No. 25A312

IN THE
Supreme Court of the United States

DONALD J. TRUMP, ET AL.

Applicant,

v.

LISA D. COOK,

Respondent.

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

BRIEF AS *AMICI CURIAE* OF FORMER MEMBERS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN OPPOSITION TO THE APPLICATION FOR A STAY

AARON S. J. ZELINSKY
ZUCKERMAN SPAEDER LLP
100 East Pratt St.
Ste. 2440
Baltimore, MD 21202
(410) 332-0444

WILLIAM W. TAYLOR, III
Counsel of Record
J. BENJAMIN JERNIGAN
DAVID A. REISER
ZUCKERMAN SPAEDER LLP
2100 L St., NW
Ste. 400
Washington, DC 20037
(202) 778-1800
wtaylor@zuckerman.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

INTEREST OF *AMICI CURIAE*

Amici Curiae are seven former members of the Board of Governors of the Federal Reserve System appointed to the Board by Presidents of both parties, including four former Vice Chairs. They believe that the substantive, enforceable "for cause" removal standard of 12 U.S.C. § 242 is important to the ability of the Board of Governors and the Federal Open Market Committee to continue to carry out their statutory mandate of making sound, independent judgments about monetary policy.[1] *Amici* former Board members are: Alan S. Blinder, 1994-1996, Vice Chair 1994-1996; Lael Brainard, 2014-2023, Vice Chair 2022-2023; Roger W. Ferguson, Jr., 1997-2006; Vice Chair 1999-2006; Donald L. Kohn, 2002-2010, Vice Chair 2006-2010; Laurence H. Meyer, 1996-2002; Frederic S. Mishkin, 2006-2008; Sarah Bloom Raskin, 2010-2014. *Amici* also include Gary Richardson and David W. Wilcox, former Federal Reserve economists who have examined the history of the Federal Reserve and whose published and ongoing research on the 1935 Banking Act contributed substantially to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 1935, a group of Federal Reserve Board members testified before the Senate to oppose a House bill that would have made Federal Reserve Board members removable at will. The law Congress subsequently enacted made the newly

---

[1] No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or any person other than *amici curiae* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. *See* Supreme Court Rule 37.6.

empowered Board members removable only "for cause," relying on the standard in the just-decided case of *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935). 12 U.S.C. § 242. Congress's enactment of the "for cause" provision was therefore an express rejection of an attempt to subject the Federal Reserve to presidential control.

Founding member of the Board Adolph C. Miller testified before the Senate that "out of the depths of [his] experience of 20 years in the Federal Reserve System," it was "indispensable" for the Board to be "as independent in law and in fact as it is possible for it to be under the Constitution[.]" *Banking Act of 1935: Hearings Before a Subcommittee of the Committee on Banking and Currency on S. 1715 and H.R. 7617, Bills to Provide for the Sound, Effective, and Uninterrupted Operation of the Banking System, and for Other Purposes*, 74th Cong. 687, 755 (1935) (hereinafter "Senate Hrg."). Now, as a President for the first time in history seeks to remove a member of the Federal Reserve Board, *amici* former Board members voice again the warnings of their predecessors. Interpreting the "for cause" removal standard to de facto permit the President to remove Board members for policy differences would eviscerate the Board's independence that the predecessors of *amici* fought for in 1935. It would also be inconsistent with the historical record, which shows Congress understood itself to be enacting a protection that would confer meaningful independence and operate with a force similar to the "inefficiency, neglect of duty, or malfeasance in office" ("INM") standard it had used for other agencies.

ARGUMENT

I. The Independence of the Country's Monetary Policy Depends on a Cause Standard that Does Not Allow Removal for Policy Differences.

In the experience of *amici*, a removal standard so feeble as the one the Applicant proposes would adversely affect the ability of Board members to exercise independent judgment in the manner Congress required. Congress has directed the Board of Governors of the Federal Reserve System and the Federal Open Market Committee ("FOMC") to "maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates." 12 U.S.C. § 225a. The Board of Governors consists of seven members appointed by the President with the advice and consent of the Senate, who devote their full time to the Board. 12 U.S.C. § 241. They serve staggered fourteen-year terms "unless sooner removed for cause by the President." 12 U.S.C. § 242. The Open Market Committee consists of the seven members of the Board of Governors and five executives of the regional Federal Reserve Banks, who serve on a rotating basis. 12 U.S.C. § 263(a).

Congress tasked the Board of Governors with exercising independent judgment about appropriate monetary policy. The *amicus* brief of Former Treasury Secretaries, Federal Reserve Board Chairs and Governors, Council of Economic Advisers Chairs, and Economists explains why Federal Reserve independence is vital to maintaining the credibility of the nation's fiat currency and economic stability. It

also explains why short-term political interests tend to cause deviations from sound monetary policy conducted in accord with the Federal Reserve's statutory mandate.

Amici here submit that the robust "for cause" removal standard Congress enacted is important not just to external market perceptions, but also to the Federal Reserve's internal capacity to conduct independent monetary policy. *Amici* have known the responsibility of making long-term decisions to achieve the monetary policy goals Congress set, even when presidents may have viewed those decisions as incompatible with their short-term political interests. Secure tenure in office gave *amici* and their predecessors the freedom necessary to take the measures they judged appropriate to achieve the objectives Congress set out for them, even if unpopular in the short run.

Indeed, there have been disagreements between presidents and the Federal Reserve over monetary policy since Congress created the Federal Reserve in 1913. President Johnson lobbied Chairman William Chesney Martin Jr. not to raise interest rates in 1965. Unsuccessful, President Johnson asked his Attorney General about termination of Board members, and received advice that he could not do so for policy differences. Kevin Granville, *A President at War With His Fed Chief, 5 Decades Before Trump*, N.Y. Times, June 13, 2017, [https://www.nytimes.com/2017/06/13/business/economy/a-president-at-war-with-his-fed-chief-5-decades-before-trump.html] (last visited Oct. 28, 2025). In another episode, President Nixon leaned on Chairman Arthur F. Burns to embark on "an expansionary monetary policy . . . in the run-up to the 1972 election." Burton A.

Abrams, *How Richard Nixon Pressured Arthur Burns: Evidence from the Nixon Tapes*, 20 J. Econ. Persps. 177, 178 (2006). The unhappy outcome of that apparent political accommodation—"an extremely costly inflationary boom-bust cycle" including multiple recessions, *id.* at 187—underscores the importance of Congress's decision to legislate structural independence for Federal Reserve Governors. Speaking to Burns, President Nixon openly mocked "the myth of the autonomous Fed." *Id.* at 185. A robust "for cause" provision helps make what some presidents might like to be a myth into a reality. As Martin explained to President Johnson, "I do have a very strong conviction that the Federal Reserve Act placed the responsibility for interest rates with the Federal Reserve Board." Helen Fessenden, *1965: The Year the Fed and LBJ Clashed*, Federal Reserve Bank of Richmond, at 1 (2016) [https://perma.cc/N4SQ-Z78S].

Yet the Applicant proposes a toothless cause standard that does nothing to prevent a President from removing a Governor to change the country's monetary policy. If the existence of statutory cause for removal were "committed to the unreviewable discretion of the president," Stay App. at 20, any "cause," even a policy disagreement about interest rates, would suffice for removal in practice. Likewise, if "cause" meant nothing more than a President's loss of confidence, *id.* at 26 (citing *Free Enter. Fund* v. *PCAOB*, 561 U.S. 477, 503 (2010)), rather than demonstrable misconduct in office, mere innuendo or pretext would suffice for removal. In other words, there would be no functional difference between "for cause" and "at will."

Amici also know that Board members do not shy away from taking public responsibility for the consequential decisions Congress entrusted them to make. To the contrary, they embrace this responsibility, so that there is no confusion about whom to hold accountable, and no mistaken effort to blame the President for decisions for which he is not responsible. As one witness during hearings on the 1935 Banking Act explained, "[so] long as the judgment of a Federal Reserve Board member is strangled, then he is merely a creature of some superior thought and knowledge, and unless he can use his own judgment, he cannot and ought not to be held fully responsible." Senate Hrg. at 269 (statement of James H. Hughes, Jr., Director and Counsel, Delaware Trust Co.). The Applicant asks to blur lines that are clear under current law: on monetary policy, the buck stops with the Board of Governors.

In addition to undermining Board members' ability faithfully to serve once in office, acceptance of the Applicant's position would discourage service on the Board—qualified candidates will reasonably balk at the impossible dual task of exercising independent long-term monetary policy judgment while also satisfying a President focused on the next election. The biographies of the current members of the Board of Governors include experience at the highest levels of the financial sector, academia, and Executive Branch service, and reflect the rare expertise required to manage the nation's monetary policy.[2] Public service is its own reward, and appointment to the Board of Governors carries with it significant prestige and influence. Even so,

---

[2] Board of Governors of the Federal Reserve System, About the Fed, Board Members, [https://perma.cc/K7VM-5XMR] (last visited Oct. 28, 2025) (linking to biographies).

commitment to a full-time position for a fourteen-year term can entail considerable sacrifice. Serving as a Governor typically means interrupting a successful career in finance or academia. The process of nomination and Senate confirmation can be intrusive. It would risk discouraging qualified individuals from serving if they had to add to their calculus the prospect of removal on presidential whim for daring to carry out their "sworn . . . duty" to exercise their independent "good judgment" in selecting the best monetary course. *See* Senate Hrg. at 943 (statement of Board member Charles S. Hamlin). So would acceptance of the Applicant's submission that his removal cannot be tested in any proceeding, depriving an accused Board member of a forum for clearing her name.

Worse, the Applicant's standard creates incentives for a President intent on asserting control over the Board to use the vast resources of the Executive Branch to conduct targeted searches for potential improprieties committed prior to service. *Cf.* *Morrison* v. *Olson*, 487 U.S. 654, 728 (1988) (Scalia, J., dissenting) ("With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case . . . it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is here that . . . the real crime becomes that of being unpopular with . . . the governing group." (quoting Robert H. Jackson, The Federal Prosecutor, Address Delivered at the Second Annual Conference of United States Attorneys (April 1, 1940)). Even for those of sufficient fortitude to undertake service under such a system, the Applicant's proposed

evisceration of the "for cause" standard eliminates an essential means of surviving improper influence campaigns.

II. The History of the 1935 Banking Act Shows that Congress Intended to Protect Federal Reserve Independence and Equated Cause with INM.

A. Congress considered it critical that the newly empowered Board be independent from presidential influence.

Title II of the Banking Act of 1935 "fundamental[ly]" augmented the powers of the Federal Reserve Board. *See* Gary Richardson & David W. Wilcox, *How Congress Designed the Federal Reserve to Be Independent of Presidential Control*, 39 J. Econ. Persps. 221, 223-24 (2025). The Board gained authority to set reserve requirements, which from 1913 to 1935 had been set by Congress itself, and new powers to set discount rates, which from 1913 to 1935 had been set by the Federal Reserve banks with the consent of the Board. *See id.* at 224; Harold James Kress, *The Banking Act of 1935*, 34 Mich. L. Rev. 155, 160, 186 (1935) (citing Banking Act of 1935, Pub. L. 74-305, Title II, §§ 206(b), 207 (1935) (hereinafter "Banking Act of 1935")). The Federal Open Market Committee, which had been established in 1933, gained "authority to devise and execute open-market operations for the entire" Federal Reserve System, replacing the former decentralized system in which regional Federal Reserve banks decided open market policies on their own with occasional advice from the Board and coordination among themselves. Richardson & Wilcox, *supra*, at 223-24; Kress, *supra*, at 158-59. The FOMC had previously consisted of one member from each of the twelve Federal Reserve districts; on the newly empowered FOMC, Board members occupied

a majority (seven) of the seats, and representatives of the regional banks only five. Kress, *supra*, at 159 (citing Banking Act of 1935, § 205).

There was much debate about how to house these newly concentrated powers—in a body under the control of the President, or in a body that would be resistant to undue political influence. At first, the advocates of presidential control seemed to have the upper hand. Over the objection of seven members of the House Committee on Banking and Currency—who warned in a minority report that presidential control over Board members would make the nation's central bank function like that of the Soviet Union—the House passed a bill under which the President could remove Board members at will. Richardson & Wilcox, *supra*, at 224, 226. The bill's principal champion, Board member Marriner Eccles, was unabashed in his advocacy for a presidentially controlled Board: Eccles argued that there should be a "responsive relationship" between central bankers and the President so that the "administration" could "deal[] with economic and social problems." *Id.* at 224 (citation omitted). In addition to subjecting Board members to at-will removal, what came to be known as the "Eccles Bill" would have further facilitated Executive Branch influence by maintaining the Secretary of the Treasury and the Comptroller of the Currency on the Board as *ex officio* members. The FOMC would have consisted of three Board members (serving at the President's pleasure) and two heads of the twelve regional banks, whose annual appointments in turn were subject to the approval of the presidentially controlled Board. *Id.* at 224-25.

But the Eccles proposal for a presidentially dominated Federal Reserve ran into trouble as a subcommittee under the leadership of Senator Carter Glass heard the testimony of 60 witnesses and "substantially rewr[ote]" the bill.[3] Kress, *supra*, at 157; Richardson & Wilcox, *supra*, at 227. Witnesses of all stripes—Federal Reserve Board members, Federal Advisory Council Members, representatives of regional Federal Reserve banks, private sector bankers, businessmen, and academics—emphasized the need for the Federal Reserve to be independent from political influence. In contrast to Eccles's endorsement of monetary policy in service of a President's economic agenda, these witnesses warned against "the possibility of the desire on the part of an administration to use the credit and currency system . . . for the purpose of creating a boom at the time when an election approaches." Senate Hrg. at 392-93 (statement of Winthrop W. Aldrich, Chairman of Chase National Bank of the City of New York).

Thus, founding Board member Adolph C. Miller emphasized that the power entrusted to the Federal Reserve required "men . . . who are willing to undertake . . . a great public responsibility which runs to the public rather than to an official of the administration of the day." *Id.* at 730. Indeed, the worst "misadventure[e]s" and "major errors of policy" of the system to date had "come through interference." Senate Hrg. at 687. "The authority" Congress was "confer[ing] upon the Board" should only be granted if Congress was prepared to enact "protective safeguards of the strongest

[3] Senator Glass had been one of the authors of the original Federal Reserve Act in 1913 as a member of the House and was one of the leading congressional experts on banking and monetary policy. *See id.* at 226.

character" against "political control"—"a status that is as impregnable to influence as it can possibly be made in law." *Id.* at 687, 754, 755 ("I would not ask the Congress to entrust us with these powers if it is not willing to give us the necessary independence in the exercise of them."). "[E]ven the President" should not be positioned to "command" members. *Id.* at 730. Board members M.S. Szymczak and Charles S. Hamlin agreed with Miller. *See id.* at 949, 957, 970-71.

Even a high-ranking member of the Executive Branch, Secretary of the Treasury Henry Morgenthau, Jr. (at the time also *ex officio* chair of the Board), warned that monetary policy should not be under the control of the Treasury Department, but rather "concentrated in an independent Government agency." *Id.* at 505. The agency should be independent "[o]f all outside influences," including that of the President—"just as independent as you can make it." *Id.* at 505-06; Richardson & Wilcox, *supra* at 226.[4]

---

[4] Other witnesses echoed these views. Senate Hrg. at 91 (statement of James P. Warburg, Vice Chairman of the Bank of the Manhattan Co.) (the "avowed purpose" of the Eccles Bill was "to bring the operation of the Federal Reserve Board, and through that the system, under the control of the administration"; thus, the Eccles Bill sought to "legalize" the "usurpation" and "domination of something that is supposed to be independent"); *id.* at 269 (Hughes of the Delaware Trust Co.) (affirming the importance of finding ways that "the political influence on this Board could be eliminated so that they were acting freely and were capable and free to use their own good judgment"); *id.* at 518 (statement of R.S. Hecht, President, Am. Bankers Ass'n) (explaining that the important monetary powers to be vested in the Board under the bill were "the reason why" his organization was "so strongly in favor of making the Federal Reserve Board a body of such independence and prestige that it would be definitely removed from all political thought, influence, and dictation. . . . The policies of the board should have no reference to the politics or the changes of the national administration.").

This fear of political influence was not just theoretical; it was the product of bitter experience. In a "violation of the whole spirit and intent of the law," the Board in prior years had at times been "absolutely dominated by the political party in control." Senate Hrg. at 206 (Senator Glass). For instance, the Treasury Department had helped caused economic "difficulties" in 1921 and 1922 by "restrain[ing]" the Board from measures it wished to take until the Department "could get its victory and liberty loans out of the way." *Id.* at 360 (statement of Henry H. Heimann, Exec. Manager, National Ass'n of Credit Men). Another witness suspected that the Board "was under the influence of the then administration which refused to take responsibility for stopping the credit inflation and the rising stock prices" in the run-up to the Great Depression; the Board instead found itself pressured into a policy of overstimulating the economy through large bond purchases. *Id.* at 268-69, 274 (Hughes of the Delaware Trust Co.).[5] Witnesses also bore in mind President Roosevelt's controversial moves under emergency laws granting him temporary control over monetary policy during the Depression. *Id.* at 79, 72 (Warburg of the Bank of the Manhattan Co. criticizing the current system, which included "an

[5] Similarly, one witness during the House debates "mentioned the attempt of President Coolidge in 1924 to influence the rediscount policy of [the Board], and declared that it was essential that the board be wholly free from this type of political pressure." Robert E. Cushman, The Independent Regulatory Commissions 172 (1941).

emergency structure designed to meet the crisis that arose in 1933," as an "obedient servant of the Administration"); Richardson & Wilcox at 224.[6]

These examples illustrated the fundamental point: "it is not a matter of which party is in control. Substantially any party in power is apt to adopt politically expedient measures when conditions become critical." Senate Hrg. at 360 (Heimann). Passage of the Eccles Bill would mean that "opportunity for control would be there for the use of the present or whatever future administration might be in power." *Id.* at 518 (Hecht of Am. Bankers Ass'n).

B. Congress saw restoration of "for cause" protection as indispensable to minimizing presidential influence.

Witnesses and Senators considered particularly pernicious the Eccles Bill's proposal that members of the Board would serve at the President's pleasure, and they relied on the "for cause" removal provision as a critical means for stopping the President "from dismissing members . . . for mere policy disputes." Richardson & Wilcox, *supra*, at 228. Thus, Senator Glass repeatedly returned to the "for cause" provision as a safeguard when witnesses raised concerns about undue political control. Senate Hrg. at 92, 206. Aldrich of Chase National Bank warned that at-will removal "would make every member of that Board subject to political pressure" from the President to juice the economy in advance of an election. *See id.* at 392-93. Board member Miller "advis[ed] as a premise that you write into the law an amendment

---

[6] *See generally Bankers View Plan with Deep Concern; Roosevelt Monetary Policy Held in Wall Street to Surely Lead to Inflation*, N.Y. Times, Oct. 24, 1933 [https://perma.cc/RUN2-SBE7]; Elmus Wicker, *Roosevelt's 1933 Monetary Experiment*, 57 J. Am. Hist. 864, 864-79 (1971).

that no member of the Board shall be removable from office during the term for which he was appointed," except for malfeasance. *Id.* at 754.

In the words of the president of the Federal Advisory Council, the Eccles Bill "practically nullifie[d] the importance of" Board members' educational and experiential "qualifications" by depriving them of protection from at-will removal. *Id.* at 539 (statement of Walter W. Smith). The Board needed "absolute freedom of action and responsibility for its duties, without fear of removal or influence." *Id.* at 274 (Hughes). Another member of the Council explained that the newly empowered "Board must be as far removed as possible from the influence of any group," including any "political" group; therefore, the Council recommended that Board members "be removable only for cause and after appropriate notice and hearing." *Id.* at 547-48 (statement of James H. Perkins). The United States Chamber of Commerce likewise recommended that Board members should be removable "only for cause." *Id.* at 627 (statement of U.S. Chamber of Com.). Some went even further: Senator McAdoo, Secretary Morgenthau, and others believed Board members should be removable only by impeachment, like Supreme Court Justices and other federal judges.[7]

---

[7] *Id.* at 506 (Secretary Morgenthau agreeing that the President should appoint Board members and then have "no more power to remove or influence than he has with regard to the Supreme Court"); *id.* at 755 (Senator McAdoo explaining that "[p]erhaps it would be well to have [Board members] appointed as Federal judges are appointed—during good behavior"); *id.* at 269 (Hughes testifying that he would "much prefer" life tenure for Board members in the fashion of federal judges "to any recall, which strangles and stifles" Board members' "own judgment"); *id.* at 206 (statement of Frank C. Ferguson, President, Hudson Cnty. Nat'l Bank) (testifying that Congress should "remove [the Board] from politics" by keeping members "secure in their positions . . . in the same manner that the members of the Supreme Court of the United States are kept secure in their positions"); *id.* at 539 (Federal Advisory

In the end, those against political influence won the debate decisively. Congress enacted a revised Title II that created a Board—renamed the Board of Governors—that, in the words of a contemporaneous commentator, "possess[ed] greater means of independence" not just than it would have under the Eccles proposal, but also as compared to the Board as it had existed since 1913. Kress, *supra*, at 165. Congress rejected the Eccles at-pleasure proposal and instead enacted "for cause" removal protection for Board members.[8] Banking Act of 1935 § 203(b). In another move toward reducing executive influence, Congress removed the Secretary of the Treasury and Comptroller of the Currency as *ex officio* board members. Kress, *supra*, at 165. Board members also received a longer term of office (fourteen years up from twelve) and could not be reappointed to a subsequent term after serving a full term, a provision that had the "purpose of removing the temptation of currying favor

---

Council President Smith testifying that "[i]f we propose to place our financial policies at the discretion of such a Board, it should be as well protected from political influence and change of membership as are the members of the Supreme Court of the United States . . . ."); *id.* at 916-17 (testimony of Frank A. Vanderlip, former President of National City Bank, and former Assistant Secretary of the Treasury) (The Eccles Bill "creates a mechanism political in its character, when it should be as nonpolitical as the Supreme Court"; monetary policy should be lodged in "[a] body organized as nearly as possible along the lines of the Supreme Court—a body appointed for life . . . they should not be removable by the President, and should not be subject to political pressure . . . ."); Richardson & Wilcox, *supra*, at 228.

[8] As discussed further below, this was not just a rejection of the Eccles Bill, but also a restoration of the "for cause" protection Board members had enjoyed since the Federal Reserve's creation in 1913. In the 1933 Banking Act, Congress had eliminated the "for cause" language. Richardson & Wilcox, *supra*, at 229. This change went unnoticed by some members of Congress, including Senator Glass, who was surprised when the issue came to his attention during the 1935 hearings. Senator Glass was not sure if the change had been inadvertent or "due to covert action." Senate Hrg. at 398. However the "for cause" language came to be removed, its restoration was conscious.

of the political party in power as a means of procuring reappointment." *Id.* at 166 (citing Banking Act of 1935 § 203(b)). The newly empowered FOMC consisted of the seven members of the Board, all of whom were protected from at-will removal, plus a rotating set of five of the twelve Reserve Bank presidents. *Id.* at 167; Banking Act of 1935 § 205.

III. Congress understood the "for cause" provision to provide removal protection similar in scope to INM protection.

The 1935 Congress would have been shocked to hear that, as the Applicant now insists, it had enacted a standard that would not meaningfully block removal for policy differences. To the contrary, the debates on the 1935 Banking Act make clear that Congress understood its "for cause" language to enact a substantial and enforceable restraint on presidential removal on par with the inefficiency, neglect of duty, or malfeasance in office standard used for other agencies.

A. Congress understood "for cause" and INM to raise the same constitutional question regarding presidential removal power.

The 1935 debates took place as Congress was coming into a reinvigorated understanding of its constitutional authority to protect officers from removal. Congress had been legislating removal protections for multimember regulatory commissions since the 1887 creation of the Interstate Commerce Commission ("ICC"), whose members were subject to removal only for "inefficiency, neglect of duty, or malfeasance in office." Interstate Commerce Act of 1887, Pub. L. 49-104, § 11, 24 Stat. 379, 383 (1887). The 1890 Board of General Appraisers under the Customs Administrative Act of 1890 (ch. 407, § 12, 26 Stat. 131, 136 (1890)), the 1914 creation of the Federal Trade Commission (Pub. L. 63-203, § 1, 38 Stat. 717, 718 (1914)), and

the 1916 creation of the Shipping Board followed (Pub. L. 64-260, § 3, 39 Stat. 728, 729 (1916))—each with INM removal protection for its leaders. So did the creation of the original Federal Reserve Board in 1913, with members removable only "for cause." Federal Reserve Act, Pub. L. 63-43, § 10, 38 Stat. 251, 260 (1913).

Then, in 1926, this Court held unconstitutional a statute requiring Senate consent to presidential removal of a postmaster. *Myers* v. *United States*, 272 U.S. 52, 164 (1926). Some in Congress interpreted *Myers* to mean that enacting removal protections was futile—the President could override them. *See* Cushman, *supra*, at 293-94. Thus, Congress for a time stopped including express removal protections when it created commissions such as the reorganized Federal Power Commission (1930), the Securities and Exchange Commission (1934), and the Federal Communications Commission (1934). *Id.* at 287, 293-94, 322-24, 335. It was during this period that Congress passed the Banking Act of 1933, which *removed* the "for cause" removal protection Federal Reserve Board members had enjoyed under the original 1913 Act. Whether inadvertent, or, as Senator Glass suggested, "covert," this move was consistent with Congress's post-*Myers* pull-back from legislating removal protections. Richardson & Wilcox, *supra*, at 229; Senate Hrg. at 398.

But on May 27, 1935, in *Humphrey's Executor*, this Court upheld Congress's restriction of the President's removal of FTC commissioners to cases of "inefficiency, neglect of duty, or malfeasance in office." 295 U.S. at 620, 623, 632 (quoting 15 U.S.C. § 41 (1914)). Members of Congress took express note of *Humphrey's Executor*'s resolution of the doubts *Myers* had injected about the extent of Congress's removal-

protection authority.[9] With its power to enact removal protections for multimember boards affirmed, Congress promptly resumed this practice. Just over a month after *Humphrey's Executor*, on July 5, 1935, Congress created the National Labor Relations Board with members subject to removal for neglect of duty or malfeasance. 29 U.S.C. § 153(a). And of course, less than two months later, on August 23, section 203(b) of the Banking Act of 1935 restored the "for cause" removal provision for Federal Reserve Board members.[10]

The Senate subcommittee hearings on the 1935 Banking Act commenced on April 19, 1935, at the tail end of the interregnum between *Myers* and *Humphrey's Executor*. Early in the hearings, on April 24, Senator Byrnes remarked that the Eccles Bill's at-pleasure approach was not necessarily a change as to presidential control, because "ever since the case of *Myers*" it "is the law . . . that the President has a right to remove a government official." Senate Hrg. at 92; *see also id.* at 393 (Senator Glass remarking that "the President might now remove any member of the Federal Reserve Board he wants to remove" because "it has been decided by the highest court of the land that the President may remove any Federal officer he may appoint"); Kress,

---

[9] During debates on the Wagner-Connery bill to create the National Labor Relations Board, which at first did not contain any removal provision, the announcement of the *Humphrey's Executor* decision "had an immediate influence upon Congressional thinking. The decision strengthened the hand of those who were urging . . . a status of complete independence, and it undoubtedly was responsible for the incorporation into the Act of an amendment providing that members of the board should be removable by the President for neglect of duty or malfeasance in office, but only after notice of public hearing." Cushman, *supra*, at 366.

[10] Congress continued, for example, with the United States Maritime Commission in 1936 (removable only for "neglect of duty or malfeasance in office"). Act of June 29, 1936, Pub. L. 74-836, § 201(a), 49 Stat. 1985 (1936).

supra, at 166 ("Before [the *Humphrey's Executor*] decision it was commonly thought, as was pointed out to the Senate Subcommittee, that under the rule laid down in the *Myers* case a member of the Board could have been removed without cause under the terms of the Federal Reserve Act as it existed from 1933-1935.").

But as the hearings went on, Congress's understanding of its own power to set removal conditions began to evolve. As Senator Glass's subcommittee debated on May 1, the Supreme Court sat just across the way to hear argument in *Humphrey's Executor*. Richardson & Wilcox, *supra*, at 229. On May 15, in the context of his recommendation that Board members "should be removable only for cause and after notice and a hearing," Chase National Bank Chairman Aldrich acknowledged that *Myers* "raise[d] serious questions" about Congress's removal-protection power and that a ruling for the United States in *Humphrey's Executor* might "hold that Congress has no constitutional right to place any limitation upon the power of the President to remove any member of the Federal Reserve Board at any time and for any reason he sees fit." Senate Hrg. at 396. But the oral argument had raised "a distinction" between removal of "administrative officers carrying out the executive powers of the President" and those who "carr[ied] out an administrative function in connection with power which is vested in Congress"—Aldrich thought both FTC commissioners and members of the Federal Reserve Board belonged in the latter category. *Id.* at 397. Because "for cause" protection was so important for the Federal Reserve, Aldrich recommended postponing action on the bill until after a decision in *Humphrey's Executor* clarified the issue. *Id.* at 396-97.

When Senator Bulkley asked what Congress should do if former Board member Miller's proposal that Board members should not be removable except for malfeasance was "not constitutional," Miller responded that he "rather expect[ed] that when we get the decision of the Supreme Court in the *Humphrey case* [sic] it will be cleared up." *Id.* at 754. And indeed, while the hearings continued, the Court in *Humphrey's Executor* upheld the FTC Act's removal protections. As one written statement to the Senate subcommittee explained, "[t]he recent *Humphrey* decision (May 27) provides ample legal grounds for the incorporation . . . in the law" of the "specific provision that a member of the Board may not be removed by the President except under certain specified conditions." *Id.* at 998 (statement of Walter E. Spahr, economist, New York State University). Reassured about its authority to legislate meaningful removal protections, Congress passed the provision that the President could remove Federal Reserve Board members only "for cause." Banking Act of 1935 § 203(b); *see* Kress, *supra*, at 166 (contemporaneous analyst observing that "[w]hile it may be said that the decision of the Supreme Court in the *Humphrey* case did much to establish the independence of the Federal Reserve Board, the present legislation makes entirely clear the necessity of more substantial grounds than a merely personal objection for removing a member of the Board").

This back-and-forth makes plain that Congress understood the 1935 Banking Act's "for cause" language to restrict presidential removal in a manner comparable to the INM language at issue in *Humphrey's Executor*. To Aldrich, a decision upholding the FTC Act restrictions would turn on "the very point . . . that would justify that

kind of limitation upon the power of a President to remove an officer of the Federal Reserve Board." Senate Hrg. at 397. Similarly, Aldrich noted that during the *Humphrey's Executor* argument, Justices asked whether the United States' position was that the President could not remove an ICC commissioner (removable only for INM) for a policy difference regarding railroad rates. Aldrich then explained, "of course that same question is involved in connection with the Federal Reserve Board."[11] *Id.* Aldrich said all this in the context of arguing that the "unless sooner removed for cause" language of the original 1913 Federal Reserve Act, removed in 1933, must be put back in, *id.* at 399—this language imposed the same restraint on presidential removal that raised the constitutional issue presented in *Humphrey's Executor*.

B. The 1935 debates used "for cause" and INM interchangeably.

Congress thought that INM and "for cause" presented the same constitutional issue because in their 1935 context, *these phrases were interchangeable*. In a letter sent during the 1935 Banking Act debates, Senator Glass wrote: "Under the terms of the bill as now drafted the President cannot dismiss members of the board except for cause. This is the exact language of the Federal Trade Commission Act under which the Supreme Court decided recently that the President had no right to remove a

[11] Aldrich likewise drew a parallel to legislation making the Comptroller General removable (by Congress) for INM. *Id.* at 397; *see also id.* at 269, 272 (Hughes of the Delaware Trust Co. holding up the ICC as an example of a body "practically free from political domination" in the way the Federal Reserve Board should be; the policy reasons for ICC independence presented "quite a parallel" to those that required insulating the Federal Reserve from political control).

member of that body at will." University of Virginia Small Special Collections Library, Carter Glass (MSS2913), Banking Correspondence-Box 37, (letter dated July 13, 1935, to a Mr. S. E. Ragland, First National Bank of Memphis, Tennessee). Aldrich similarly referred to the FTC Act's INM protection as providing that commissioners should not be removed "except for cause." Senate Hrg. at 397. In equating INM with "for cause," Senator Glass and Aldrich spoke in the same terms the Court itself used in *Humphrey's Executor*. 295 U.S. at 623, 629, 630-31 (referring to the FTC Act's INM language as "the fixing of a definite term subject to removal for cause," "precluding a removal except for cause," and "forbid[d]ing" a commissioner's "removal except for cause").

No surprise, then, that when Hudson County National Bank President Frank C. Ferguson testified that he would like to see Board members "removable only upon charges to be preferred for malfeasance, misfeasance, or nonfeasance, and heard on those charges," Senator Glass—for the moment still under the misimpression that the "for cause" language remained in the current law and had not been removed in 1933—expressed his view that this language accomplished what Ferguson recommended. Glass asked "[w]hat [was] the matter" in that regard with "the existing law," under which the "President . . . cannot remove a member of the Board except for cause, in writing to the Senate."[12] Senate Hrg. at 206. Similarly, when Miller

---

[12] Ferguson was not the only one to contemplate that presidential removal for cause would come with process to adjudicate the asserted cause. Aldrich flagged the 1933 elimination of the "for cause" provision and advocated adding to the 1935 legislation a provision that members "should be removable only for cause and after notice and hearing"; the Federal Advisory Council recommended that Board members be

recommended to the Senate an "amendment that no member of the Board shall be removable from office during the term for which he was appointed," Senator Glass asked him whether he meant "[e]xcept for malfeasance." *Id.* at 754. Miller responded: "I do not have that in the amendment, but I have it in mind." *Id.*

That Congress was restoring "for cause" language that had governed from 1913 until the 1933 interruption, rather than drafting new language out of whole cloth, explains why it did not directly transplant the INM language at issue in *Humphrey's Executor*. At the time of the 1913 Federal Reserve Act's use of "for cause," there was no extensive track record of congressional use of INM language as opposed to "for cause" when Congress wished to restrict removal (only the 1887 ICC and the 1890 Board of General Appraisers used INM before the 1913 use of "for cause" for the Federal Reserve). *See* Jane Manners & Lev Menand, *The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence*, 121 Colum. L. Rev. 1, 74 (2021). The 1935 discussion makes clear that Congress believed the restored 1913 language would function similarly to INM in practice.

Congress therefore legislated under the understanding that the INM provision at issue in *Humphrey's Executor* and the "for cause" language Congress restored to the Federal Reserve in 1935 imposed the same manner of restriction on the President's right to remove. The distinction the Applicant imagines—between a

---

removable "only for cause and after appropriate notice and hearing"; and Senator Glass repeatedly expressed his understanding that under the "for cause" provision that had governed until 1933, the President would have to "give his reason" for any removal "in writing to the Senate." *See* Senate Hrg. at 206, 396; 548.

restrictive INM standard and a permissive "for cause" standard—was not present in 1935 when the law was enacted. Congress would not have been concerned that its "for cause" language would run afoul of *Myers*, and then been reassured that the decision in *Humphrey's Executor* supported the language, if Congress had understood the language to be substantially weaker than the INM provision at issue in *Humphrey's Executor*.[13]

At bottom, the Applicant's interpretation of the "for cause" provision as a toothless technicality renders it practically no different from the at-pleasure standard Eccles proposed. On the sound recommendation of the predecessor Board members of *amici*, Congress foreclosed this interpretation in 1935 when it rejected Eccles's vision both as a matter of policy and as a matter of law. This Court must similarly foreclose the Applicant's interpretation in this case.

CONCLUSION

For the foregoing reasons, the Court should deny the application for a stay.

---

[13] It would make little sense if, as the Applicant contends, the 1935 "for cause" language imposed a less meaningful restriction on removal than the restrictions for agencies like the SEC, which Congress created during the period of doubt between *Myers* and *Humphrey's Executor*. SEC commissioners enjoy INM protection even though the Securities Exchange Act does not include *any* express removal protections. *Free Enter. Fund*, 561 U.S. at 487 ("The parties agree that the [SEC] Commissioners cannot themselves be removed by the President except under the *Humphrey's Executor* standard of 'inefficiency, neglect of duty, or malfeasance in office,' and we decide the case with that understanding.") (internal citations omitted).

October 29, 2025

Respectfully submitted,

/s/ William W. Taylor III

William W. Taylor III
Counsel of Record
J. Benjamin Jernigan
David A. Reiser
ZUCKERMAN SPAEDER LLP
2100 L St., NW
Ste. 400
Washington, DC 20037
Tel: (202) 778-1800
wtaylor@zuckerman.com

Aaron S. J. Zelinsky
ZUCKERMAN SPAEDER LLP
100 East Pratt St.
Ste. 2440
Baltimore, MD 21202-1031
Tel: (410) 332-0444

Counsel for Amici Curiae