

In the
Supreme Court of the United States

DONALD J. TRUMP,
President of the United States, et al.,
Applicant,

v.

LISA D. COOK, et al.,
Respondents.

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

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF
AMERICA AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY**

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October 29, 2025

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INTEREST OF *AMICUS CURIAE*¹

The Chamber of Commerce of the United States of America (the “Chamber”) is the world’s largest business federation. It represents approximately 300,000 members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the Nation’s business community.

The business community has long viewed the independence of the Federal Reserve System (“Federal Reserve”) as essential for a strong economy and financial stability. Interfering with that independence would not only imperil the smooth functioning of the monetary system, but would also threaten the long-term economic growth of the Nation. The Chamber therefore has a significant interest in continuing to safeguard the Federal Reserve’s independence.

The Chamber does not take a position on whether President Trump’s termination of Lisa Cook was lawful or whether this Court should stay the district court’s order in this case. Instead, the Chamber submits this brief to make three broader points relevant to the stay application. First, Congress designed the Federal Reserve to be independent because that feature is critical to the United States’

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

economic stability. Second, the Federal Reserve’s independence is constitutionally permissible, sanctioned by history and tradition dating back to the Founding. And third, to ensure this independence, terminations of members of the Federal Reserve Board of Governors should be subject to meaningful judicial review.

INTRODUCTION AND SUMMARY OF ARGUMENT

From the time of the Founding, and for the majority of our Nation’s history, independence has been a key feature of American monetary policy. In keeping with that tradition, Congress chose to protect the modern Federal Reserve System from political interference in multiple ways. Most notably, Congress provided that the President may remove members of the Board of Governors only “for cause.” 12 U.S.C. § 242. And, on top of that, Congress adopted a hybrid structure for the Federal Open Market Committee (“FOMC”) to ensure that it consists of both members of the Board of Governors and representatives of the twelve regional Reserve Banks. *See id.* § 263(a). Due to these features and others, the Federal Reserve retains insulation from the President that would not be tolerated in a traditional executive department.

The Federal Reserve’s unusual design is neither new nor constitutionally questionable. As this Court recognized just a few months ago, “[t]he 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.” *Trump v. Wilcox*, 145 S. Ct 1415, 1415 (2025). And its independence reflects the simple fact that controlling the Nation’s money supply is “not an *executive* function” that must be lodged in an entity subject to the President’s supervision. *Consumers’ Rsch. v. Consumer Prod.*

Safety Comm’n, 98 F.4th 646, 657 (5th Cir. 2024) (Oldham, J., dissenting from denial of rehearing en banc) (emphasis added). Consistent with that understanding—and to safeguard the national economy from political interference—Congress has long entrusted monetary policy to semi-private financial institutions with tenure protections.

The President does not contest the validity of the Federal Reserve’s tenure protections in this case. *See App. at 2 n.1.* But protecting the independence of the Federal Reserve does not end there. It is also important for this Court to confirm that when the President removes a member of the Federal Reserve Board of Governors for cause, that termination may be challenged and subjected to meaningful judicial review.

Dating back to *Marbury*, this Court has held that whether an official “has a legal right” to an office is “examinable in a court.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 167 (1803). Concluding that the President’s removal decision is effectively unreviewable would flip that longstanding rule on its head and render the for-cause provision at issue as “hav[ing] no operation at all.” *See id.* at 174. That is not the law that Congress enacted. The “for cause” language that it codified for the Federal Reserve “cannot be regarded as mere surplusage; it means something.” *Potter v. United States*, 155 U.S. 438, 446 (1894). And it is a standard that may guide the Judicial Branch in the cases falling within its jurisdiction, as much as it guides the President himself. To hold otherwise would seriously undermine the independence of the Federal Reserve.

The Chamber takes no position on whether cause exists here—or whether a stay should ultimately be granted. But it urges the Court to make clear that the Federal Reserve’s removal provision is not an empty “parchment barrie[r].” The Federalist No. 48, at 308 (Clinton Rossiter ed., 1961) (James Madison). The President’s determination of cause for removing a member of the Federal Reserve Board of Governors should be subject to meaningful judicial review.

ARGUMENT

I. **Congress Permissibly Structured the Federal Reserve To Insulate Monetary Policy from the Political Branches.**

In creating an independent Federal Reserve, Congress sought to ensure that decisions related to the Nation’s monetary policy would be made based on economic factors, not politics. That design was not groundbreaking. Rather, as this Court has recognized, the Federal Reserve may “claim a special historical status” for its unique structure. *Seila Law LLC v. CFPB*, 591 U.S. 197, 222 n.8 (2020); see *Wilcox*, 145 S. Ct at 1415. The Federal Reserve is “an historical anomaly . . . due to [its] special functions in setting monetary policy and stabilizing the financial markets.” *PHH Corp. v. CFPB*, 881 F.3d 75, 192 n.17 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting); see also *CFPB v. Cmty. Fin. Servs. Ass’n of Am., Ltd.*, 601 U.S. 416, 467 n.16 (2024) (Alito, J., dissenting) (calling the Federal Reserve “a unique institution with a unique historical background”). In fact, the management of monetary policy is not an executive function, so it may be performed by bodies independent from the political branches. Both the history of the Federal Reserve, and economic theory, bear out the wisdom of this approach.

A. Congress Designed the Federal Reserve to Be Independent from the Political Branches.

Congress established the Federal Reserve over a century ago through the Federal Reserve Act, Pub. L. No. 63-43, 38 Stat. 251 (1913). In doing so, Congress tasked the Federal Reserve with “maintain[ing] long run growth of the monetary and credit aggregates” and promoting “maximum employment, stable prices, and moderate long-term interest rates.” 12 U.S.C. § 225a. To effectuate these ends, Congress designed the Federal Reserve to consist of three overlapping entities: (1) the Board of Governors (“the Board”), which is the Federal Reserve’s supervisory arm; (2) the twelve regional Federal Reserve Banks (“Reserve Banks”), which execute the Board’s directives; and (3) the FOMC, which establishes the Federal Reserve’s monetary policy.

These entities have long been insulated from the short-term temptations of political actors. Members of the Board are appointed to fourteen-year terms—a lengthy term as compared both to the terms of other presidential appointees, as well as the President and Members of Congress. *See id.* § 242. Congress set the terms of the members of the Board to be staggered, slowing turnover and ensuring a long-term focus for the Board as a whole. *See id.* And of course, the terms of each member may be cut short by removal only “for cause” by the President. *Id.*

Meanwhile, directors of the Reserve Banks may be removed only by the Board of Governors, with the cause communicated in writing, or by the privately elected board of directors of their own Reserve Bank. *See id.* §§ 248(f), 341; *see also Appointment and Removal of Federal Reserve Bank Members of the Federal Open*

Market Committee, 43 Op. O.L.C. 263, 267–68 (2019). And the members of the FOMC—comprising the seven members of the Board and five representatives of the boards of directors of the Reserve Banks—retain these underlying removal restrictions. *See* 12 U.S.C. § 263(a).

These removal protections are a key piece of the Federal Reserve’s design. In the compromise of 1913 that led to the Federal Reserve’s creation, Congress opted for a decentralized, independent structure—out of fear that concentrated power could undermine long-term national interests. *See* Peter Margulies, *Reform and Removal at the Federal Reserve: Independence, Accountability, and the Separation of Powers in U.S. Central Banking*, 108 Marq. L. Rev. 117, 125 (2024). Congress then buttressed that independence by sheltering the Federal Reserve from the political winds of the appropriations process. The Federal Reserve instead would support itself by levying funds “from the Federal Reserve Banks, which are federally chartered corporations that are ‘not departments of the government.’” *Cnty. Fin. Servs. Ass’n*, 601 U.S. at 450 (Alito, J., dissenting) (citation omitted); *see* 12 U.S.C. § 243. In these ways, “the conception of the system from its onset in the compromise of 1913 was on *federalism* as a guiding principle,” using “regional and local centers with a measure of autonomy” alongside a “central body at the national level.” Margulies, *supra*, at 125 (emphasis in original).

Later congressional action reinforced this commitment to autonomy. The Banking Act of 1935 decoupled the Federal Reserve from the Treasury Department, and it reorganized the FOMC to its modern hybrid form, giving both the Board of

Governors and the Reserve Bank representatives their current removal restrictions. *See* Pub. L. No. 74-305, §§ 203, 205, 48 Stat. 684, 704–06 (1935); Harold James Kress, *The Banking Act of 1935*, 34 Mich. L. Rev. 155, 158, 165 (1935) (noting that the 1935 Act contains “measures [that were] provided to increase the independence of the governing board” and made it so “[t]he Secretary of the Treasury and the Comptroller of the Currency will no longer be ex officio members of the Board”).² The “paramount purpose[]” of these reforms was to “insulat[e] the agencies controlling the central banking system from government or political pressure.” Kress, *supra*, at 165.

B. Congress Ensured the Federal Reserve’s Independence Because Its Proper Functioning Is Critical to Economic Stability.

Congress enshrined the Federal Reserve’s independence because political insulation is critical to its statutory mission. As noted, Congress charged the Federal Reserve with “maintain[ing] 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. Generally, this dual mandate requires the Federal Reserve “to actually behave in a conservative fashion” to “ensure, most prominently, price stability, regardless of short-term government pressure.” Cristina Bodea & Raymond Hicks, *Price Stability and Central Bank Independence: Discipline*,

² Between 1913 and 1933, the Federal Reserve Board of Governors served for fixed terms “unless sooner removed for cause by the President.” Pub. L. No. 63-43, § 10, 38 Stat. 260. Congress eliminated this language in the Banking Act of 1933—perhaps by inadvertence—before quickly readopting the current removal restriction in the Banking Act of 1935. *See* Gary Richardson & David W. Wilcox, *How Congress Designed the Federal Reserve to Be Independent of Presidential Control*, 39 J. Econ. Persps. 221, 229 (2025).

Credibility, and Democratic Institutions, 69 Int'l Org. 35, 37 (2015). This is so even when such decisions may have a negative impact on the economy or employment in the short term.

In other words, the “monetary policy” performed by the Federal Reserve is intrinsically a “long-horizon investment.” Allan Drazen, *Central Bank Independence, Democracy, and Dollarization*, 5 J. Applied Econ. 1, 6 (2002). But monetary policy’s “gestation period does not fit politicians’ time horizons.” *Id.* at 5. This leads to “the implicit weights for political choices [being] very different from conventional weights for economic decisions.” William D. Nordhaus, *The Political Business Cycle*, 42 Rev. Econ. Studies 169, 182 (1975). Rather than pursue long-term stability, political actors have an incentive to match the economy to election cycles. They combat inflation early in their term and then work towards full employment on the eve of the next election. *See id.* at 184. And such politically oriented monetary policy risks “the most precious resource a central bank can command: credibility.” Jens Weidmann, *Monetary Policy is No Panacea for Europe*, Fin. Times (May 7, 2012), perma.cc/JW9L-PCU4; *see also* Neil H. Buchanan & Michael C. Dorf, *Don’t End or Audit the Fed: Central Bank Independence in an Age of Austerity*, 102 Cornell L. Rev. 1, 23 (2016).

Indeed, a central bank hampered by political pressure—and a concomitant lack of credibility—has “dangerous and far-reaching” impacts. Kenneth Rogoff, *Risks to Central-Bank Independence*, in *Independence, Credibility, and Communications of Central Banking* 27, 31 (Ernesto Pastén & Ricardo Reis eds., 2021). In addition to heightened inflation and price variability, credibility issues weaken the tools that

central banks have to combat recessions and depressions. *See, e.g.,* Michael Parkin, *Central Bank Laws and Monetary Policy Outcomes: A Three Decade Perspective* 1–7 (Econ. Rsch. Pol’y Inst., Working Paper No. 2013-1, 2013) (collecting research showing that a lack of central bank independence leads to higher inflation and price variability); Rogoff, *supra*, at 40 (discussing the ability of “central banks . . . to credibly raise inflation expectations,” thus lowering real interest rates, as a tool in the amelioration of financial crises).

The Federal Reserve’s own history bears this out. During World War II, the Federal Reserve subordinated its monetary policy aims and “concluded that winning the war was the most important goal, and that providing the government with cheap financing was the most effective way for the Fed to support that goal.” Jessie Romero, *The Treasury-Fed Accord*, Fed. Rsrv. Hist. (Nov. 22, 2013), perma.cc/TW5A-QYXD. Because of this, the Federal Reserve’s monetary policy became dictated, in large part, by the Executive Branch, and this pattern continued even in the years following the war. *Id.* Spurred by President Truman’s desire for low interest rates to support war bonds, inflation ballooned. *See id.* And, by 1951, with the Federal Reserve abdicating its responsibility to maintain stable prices, Consumer Price Index inflation reached 21%. *Id.*

At this point, the fever finally broke. Contrary to President Truman’s directives, the FOMC “informed the Treasury” that “it would no longer ‘maintain the existing situation.’” *Id.* This newly reasserted independence proved immediately fruitful, as “[d]uring the 1950s [the Federal Reserve] was quite successful in

ameliorating several recessions and in maintaining low inflation.” Michael D. Bordo, *A Brief History of Central Banks*, Fed. Rsrv. Bank Cleveland (Dec. 1, 2007), perma.cc/H28D-LF45.

A similar dynamic occurred during the Nixon Administration. President Nixon, believing he lost the 1960 election due to a rise in unemployment, sought to avoid that fate during his 1972 re-election campaign. See Burton A. Abrams, *How Richard Nixon Pressured Arthur Burns: Evidence from the Nixon Tapes*, 20 J. Econ. Persps. 177, 177–78 (2006). In the run-up to the election, President Nixon engaged in a sustained effort to influence the Federal Reserve Chairman, Arthur Burns, to pursue expansionary monetary policy, repeatedly admonishing him that failure to do so would result in “the last Conservative administration in Washington” and would “hurt us . . . in November.” *Id.* at 180, 184. Burns eventually relented, contributing to the 1970s stagflation “that took nearly a decade to resolve.” *Id.* at 179.

* * *

In sum, Congress wisely placed independence at the core of the Federal Reserve’s design. It did so because monetary policy independence begets economic stability, and political intrusion threatens it. And while academic literature and the Federal Reserve’s history both demonstrate this principle, it was known to the Framers long before then—which is why they took great care to ensure the President did not have power over the money supply.

II. Independent Monetary Policy Dates Back to the Founding.

The Federal Reserve’s independence—made explicit through “for cause” removal protections—is sanctioned by a “distinct historical tradition” dating back to the Founding. *Wilcox*, 145 S. Ct. at 1415.

The Framers “all had lived the first part of their lives under law that identified the Crown as the arbiter of commerce within Great Britain.” Robert G. Natelson, *Paper Money and the Original Understanding of the Coinage Clause*, 31 Harv. J.L. & Pub. Pol’y 1017, 1029 (2008) (quotation marks omitted). And “[h]istory was replete with monarchical abuse of such power.” Andrew T. Levin & Christina Parajon Skinner, *Central Bank Oversight: Assessing the Fed’s Accountability to Congress*, 77 Vand. L. Rev. 1769, 1779 (2024). Kings like Henry VIII had “used [the monetary policy] power to devastating effect, creating economic havoc.” Christina Parajon Skinner, *The Monetary Executive*, 91 Geo. Wash. L. Rev. 164, 174 (2023) (quoting Michael W. McConnell, *The President Who Would Not Be King* 103 (2020)). The Framers thus understood that monetary policy was critical to economic stability. And when the Framers decided to lodge the Article I, Section 8 power to “coin Money” and “regulate the Value thereof” in Congress, they “clearly intended to cordon off the president’s power to issue currency.” Levin & Skinner, *supra*, at 1779.

Early congressional practice also reflected the view that managing the Nation’s money supply fell outside the scope of executive power. As explained below, the First Congress created the Sinking Fund Commission to “facilitate orderly management of the nation’s debts,” and the Commission’s “structure and operation reflected a

substantial measure of independence from the political branches.” Margulies, *supra*, at 167. The First and Second Banks of the United States continued that tradition in the years that followed. They were structured, not as government agencies, but as chartered corporations. Both banks “used the same sorts of open-market tools to control monetary policy that the Fed does today.” Aditya Bamzai & Aaron L. Nielson, *Article II and the Federal Reserve*, 109 Cornell L. Rev. 843, 901–02 (2024). “And like the Fed, the First and Second Banks had private shareholders in addition to government shareholders.” *Id.* at 902; *see Wilcox*, 145 S. Ct. at 1415 (noting that the Federal Reserve is a “uniquely structured, quasi-private entity”).

Those early historical precedents are relevant to “fix[ing] the meaning of the Constitution.” *Printz v. United States*, 521 U.S. 898, 915 n.9 (1997). And they suggest that monetary policy is “not an executive function,” like the enforcement of the laws. *Consumers’ Rsch.*, 98 F.4th at 657 (Oldham, J., dissenting from the denial of rehearing en banc). In fact, nobody argued otherwise during the frequent Founding-era debates over the wisdom and constitutionality of the National Banks. *See, e.g., McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). Even President Andrew Jackson, the Second Bank’s most prominent critic and the man responsible for its demise, never made that argument.

A. The First and Second National Banks Support the Constitutionality of Removal Protections for the Federal Reserve.

The history of the First and Second Banks of the United States shows that monetary policy differs from traditional executive action. These National Banks were

precursors to the Federal Reserve and set monetary policy while operating outside of executive control.

The function of the First Bank “was essentially that now served by the Federal Reserve Board in regulating the money supply.” Jerry L. Mashaw, *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law* 47 (2012). “By managing its lending policies and the flow of funds through its accounts, the bank could—and did—alter the supply of money and credit in the economy and hence the level of interest rates charged to borrowers.” Federal Reserve Bank of Philadelphia, *The First Bank of the United States: A Chapter in the History of Central Banking* 9 (2021). All the while, the First Bank “operated more independently of congressional instruction, or indeed presidential direction, than does the Federal Reserve Board today.” Mashaw, *supra*, at 47.

The First Bank’s structure fundamentally differed from a government agency. Like the Federal Reserve, it had both government and private shareholders. *See First Bank of the United States, supra*, at 4; Bamzai & Nielson, *supra*, at 902. The First Bank’s initial \$10 million capitalization was similarly divided between the government and private investors. *See First Bank of the United States, supra*, at 4. And instead of “placing appointment of the Bank President in the U.S. President’s control,” Congress entrusted the First Bank’s shareholders to select the Bank’s “twenty-five directors, who in turn chose its President.” Bamzai & Nielson, *supra*, at 875; *see* Act of Feb. 25, 1791, ch. 10, § 4, 1 Stat. 191, 192–93. The First Bank was thus privately controlled, though Congress authorized the Treasury Secretary to

inspect the Bank's books and remove government deposits at any time. *See* Bamzai & Nielson, *supra*, at 875. The First Bank's power remained controversial in a Nation divided among regional interests, and Congress allowed its charter to expire in 1811. *Id.* at 876.

Five years later, Congress chartered the Second Bank of the United States. *See* Act of Apr. 10, 1816, ch. 44, §§ 1, 21, 3 Stat. 266, 266, 276. It was like the First in many ways. *See* Federal Reserve Bank of Philadelphia, *The Second Bank of the United States: A Chapter in the History of Central Banking* 5–6 (2021). “[L]ike its predecessor, the Second Bank could engage in monetary policy by using its holdings to control the amount of credit available.” Bamzai & Nielson, *supra*, at 877. In fact, the “Second Bank possessed a greater power to control monetary policy than the First, due to its larger capitalization of thirty-five million dollars (seven of which came from the United States) and twenty-five branches.” *Id.* It “had a greater impact on the Nation than any but a few institutions, regulating the Nation’s money supply in ways anticipating what the Federal Reserve does today.” *Seila Law*, 591 U.S. at 274 (Kagan, J., concurring in part and dissenting in part).

The Second Bank's structure differed from the First's in a key respect: Congress empowered the President to appoint five of the Second Bank's twenty-five directors with the Senate's advice and consent. *See* Act of Apr. 10, 1816, § 8, 3 Stat. 269. Still, the other twenty directors were elected each year by the private stockholders. *See id.* And “as with the First Bank, the President of the Second Bank was not nominated by the U.S. President, but was chosen by the bank's directors.”

Bamzai & Nielson, *supra*, at 877. “This unusual structure . . . mixed private and public features,” prompting some to wonder whether the Second Bank was a commercial bank or a government bank. *Id.*

Despite this structure, no one argued that the Second Bank was unconstitutional because it was performing an *executive* function insulated from presidential control. Instead, most regarded the Bank as a private entity. See Aditya Bamzai, *Tenure of Office and the Treasury: The Constitution and Control over National Financial Policy, 1787 to 1867*, 87 Geo. Wash. L. Rev. 1299, 1299 (2019). And those who argued that the Bank was unconstitutionally performing sovereign functions used “a variation of the modern argument that Congress may not delegate such functions to private entities.” *Id.*

In all these ways, the First and Second Banks were prototypes for the Federal Reserve. See *Seila Law*, 591 U.S. at 274 (Kagan, J., concurring in part and dissenting in part). Like the Federal Reserve today, the National Banks’ directors made significant policy decisions that had a dramatic effect upon the Nation’s money supply, yet 80% of those directors fell outside the control of the President.

Thus, the legacy of the National Banks establishes a historical practice, which has continued into the present, of employing a public-private hybrid institution to set monetary policy. Like the Banks of the United States—but unlike other modern agencies—the Federal Reserve is a “*sui generis* mishmash of the public and private sectors,” Bamzai & Nielson, *supra*, at 853, tasked with carrying out “special functions in setting monetary policy and stabilizing the financial markets,” *PHH Corp.*, 881

F.3d at 192 n.17 (Kavanaugh, J., dissenting). These are not traditional “executive” functions. *Consumers’ Rsch.*, 98 F.4th at 657 (Oldham, J., dissenting from denial of rehearing en banc). And at the same time that they were establishing the Executive Branch, the Framers insulated these functions from direct presidential control.

B. The Sinking Fund Commission Further Suggests that the Federal Reserve Is Constitutionally Distinct.

The National Banks are not the only historical precursors to the Federal Reserve. The Sinking Fund Commission was another Founding-era entity engaged in monetary policy, “with substantial independence from the President,” to repay the national debt through open-market purchases of United States securities. Christine Kexel Chabot, *Is the Federal Reserve Constitutional? An Originalist Argument for Independent Agencies*, 96 Notre Dame L. Rev. 1, 4, 34 (2020); see Act of Aug. 12, 1790, ch. 47, § 2, 1 Stat. 186, 186. The Commission also helped the United States “cope with credit crunches when financial institutions were short on cash” by buying “Treasury bonds and notes from private sources.” Margulies, *supra*, at 167. “These open-market purchases . . . inject[ed] liquidity into the system” to stave off financial disaster, foreshadowing the same “actions that the Federal Reserve” would take nearly 220 years later “to address the Great Recession of 2008.” *Id.* at 167–68.

The Act creating the Sinking Fund Commission was “proposed by Alexander Hamilton, passed by the First Congress, and signed into law by President George Washington.” Chabot, *supra*, at 1. Under Hamilton’s original proposal, the multimember Commission would have included five officers: the Vice President, the Chief Justice, the Speaker of the House, the Treasury Secretary, and the Attorney

General. *See 2 Annals of Cong.* 2071 (1790). At the time of this proposal, the vice presidency went to the runner-up in the presidential election. *See* U.S. Const. art. II, § 1, cl. 3. That meant that three of the five officers would have possessed complete independence from the President, who had no ability to direct their action and needed at least one of their votes to act. *See Chabot, supra*, at 37.

Providing the Commission with this independence from executive control sought to avoid the issues that plagued earlier sinking funds in England. The King's ministers often diverted resources for their own short-term political benefit. *See id.* at 37–38. And the American people, keenly aware of this British experience, were cognizant of “the executive branch’s incentive to spend money and put more money into circulation.” Margulies, *supra*, at 162. So the Framers emphasized “the value of independence” for those tasked with setting monetary policy and managing the country’s finances. *Id.* And they acted accordingly in designing the new government.

The Sinking Fund Act of 1790 modified Hamilton’s proposal by replacing the Speaker of the House with the Secretary of State on the Commission. *See* Act of Aug. 12, 1790, § 2, 1 Stat. 186. But this was not done to increase executive oversight; rather, it was thought necessary to avoid the constitutional prohibition on members of Congress holding other offices. *See Bamzai, supra*, at 1339; U.S. Const. art. I, § 6, cl. 2.

Although substituting the Secretary of State for the Speaker of the House meant that three members of the Commission were subject to removal by the President, “the Commission’s structure” made it “difficult for the president to control

it in the real world.” Aaron L. Nielson & Christopher J. Walker, *The Early Years of Congress’s Anti-Removal Power*, 63 Am. J. Legal His. 219, 220, 225 (2023). In fact, two of the Commission’s original members—Thomas Jefferson and Alexander Hamilton—were “known political rivals.” Chabot, *supra*, at 41. Because the Commission required at least three votes to approve a purchase, if these men disagreed, the vote of the entirely independent Vice President or Chief Justice would be decisive.

That happened at least once. During the financial panic of 1792, four Commissioners met to consider purchases proposed by Hamilton, but they split, with Jefferson and Attorney General Edmund Randolph voting against Hamilton’s proposal. *Id.* at 44. The Fifth Commissioner, Chief Justice John Jay, was absent because he was riding circuit. *Id.* Weeks passed before the Commission approved purchases. *See id.* at 45. “Even though President Washington approved purchases in response to the 1792 market crash,” he lacked authority to direct the Commission to approve open-market purchases earlier, and the “Commission’s independent structure prevented it from acting as quickly as it could have.” *Id.* at 46.

The Sinking Fund Commission thus provides another historical analogue to the FOMC, which similarly purchases United States securities pursuant to a statutory mandate. *See* 12 U.S.C. § 263(b). This history indicates that the Federal Reserve’s independent structure “is consistent with the original meaning of the Constitution.” Chabot, *supra*, at 54.

* * *

In short, the Federal Reserve can “claim a special historical status” in its responsibility for monetary policy. *Seila Law*, 591 U.S. at 222 n.8 (majority op.). This deep historical tradition, with clear ties to the Founding, offers the Federal Reserve unique support for its “for cause” removal protections.

III. The For-Cause Removal Standard Is Judicially Reviewable.

A President’s decision to remove a member of the Federal Reserve “for cause” is not exempt from judicial scrutiny. 12 U.S.C. § 242. After all, the phrase “for cause” . . . does not mean the same thing as ‘at will.’” *Collins v. Yellen*, 594 U.S. 220, 256 (2021) (alteration in original). And the “for cause” language would lack meaningful force if the President had unreviewable discretion in his removal decision. This Court should confirm the important role of judicial review in this context.

A. Our Constitutional Separation of Powers Recognizes a Strong Presumption of Judicial Review of Executive Actions.

“No political truth is . . . stamped with the authority of more enlightened patrons of liberty than’ the separation of powers.” *Dep’t of Transp. v. Ass’n of Am. R.R.*, 575 U.S. 43, 74 (2015) (Thomas, J., concurring) (alteration adopted) (quoting *The Federalist* No. 47, at 301 (James Madison)). To preserve that structure, power must be set against power, “divided and balanced,” “checked and restrained.” *The Federalist* No. 48, at 311 (James Madison).

Judicial review is “[t]he ‘check’ the judiciary provides to maintain our separation of powers.” *Ass’n of Am. R.R.*, 575 U.S. at 76 (Thomas, J., concurring). Indeed, “[t]he idea that courts may review legislative action was so ‘long and well

established’ by the time [the Court] decided *Marbury* in 1803 that Chief Justice Marshall referred to judicial review as ‘one of the fundamental principles of our society.’” *Moore v. Harper*, 600 U.S. 1, 22 (2023) (quoting *Marbury*, 5 U.S. (1 Cranch) at 176–77). That same basic principle has long applied to the review of executive action as well. See, e.g., *Marbury*, 5 U.S. (1 Cranch) at 166; *United States v. Lee*, 106 U.S. (16 Otto) 196, 220–21 (1882); *United States v. Nixon*, 418 U.S. 683, 704 (1974).

As a result, there is a “well-settled” and “strong presumption” that “executive determinations” are “subject to judicial review.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (citations omitted). This presumption may be rebutted only by “clear and convincing evidence,” *Reno v. Catholic Social Servs., Inc.*, 509 U.S. 43, 64 (1993), demonstrated through “specific language” or evidence “drawn from the statutory scheme as a whole,” *Patel v. Garland*, 596 U.S. 328, 347 (2022) (quotation marks omitted). In other words, “‘unless there is persuasive reason to believe’ that Congress intended to preclude judicial review, this Court will not preclude review.” *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 155–56 (2025) (citation omitted).

B. The Presumption of Judicial Review Applies in the Removal Context.

This presumption of judicial review applies with equal force in removal cases. Indeed, Chief Justice Marshall established early on for the Court that one’s “legal right” to an office is a matter “examinable in a court.” *Marbury*, 5 U.S. (1 Cranch) at 167. As he explained, “[t]he power of nominating to the senate, and the power of appointing the person nominated, are political powers, to be exercised by the

President according to his own discretion.” *Id.* But “if the officer is by law not removable at the will of the President,” then “the rights he has acquired are protected by the law,” and “he has the privilege of asserting them.” *Id.*

This Court has never strayed from that principle. On the contrary, it has consistently reviewed—and sometimes invalidated—presidential decisions to fire officers who were removable only for cause. *See, e.g., Wiener v. United States*, 357 U.S. 349, 356 (1958); *Humphrey’s Executor v. United States*, 295 U.S. 602, 632 (1935).

In fact, Congress adopted the Federal Reserve’s removal provision just months after this Court enforced a for-cause provision. In *Humphrey’s Executor*, the Court held that the President’s dismissal of a tenure-protected FTC commissioner on policy grounds was unjustified. *See* 295 U.S. at 626. The “Court announced its decision in favor of Humphrey’s executor on May 27, near the end of the Senate hearings” for the Banking Act of 1935, “and witnesses soon noted its relevance for the independence of the Federal Reserve.” *Richardson & Wilcox, supra*, at 229. Later that year, Congress decoupled the Federal Reserve from the Treasury Department and adopted the current for-cause provision, further confirming the Federal Reserve’s independence. This history provides powerful evidence that Congress expected the removal restriction to likewise be judicially tested and enforced. *See Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010) (“We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent.”).³

³ Because of the FTC’s indisputably executive powers, the Court is currently reviewing whether the FTC’s removal protection is consistent with Article II. *See Trump v. Slaughter*, ___ S. Ct. ___ (2025) (granting certiorari and issuing stay). But

In light of this history and precedent, the Solicitor General’s reliance on *Reagan v. United States*, 182 U.S. 419 (1901), is misplaced. *See* App. at 21–22. Unlike here, *Reagan* involved a judge’s decision to fire a commissioner appointed under a statute that fixed no term of office and permitted removal “for causes *prescribed by law*.” 182 U.S. at 424 (emphasis added; citation omitted). Given that statutory language, the Court’s “inquiry [was], therefore, whether there were any causes of removal *prescribed by law*.” *Id.* at 425 (emphasis added). Congress “did not provide” such prescriptions, and as such, the judge’s removal determination for an inferior officer with no “fixed tenure” fell within his discretion. *Id.* at 424, 426. Otherwise, “the effect would be to hold the commissioners in office for life.” *Id.* at 426.

There is no reason to believe that the same kind of unreviewable discretion applies to the Federal Reserve. Unlike in *Reagan*, the Federal Reserve’s statutory removal protection is not limited to causes “prescribed by law.” And Congress addressed one of *Reagan*’s key justifications for concluding that removal fell within the judge’s discretion. After the *Reagan* Court emphasized that the inferior officer in question had no “term of office,” and thus restrictions on his removal would constitute a *de facto* lifetime appointment, 182 U.S. at 425, Congress provided that members of the Board of Governors would serve fixed “term[s] of fourteen years,” 12 U.S.C. § 242.

Accordingly, nothing in this Court’s precedent or the statutory text provides a “persuasive reason to believe that Congress intended to preclude judicial review.” *McLaughlin*, 606 U.S. at 155–56 (quotation marks omitted). At the time Congress

that constitutional question is distinct from the availability of judicial review, which is principally a matter of statutory interpretation.

enacted the Federal Reserve’s removal provision, it was well established that courts can—and would—review for-cause terminations. Congress expected that to continue when it afforded “for cause” protection to the Federal Reserve’s Board of Governors. 12 U.S.C. § 242.

C. A Lack of Judicial Review Would Render the For-Cause Protection Meaningless.

Adopting a contrary position would depart from the statute, ordinary principles of judicial review, and common sense. The Solicitor General argues that courts “may not question whether the stated cause provides a sufficient justification for removal” unless “the President identifies no cause.” App. at 20. Put differently, the government’s position is that the President may remove a Federal Reserve Governor so long as he identifies *any* reason at all—regardless whether that justification fits within the meaning of “cause” under the statute or whether the President’s stated reason has any basis in fact. That standard is no standard at all.

Nor can it be squared with well-settled rules of statutory construction. “It is the duty of the court to give effect, if possible, to every clause and word of a statute.” *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1882). No clause should be construed as “superfluous, void, or insignificant.” *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 226 (2015) (citation omitted). But that is precisely what the Solicitor General’s interpretation would do: subordinate the substance of the Board of Governors’ for-cause removal protections to the use of magic words by the President. That is not what Congress intended when designing the Federal Reserve and entrusting it with the Nation’s monetary policy.

Indeed, the Court should be “especially unwilling” to strip the ‘for cause’ limitation of meaningful effect, because it “occupies so pivotal a place in the statutory scheme.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001). As explained above, Congress took pains to ensure that the Federal Reserve would operate independently from political pressure. *See supra* Section I. So did the Framers when creating the National Banks and the Sinking Fund Commission. *See supra* Section II. Such independence in the performance of monetary policy is critical to the Nation’s economic stability. But the only thing standing between the President and control over the Federal Reserve is the for-cause restriction—a provision which lacks meaningful effect without judicial review.⁴ The Solicitor General’s suggestion that Congress meant to sideline the courts anytime the President says *anything* when purporting to remove a Federal Reserve Governor does not withstand scrutiny. The words Congress chose “cannot be meaningless, else they would not have been included.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) (quoting *United States v. Butler*, 297 U.S. 1, 65 (1936)).

CONCLUSION

The Chamber takes no position on the outcome of the application for stay, but the Court’s decision should make clear that the “for cause” removal standard is subject to meaningful judicial review.

⁴ Although the representatives of the Reserve Banks are not subject to direct presidential removal, they may be removed by the Board of Governors, and so, the President could readily control not only the Board, but the entire FOMC, if he could fire Federal Reserve Governors at will.

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October 29, 2025

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