

No. 25A312

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, *Applicant*,

v.

LISA D. COOK, *Respondent*.

BRIEF OF AMERICA FIRST LEGAL FOUNDATION
AS *AMICUS CURIAE*
IN SUPPORT OF APPLICATION TO STAY

GENE HAMILTON
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave. SE #231
Washington, DC 20003

R. TRENT MCCOTTER
Counsel of Record
SEPARATION OF POWERS CLINIC
COLUMBUS SCHOOL OF LAW
THE CATHOLIC UNIVERSITY OF
AMERICA
3600 John McCormack Rd. NE
Washington, DC 20064
(202) 706-5488
mccotter@cua.edu

Counsel for Amicus Curiae

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IDENTITY AND INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae America First Legal Foundation (“AFL”) is a 501(c)(3) non-profit organization dedicated to promoting the rule of law in the United States and defending individual rights guaranteed under the Constitution and federal statutes. AFL believes that principal officers’ accountability to the President is essential to achieving those aims.

SUMMARY OF THE ARGUMENT

The decisions below made several critical errors about due process, remedies, and what qualifies as “cause” for removal. This Court should grant the Application.

First, both the D.C. Circuit majority and the district court found a due process property right to be a Federal Reserve Board member, even going so far as to indicate that Respondent could not be terminated without first being given a full-blown evidentiary hearing. That was wrong twice over. Respondent has no private property interest in exercising the government powers inherent in her office. At most, perhaps she could claim a private interest in her salary, but that would mean her suit belongs in the Court of Federal Claims. Even if she could assert a private property interest in a government office, the process due would be minimal—and it was satisfied here. She had public notice of the allegations against her nearly a week before she was terminated, and she responded publicly, albeit non-substantively (which itself provides another ground for removal). An evidentiary-style hearing would only risk

¹ No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *amicus curiae* and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

needless escalation, as Respondent would presumably be put under oath and asked about potentially criminal conduct, raising the specter of self-incrimination.

Second, there is no judicial power to reinstate Respondent to her position. In addition to a lack of inherent equitable powers in the judiciary to do so, there is a strong statutory basis for finding no such power. The Civil Service Reform Act (“CSRA”), which provides a comprehensive remedial scheme (including reinstatement) for a wide range of federal employees and officers, expressly excludes presidential appointees from its scope, which means they not only have no CSRA claim but have no claim at all to traditional employment remedies like reinstatement.

Third, although the D.C. Circuit did not adopt this view, the district court erroneously concluded that “cause” in 12 U.S.C. § 242 means only “in-office conduct.” App.39a. That is wrong as a matter of textual interpretation and risks unnecessarily escalating personnel disputes into criminal matters, especially given the district court’s suggestion that the way around this “in-office” rule is to imprison an official for pre-office conduct and *then* remove her from office.

The district court further concluded that “cause” cannot include policy disagreements. That is also wrong. Even assuming § 242 incorporated some form of so-called “INM” restrictions (inefficiency, neglect of duty, or malfeasance), an official’s refusal to achieve the President’s policy is itself a form of inefficiency, as Judge Griffith explained in his landmark concurrence in *PHH Corp. v. CFPB*.

For all these reasons, the Applicant is highly likely to succeed on the merits. The Court should grant his emergency stay motion.

ARGUMENT

I. Respondent Has No Private Property Interest in the Levers of Government Power.

The district court and D.C. Circuit majority concluded that Respondent was deprived of her office without due process. That is incorrect for several reasons, and even if it were right, Respondent received sufficient process.

Section 242 does not provide for any sort of notice or hearing before removal. Respondent, therefore, must assert a constitutional right to process, but that would require identifying a cognizable property interest in her office itself. But that runs headlong into a trio of cases this Court decided when open-ended removal protections were more common, where this Court repeatedly rejected assertions of a due process interest in government offices.

In the first case, the Court rejected the claim that a tenure-protected naval officer “ha[s] any vested interest or contract right in his office.” *Crenshaw v. United States*, 134 U.S. 99, 104 (1890). In fact, the Court had “little difficulty in deciding that there was no such interest or right” because an “appointment” to an office is “public,” not “private” or “personal.” *Id.* at 104–05. The Court held the same in *Taylor v. Beckham*, 178 U.S. 548 (1900), which rejected a claim that a gubernatorial candidate had a due process property interest in his office, *id.* at 576–77. “[P]ublic office is not property.” *Id.* at 576. And in *Reagan v. United States*, 182 U.S. 419 (1901), the Court likewise held that “no notice of any charge” and “no hearing” were required to remove an officer with for-cause removal protection, *id.* at 424.

Surveying this caselaw, Judge Katsas concluded below that “public offices are mere agencies or trusts, and not property as such.” App.16a (Katsas, J., dissenting) (quoting *Taylor*, 178 U.S. at 577). That means Respondent cannot assert a due process claim.

Further, even if one indulged Respondent’s theory, it is unclear what exactly would be the protected interest. As Judge Easterbrook aptly put it: “What, particularly, is the ‘property’ in a public job? Is it the emoluments of the office, the official power of the office, or the honor of it all?” *Thornton v. Barnes*, 890 F.2d 1380, 1392 (7th Cir. 1989) (Easterbrook, J., concurring). None of those belong to Respondent in the sense recognized under due process caselaw.

To be sure, when the permissible causes of removal are “named in the statute,” the Court has indicated that a “removal for any of those causes can only be made after notice and an opportunity to defend.” *Shurtleff v. United States*, 189 U.S. 311, 317 (1903); see Aditya Bamzai, *Taft, Frankfurter, and the First Presidential For-Cause Removal*, 52 U. Rich. L. Rev. 691, 729–37 (2018). Given the Court’s holdings elsewhere that there is no property interest in the office itself, *Shurtleff* is best interpreted as holding that listing the bases amounting to “cause” provides a *statutory* right to a cursory form of process—but there is still no constitutionally recognized property interest in the underlying office. Either way, the Court has held that no such process is due where a removal provision requires cause *without* listing specific causes. In those cases, as here, removal can occur with “no notice of any charge against [the officer], and no hearing.” *Reagan*, 182 U.S. at 424.

Perhaps Respondent could contend she has a private property interest in receiving her salary, rather than the continued occupation of the office itself. *See Reagan v. United States*, 35 Ct. Cl. 90, 105–06 (1900). But that would mean her suit would belong exclusively in the Court of Federal Claims, the traditional route for pursuing such claims. *Wiener v. United States*, 357 U.S. 349, 350 (1958); *Humphrey's Executor v. United States*, 295 U.S. 602, 612 (1935); *Myers v. United States*, 272 U.S. 52, 60 (1926); *Shurtleff*, 189 U.S. at 318; *Parsons v. United States*, 167 U.S. 324, 327, 344 (1897); *United States v. Perkins*, 116 U.S. 483, 483–85 (1866). That would mean the lower courts here did not have jurisdiction, which provides another basis for granting the Application.

Further, even assuming Respondent could assert a due process interest in her office, she received sufficient process. As Judge Griffith has explained, even if process is due in such circumstances, “there is little reason to think it would impose an onerous burden on the President.” *PHH Corp. v. CFPB*, 881 F.3d 75, 135 (2018) (Griffith, J., concurring in the judgment). Here, Respondent was undoubtedly on notice of the proposed basis for her removal. Notice was publicly given, and she publicly responded, albeit non-substantively, which itself is likely an adequate basis for removal. But the lower courts demanded more, suggesting that Respondent be given a “formal evidentiary hearing.” App.61a.

Besides being wrong as a matter of law, this forces needless escalation. Should Respondent be put under oath and asked questions about her potential commission of a crime? What if she equivocates or invokes the Fifth Amendment? Could the

President still fire her? What if she then challenges her removal again after the President or his designee has ruled against her?

Neither the D.C. Circuit majority nor the district court had answers to these questions. It seems the lower courts' preferred path was to force escalation by converting personnel decisions into criminal inquisitions. It should not have to come to that. Even Respondent should agree.

II. The Civil Service Reform Act Confirms the Courts Cannot Reinstate or Bar the Removal of Respondent.

The government raises strong arguments for why courts possess no equitable authority to reinstate or bar the removal of principal officers like Respondent. App.32–34. Such “injunctions present difficult and novel questions about the remedial authority of the Article III courts in the context of the President’s exercise of his Article II powers.” *Harris v. Bessent*, No. 25-5037, 2025 WL 1021435, at *4 (D.C. Cir. Apr. 7, 2025) (Rao, J., dissenting from denial of *en banc* rehearing).

The Court need not reach that issue, however, because there is a statutory basis for reaching the same conclusion. The Civil Service Reform Act expressly covers federal officers and provides a wide range of remedies—including reinstatement—but the CSRA also expressly *bars* certain high-ranking officers like Respondent from receiving remedial relief under the CSRA. That indicates that such officers lack a CSRA claim and that Congress desired to bar such officers from obtaining remedial relief.

The CSRA created a comprehensive “framework for evaluating adverse personnel actions against federal employees.” *United States v. Fausto*, 484 U.S. 439,

443 (1988) (cleaned up). The CSRA defines “employee” broadly to include certain officers of the United States—but, most importantly here, expressly states that the term does *not* include anyone “whose appointment is made by and with the advice and consent of the Senate” or “whose appointment is made by the President.” 5 U.S.C. § 7511(b).

The preeminent case to address these provisions held that they “support” the conclusion that a presidentially appointed officer “does not have a private remedy” to challenge his removal—under the CSRA, or otherwise. *Bloch v. Exec. Off. of the President*, 164 F. Supp. 3d 841, 851 (E.D. Va. 2016). In *Bloch*, the plaintiff was a former special counsel appointed by the President. Congress had stated the special counsel could be “removed by the President only for inefficiency, neglect of duty, or malfeasance in office.” 5 U.S.C. § 1211(b). In a thorough opinion, Judge Ellis explained that the plaintiff fell within § 7511(b)’s carve-out for presidential appointees, and thus he had no CSRA claim. *Bloch*, 164 F. Supp. 3d at 852.

The absence of a CSRA remedy “does not mean that Congress intended that presidential appointees should have a panoply of remedies unavailable to other federal employees. To the contrary, the ‘deliberate exclusion of employees in a service category’ indicates a congressional intention that employees within that service category simply should not have administrative or judicial remedies.” *Id.* (quoting *Fausto*, 484 U.S. at 455) (cleaned up). “Because the CSRA is the comprehensive statutory scheme governing federal personnel actions, and because Congress intentionally excluded presidential appointees like plaintiff from the CSRA’s

remedial coverage, it follows that Congress determined that plaintiff should not have a statutory remedy under [the statute providing removal of the special counsel only for INM].” *Id.*

The same logic applies here: Respondent is a presidential appointee. Congress through the CSRA has expressly denied her typical employment remedies like reinstatement, despite covering the waterfront for other types of employment relief. This provides a strong basis for concluding that courts cannot invoke equitable theories to achieve the same result Congress prohibited in the CSRA.

III. The District Court’s Interpretation of “Cause” Was Wrong Twice Over.

The district court made several additional errors that the D.C. Circuit did not adopt. This Court should likewise refuse to rely on those erroneous grounds.

A. Limitation of “Cause” in Section 242 to Actions While in Office Is Textually Unsupported and Risks Needless Escalation.

The district court concluded that “cause” in § 242 means only “in-office conduct that demonstrates ineffective or unfaithful execution of statutory duties.” App.39a (capitalization omitted). That is textually wrong and encourages the needless escalation of personnel disputes.

First, unlike other statutory for-cause provisions, § 242 does not limit “cause” to actions or consequences while “in office.” *E.g.*, 12 U.S.C. § 5491(c)(3). Section 242 in no other way refers to actions while in office, either. The text thus strongly indicates that cause is not limited to “in-office conduct.” App.39a. Nor does it define “cause” to mean only inefficiency, neglect of duty, or malfeasance (so-called “INM factors”). That absence “give[s] the President more removal authority than other

removal provisions” imposed by Congress or reviewed by the Supreme Court. *Collins v. Yellen*, 594 U.S. 220, 255–56 (2021). It affords the President broader authority than a “good cause” requirement, *see id.*, which itself leaves the President with “ample authority” to remove an official who performs his statutory responsibilities incompetently, *Morrison v. Olson*, 487 U.S. 654, 692 (1988). And it certainly is broader than the so-called INM factors. *See Collins*, 594 U.S. at 255–56. This all confirms that the district court erred by concluding that “cause” in § 242 is limited to in-office conduct.

Second, it makes little sense to limit § 242 to actions while in office. Many actions occurring before taking office would still directly bear on suitability to remain in the position. Imagine Respondent were alleged to have bribed her way to Senate confirmation. That would be action before she took office and thus, under the district court’s view, could not be a basis for dismissal. It is unbelievable that this would not qualify as “cause” for removing her from that same position.

The same logic applies to the allegations here, where Respondent is charged with potential mortgage fraud to gain a better interest rate, and her government position gives her the power over those very same mortgage rates for the entire country. Given their power and relative insulation, it is not unreasonable to demand that Federal Reserve Board Members be like Caesar’s wife, above suspicion. Accordingly, abusive and self-dealing pre-office conduct bears directly on Respondent’s continued fitness for office, and there is no reason why the timing should matter.

The district court's response was that such an official should be indicted and convicted for that pre-office conduct, at which point there would be in-office action (a conviction) that reduces her efficiency (because she's in prison). App.44a–45a. That is an unnecessary and extreme escalation just to remove an official from office. A President should not have to imprison a federal officer just to remove her from office. Nor is that a desired outcome from anyone who seeks to end the “weaponization” of the federal government.

Even setting that aside, what if the prior crime were beyond the statute of limitations or could not be proven beyond a reasonable doubt? There is no indication of such requirements in the exceptionally broad term “for cause.” The district court erred by introducing them.

Further, even if only in-office conduct could satisfy “cause,” it is unclear why Respondent's in-office refusal to respond substantively to the allegations against her would not qualify. The district court acknowledged that an in-office conviction for pre-office conduct would qualify as cause. Under the same logic, an in-office refusal to rebut the charge against her should qualify just the same. At the very least, that construction of “cause” is preferable to one that encourages Respondent to be arrested and imprisoned.

B. As Judge Griffith Explained in *PHH*, Policy Disputes Can Amount to Cause.

The district court also erred by concluding that “cause” in § 242 cannot include “policy disagreement[s].” App.35a. The court cited *Humphrey's Executor* as allegedly

supporting that conclusion. *Id.* The D.C. Circuit refused to adopt that view, and this Court should do the same.

First, as noted above, § 242 does not include INM language, unlike the clause in *Humphrey's Executor*. So even if *Humphrey's Executor* did hold that policy disagreements cannot amount to INM, that says nothing about whether such disagreements would amount to “cause” under § 242.

Second, as Judge Griffith has explained, *Humphrey's Executor* did *not* hold that policy disagreements cannot amount to INM. *Humphrey's Executor* “nowhere addressed the extent to which the INM standard insulated Humphrey. When the Court determined that President Roosevelt failed to comply with the INM standard, it was not because he removed Humphrey for any specific policy the Commissioner had pursued. Instead, the President failed to comply with the INM standard because he expressly chose to remove Humphrey *for no cause at all.*” *PHH Corp.*, 881 F.3d at 128 (Griffith, J., concurring in the judgment) (emphasis in original).

Rather, as Judge Griffith explained, policy disagreements assuredly can amount to “inefficiency,” which “is the broadest of the three INM removal grounds.” *Id.* at 131–32. Dictionary definitions, historical evidence, and contemporary usage all demonstrated that “an officer is ‘inefficient’ when he fails to produce or accomplish some end.” *Id.* at 134. For example, in the context of the Comptroller, “the breadth of the ‘inefficiency’ ground permitted Congress to remove him for failing to perform his duties in the manner Congress wanted.” *Id.* at 133.

Surveying this extensive record, Judge Griffith concluded that “an officer is inefficient when he fails to produce or accomplish the agency’s ends, as understood or dictated by the President operating within the parameters set by Congress.” *Id.* at 134. Other judges across the ideological spectrum have agreed that this is a reasonable interpretation of “inefficiency” and that it also comports with “avoidance” principles. *CFPB v. All Am. Check Cashing, Inc.*, 952 F.3d 591, 602 (5th Cir. 2020) (Higginbotham, J., joined by Higginson, J., concurring).

Thus, even if § 242 adopted some variation of INM (it doesn’t), the President is still authorized to terminate Respondent for policy disagreements. Although he did not purport to do so in this instance, the Court should nonetheless avoid adopting the District Court’s cramped and flawed view of “cause.”

CONCLUSION

The Court should grant the Application.

October 28, 2025

Respectfully submitted,

R. TRENT McCOTTER

Counsel of Record

SEPARATION OF POWERS CLINIC

COLUMBUS SCHOOL OF LAW

THE CATHOLIC UNIVERSITY OF

AMERICA

3600 John McCormack Rd. NE

Washington, DC 20064

(202) 706-5488

mccotter@cua.edu

GENE HAMILTON

AMERICA FIRST LEGAL

FOUNDATION

611 Pennsylvania Ave. SE #231

Washington, DC 20003

Counsel for Amicus Curiae