NO. 25A312

IN THE

Supreme Court of the United States

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

APPLICANTS,

v.

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

RESPONDENT.

BRIEF OF AMERICA FIRST POLICY INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF APPLICATION TO STAY

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INTEREST OF THE *AMICUS CURIAE*[1]

The America First Policy Institute (AFPI) is a 501(c)(3) non-profit, non-partisan research institute. AFPI exists to advance policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do.

AFPI advocates fiercely for American communities, who benefit from a sound, stable, and healthy economy. The Governors of the Federal Reserve Bank make decisions on monetary policy and financial regulation that directly impact the interests of American families and workers. The President's authority to remove a Federal Reserve Bank Governor for cause ensures public confidence in the integrity of those who regulate the financial system and provides democratic accountability. AFPI has an interest in this case to protect the right of the executive to utilize constitutional and statutory authority that Congress has authorized in furtherance of these interests, which are beneficial to the American workers, families, and communities championed by AFPI.

[1] No counsel for a party authored this brief, in whole or in part, and no person or entity other than *amicus curiae* made a monetary contribution to the preparation or submission of the brief. Sup. Ct. R. 37.6. The argument is adapted from one made by the government in *Trump v. Slaughter*, No. 25-332.

SUMMARY OF THE ARGUMENT

The President has broad removal powers under Article II of the Constitution. A strong presumption exists that any officer wielding the executive power is removable by the President. When Congress constrains this power, it must do so by express statement. The D.C. Circuit majority and the district court erred by asserting that a full evidentiary hearing would be required before an officer can be removed by the President for cause. This requirement is not ordained either by statute or by the Fifth Amendment, as officers do not have a private property interest in their public office. But even if the removal power were so burdened – and it is not – reinstatement is not an appropriate judicial remedy in such a case.

If Congress endeavors to constrain the President's power to remove an executive officer by providing reinstatement as a remedy for improper removal, then it must do so explicitly. But the Federal Banking Act of 1935 contains no express judicial remedy of reinstatement for Federal Reserve Bank Governors.

Also, reinstatement via injunction is not a traditional equitable remedy for removal of senior federal officers. Equity jurisprudence has long held that courts will not interfere by injunction to determine an officer's title to office.

Finally, the Civil Service Reform Act of 1978 specifically forecloses reinstatement as a remedy for presidentially appointed, Senate-confirmed officers like Respondent Lisa Cook.

Therefore, President Trump has a strong likelihood of success on the merits. The Court should grant his emergency motion to stay the district court injunction.

ARGUMENT

I. The Banking Act of 1935 contains no express statement by Congress giving a removed Federal Reserve Bank Governor the remedy of reinstatement.

Article II of the U.S. Constitution vests the President with all the powers of the executive and charges him to "take care that the laws be faithfully executed." This obligation necessarily implies the power to supervise, direct, and when appropriate, remove officers that wield the executive power on his behalf. The power of removal has long been recognized as "incident to the power of appointment." *Myers v. United States,* 272 U.S. 52, 119 (1926).

Due to the constitutional nature of the President's removal power, the Court has repeatedly cautioned against encumbrances of this power except under certain recognized exceptions. *See Seila Law LLC v. Consumer Fin. Prot. Bureau,* 591 U.S. 197, 204 (2020); *see also Collins v. Yellen*, 594 U.S. 220 (2021); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.,* 561 U.S. 477 (2010). In order to authorize remedies that burden the President's Article II power, the Court's precedents require an express statement by Congress. *See Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992); *Nixon v. Fitzgerald*, 457 U.S. 731, 748 (1982).

In the Banking Act of 1935, Congress stated that the President may remove a member of the Federal Reserve Board only "for cause." 12 U.S. Code § 242. But Congress' restriction goes only so far and no further. The Act did not go on to provide any remedies to improperly removed Governors. *Id*. Specifically, there was no express statement by Congress that a removed Governor was entitled to reinstatement, *id*., as was ordered in this case by the district court.

The Circuit and district courts improperly extended the requirements of § 242 by concluding that Cook was deprived of her office without due process and was thus entitled to a full evidentiary hearing. But such a conclusion is precluded because Respondent does not have a private property interest in her office. *See Snowden v. Hughes*, 321 U.S. 1, 12 (1944); *Taylor v. Beckham*, 178 U.S. 548, 577 (1900). Thus, a requirement for a full evidentiary hearing represents an encumbrance beyond the authorization of Congress in § 242.

If Congress were to intend "a drastic departure from the traditions of equity practice," it must make "an unequivocal statement." *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). No such departure is found in the text of § 242. Congress has at other times spoken clearly in authorizing reinstatement of removed officers. For example, "independent counsel removed from office may obtain judicial review of the removal in a civil action" and "may be reinstated" by court order. Independent Counsel Reauthorization Act of 1987, Pub. L. No. 100-191, § 596, 101 Stat. 1305. But Congress refused to add such language when it reinstated the "for cause" removal provision through the Banking Act of 1935. *See* Banking Act of 1935 § 203(b), 49 Stat. 704-705 (1935).

Because no such remedy for reinstatement exists in § 242, the district court injunction imposing it is improper.

II. Reinstatement by injunction is also not an available remedy through equity.

Even if Cook were entitled to some remedy – which is not the case – reinstatement by injunction is not an available judicial remedy. The federal courts' power to issue injunctions derives from the Judiciary Act of 1789, ch. 20, 1 Stat. 78. *See Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025); *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999). Courts must exercise that power in accordance with "traditional principles of equity," *id.* at 319, as understood "at the time" of "the enactment of the original Judiciary Act," *CASA*, 606 U.S. at 841-842. In the case of *In re Sawyer*, 124 U.S. 200, 212 (1888), the Court determined, "No English case has been found of a bill for an injunction to restrain the appointment or removal of a municipal officer." Commentators have explained, "No principle of the law of injunctions, and perhaps no doctrine of equity jurisprudence, is more definitely fixed or more clearly established than that courts of equity will not interfere by injunction to determine questions concerning the appointment of public officers or their title to office." 2 James L. High, Treatise on the Law of Injunctions § 1312, at 863 (2d ed. 1880). Therefore, under traditional principles of equity, reinstatement is not a proper remedy for the Court to issue.

III. The Civil Service Reform Act forecloses Senate confirmed officers from seeking reinstatement.

Not only has Congress *not* created novel remedies for presidentially appointed and Senate confirmed public officers, it specifically *excluded* them from personnel actions it made available to other federal employees. In passing the Civil Service

Reform Act of 1978 (CSRA), Congress created a "framework for evaluating adverse personnel actions" against all federal employees. *United States v. Fausto*, 484 U.S. 439, 443 (1988). The CSRA replaced the preexisting "patchwork system" of remedies with an "integrated scheme." *Id*. at 445. The CSRA scheme specifically delineates the class of employees entitled to relief, the actions they are permitted to bring, the appropriate venue for these actions, and the relief available. The CSRA is comprehensive: for federal employees, "what you get under the CSRA is what you get." *Fornaro v. James*, 416 F.3d 63, 67 (D.C. Cir. 2005).

In the CSRA, Congress expressly withheld its remedies from certain appointed and confirmed public officers, including Cook. Specifically, CSRA remedies do not apply to employees "whose appointment is made by and with the advice and consent of the Senate." 5 U.S.C. § 7511(b)(1). Because Cook, as a member of the Board of Governors of the Federal Reserve Bank, was appointed by the president and confirmed by the Senate, she is covered by this exclusion. And the effect of this exclusion is fatal. As one district court held, "Because the CSRA is the comprehensive statutory scheme governing federal personnel actions, and because Congress intentionally excluded presidential appointees" from its remedial provisions, it follows that such officers "simply should not have administrative or judicial remedies." *Bloch v. Executive Office of the President*, 164 F. Supp. 3d 841, 852 (E.D. Va. 2016). Thus, even if Cook were entitled to relief because the cause for her termination were unwarranted – and it is not – she still would not be permitted to

seek an injunction from federal courts because the CSRA explicitly excludes her from pursuing that remedy.

CONCLUSION

Because the injunction is not supported by the Banking Act of 1935, principles of equity, or the Civil Service Reform Act of 1978, the Court should grant the government's application to stay the preliminary injunction of the district court.

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Respectfully submitted,

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