. If the President could replace Board

members at his sole discretion and without any judicial scrutiny, none of the other protections would mean anything.

The Fed's political independence mattered so much to Congress because independence promotes stability across administrations and over time, and Congress explicitly crafted a scheme aimed at maximizing "the stability of the financial system of the United States." 12 U.S.C. § 248; *and see* 12 U.S.C. § 225a (charging the Fed with "promot[ing] effectively the goals of maximum employment, stable prices, and moderate long-term interest rates."). Congress was right. Monetary policy stability is indispensable to long-term economic success.[11]

Congress' insulated structure worked. The Federal Reserve Act is both the product and the progenitor of a "unique" historical tradition: it grew out of a history of independence, and it has fostered a history of independence. Since Woodrow Wilson signed the Federal Reserve Act, no President—for nineteen different administrations, across 112 years—has ever tried to dismiss a Board Governor. Instead, prior administrations have repeatedly endorsed the Fed's independence. For instance: while President Reagan had his disagreements with then-Federal Reserve Chairman Paul Volcker, he still affirmed that "[t]his administration will always support the political independence of the Federal Reserve Board."[12]

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[11] *See, e.g.,* David Beckworth, *What Would Milton Friedman Say about Financial Stability?*, MERCATUS CENTER (May 2, 2022), https://perma.cc/5J35-KQKH (arguing that Milton Friedman "believed a stable monetary policy regime would lead to stable nominal income growth and, in turn, support financial stability."); *Alan Greenspan: Transparency in Monetary Policy* (Oct. 11, 2001), https://perma.cc/6XZD-SMAK (characterizing the Fed's "ultimate objectives" as achieving "price stability and the maximum sustainable growth in output that is fostered when prices are stable.").

[12] *See The President's News Conference*, Ronald Reagan Presidential Library & Museum (Feb. 18, 1982), https://perma.cc/AE9T-H8BF.

This history, and the "for cause" protection's indispensable place in the comprehensive congressional scheme, matter here in at least three ways that show why the Administration cannot prevail on the merits.

First, Congress' centuries-long insistence on central bank independence speaks to the robust meaning of its "for cause" protection. If the Administration is right, that protection is not even a speedbump. The President can invent any pretext he chooses, and no judge can second-guess him. *But see Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019) ("[W]e are 'not required to exhibit a naiveté from which ordinary citizens are free.'") (citation omitted). The Administration asks this Court to assume that Congress, which spent two centuries protecting banks' independence, also deliberately built a fatal (and obvious) design flaw into its own structure. This is the Death Star theory of congressional drafting. If "for cause" means whatever the President wants it to mean, it is not just redundant but also cuts against the entire statutory structure and the century and more of history behind the FRA. *Cf. Advoc. Health Care Network v. Stapleton*, 581 U.S. 468, 477 (2017) (deploying the surplusage canon); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (deploying the whole-text canon, which requires looking to "the language and design of the statute as a whole.").

Second, the uninterrupted history of government practice post-FRA enactment is strongly probative of the "for cause" protection's meaning.

Traditions of practice help elucidate the meaning of ambiguous text. *See, e.g., Rutan v. Republican Party of Illinois,* 497 U.S. 62, 95 (1990) (Scalia, J., dissenting)

("[W]hen a practice not expressly prohibited by the text ... bears the endorsement of a long tradition of open, widespread, and unchallenged use that dates back to the beginning of the Republic, we have no proper basis for striking it down."). That is true in constitutional interpretation. *Zivotofsky v. Kerry*, 576 U.S. 1, 23 (2015) ("In separation-of-powers cases this Court has often 'put significant weight upon historical practice.'") (citing *N.L.R.B. v. Noel Canning,* 573 U.S. 513, 524 (2014)). And it is true in statutory interpretation. *Kisor v. Wilkie*, 588 U.S. 558, 594 (2019) (Gorsuch, J., concurring) ("[T]he government's early, longstanding, and consistent interpretation of a statute ... could count as powerful *evidence* of its original public meaning."). Amici believe that our shared history makes meaning. Or, as Justice Scalia put it, our venerable traditions "are themselves the stuff out of which the Court's principles are to be formed." *Rutan,* 497 U.S. at 96.

Presidential practice is part of our interpretive tradition. In *Dames & Moore v. Regan*, the Court cited presidential practice dating back to 1799 as evidence of the scope of "Executive Power." 453 U.S. 654, 679–681 & n.8, 686 (1981). In *Ex parte Grossman*, it relied on unchallenged presidential use of the pardon power since 1841. 267 U.S. 87, 118–119 (1925). In *United States v. Midwest Oil Co.*, the Court upheld presidential authority to withdraw public lands from private use by citing a line of executive practice "dat[ing] from an early period in the history of the government," "uniformly and repeatedly acquiesced in" by Congress. 236 U.S. 459, 469–471, 474 (1915). More recently, in *Zivotofsky*, the Court considered whether Congress could compel the President to list "Israel" as the place of birth on a U.S. citizen's passport.

Writing in dissent, Justice Thomas concluded that the President retained exclusive authority over passports—not by appealing to abstract theories of executive power, but by pointing to the consistent, unbroken practice of past Presidents. 576 U.S. at 43 (Thomas, J., dissenting).

Third, the Fed's "distinct" history also shows why the Administration is mistaken in contending that the D.C. Circuit's due process decision somehow sets a precedent beyond the Federal Reserve itself. *See* App. at 11-14. As described above, Governors derive statutory tenure from their 14-year terms and the statutory bar to removals that are not "for cause." In addition, as also described above, there is an unbroken history of insulation of Fed Governors—and those who managed the Fed's predecessors—from executive branch interference dating back to the dawn of our Republic. And the Fed is "quasi-private" and "distinct." *Wilcox*, 145 S.Ct. 1415. Most important, no Governor has been removed over the Fed's 112-year history. Even absent statutory tenure or a "quasi-private" employer, long-standing government practices in a specific setting far short of these have created property interests. *See, e.g., Perry v. Sinderman*, 408 U.S. 593, 601-03 (1972). Under the Administration's argument, every President at any moment could fire the entire Board of Governors with no notice or opportunity to be heard. Preventing hasty government action that is "mistaken or unjustified" is exactly what the Due Process Clause is designed to do. *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (per curiam) (quotations and citations omitted).

In 1913 and 1935, Congress wrote against the backdrop of more than a century of national bank independence. Its "for cause" protection was meant to perpetuate that history. And Congress crafted a Fed whose independence every President respected for more than a century. This tradition speaks to the strength of the protections that Congress crafted. The Administration's stay application fails because it has nothing to say about this vitally important history.

B. The Administration's claim of unreviewable discretion defies the presumption of judicial review and threatens the constitutional separation of powers.

The Administration's tendentious reading of the Federal Reserve Act upends the presumption of judicial review. "When Congress means to authorize judicial review of removals for cause," the Administration wrongly contends, "it says so." App. 22. From statutory silence, the Administration would infer Congress' intent to sideline a coequal branch of government—and leave the executive branch entirely free from scrutiny. But that gets it backwards. And by sidelining the judiciary, the Administration would threaten the constitutional separation of powers, a bulwark of the liberty and limited government that Amici have spent their careers defending.

The Administration would mistakenly discard this Court's "well-settled" and "strong" presumption of judicial review, drawing precisely the wrong conclusion from § 242's silence. *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020). This Court has not limited that presumption to agency action: "Because *executive determinations* generally are subject to judicial review, we presume that review is available when a

statute is silent." *Patel v. Garland*, 596 U.S. 328, 346 (2022) (emphasis added, cleaned up).[13]

By upending the presumption of judicial review, the Administration also threatens the separation of powers. The stay application mistakenly invokes the canon of constitutional avoidance. App. 23. But granting the stay would raise, not allay, constitutional concerns.

Again: history and tradition matter. And judicial review is "deeply rooted" in both "our history and separation of powers." *Thryv, Inc v. Click-To-Call Techs., LP*, 590 U.S. 45, 72 (2020) (Gorsuch, J., dissenting). Judicial review is essential to our system of limited government: "The 'check' the judiciary provides to maintain our separation of powers is enforcement of the rule of law through judicial review." *Dep't of Transp. v. Ass'n of Am. Railroads*, 575 U.S. 43, 76 (2015) (Thomas, J., concurring). The President is an elected official. But, "to guard against arbitrary government, our founders knew, elections are not enough: 'An elective despotism was not the government we fought for.'" *Thryv*, 590 U.S. at 72 (Gorsuch, J., dissenting) (quoting The Federalist No. 48, p. 311 (C. Rossiter ed. 1961)). It is not enough to say that the President is accountable to the people. When he seeks to encroach on the independence that Congress provided and our history sanctions, he must also be checked by the judiciary.

[13] The presumption, of course, "may be overcome by specific language" or by evidence "drawn from the statutory scheme as a whole." *Block v. Community Nutrition Institute*, 467 U.S. 340, 349 (1984). But everyone agrees that Congress inserted no such language in § 242—and, as shown above, the statutory scheme evinces Congress' strong desire to insulate and protect Governors from interference.

The President, the Administration irrelevantly reminds this Court, is not an agency. App. 22. But no matter the identity of the executive official, an Article III court is still an Article III court, and since *Marbury* it has been the judiciary's "duty…to say what the law is," no matter who purports to be remaking it. 1 Cranch 137, 177, 5 U.S. 137, 2 L.Ed. 60 (1803). The constitutional demand for a judicial check is strongest, not weakest, when the most powerful executive is involved. *See Thryv*, 590 U.S. at 72 (Gorsuch, J., dissenting) ("[P]ower must be set against power, 'divided and balanced among several bodies ... checked and restrained by the others.'"). The Administration cannot show a likelihood of success on the merits because its elimination of that check flies in the face of both the presumption of review and that canon's constitutional underpinning.

CONCLUSION

This Court should deny the stay application.

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