

No. 25A312

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
APPLICANT

v.

LISA D. COOK, ET AL.

*ON APPLICATION FOR STAY
OF THE PRELIMINARY INJUNCTION
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

SUPPLEMENTAL BRIEF FOR THE APPLICANT

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The President lawfully removed respondent Lisa Cook from the Federal Reserve Board of Governors after concluding that the American people should not have their interest rates determined by someone who made misrepresentations material to her mortgage rates that appear to have been grossly negligent at best and fraudulent at worst. Appl. App. 29a. Her conduct creates an intolerable appearance of impropriety in financial matters—yet Cook and her supporting amici have to date refused to offer any explanation for her facially inconsistent representations in any briefing in any court.

Cook and her amici instead pursue tangents. But this case does not involve the constitutionality of the Federal Reserve Board’s removal protections. Contra, *e.g.*, Chamber of Commerce Br. 4-19. Nor are the ef-

fects of Federal Reserve independence on “the financial markets,” Former Treasury Secretaries Br. 24; the “dollar’s dominant role,” Economics Professors Br. 7; or “general market conditions,” Colorado Br. 7, at issue.

This case is far narrower. All agree that the President may remove Federal Reserve Governors “for cause.” 12 U.S.C. 242. And all agree that President Trump’s stated cause for removing respondent Lisa Cook was that, before taking office, she made contradictory material representations in two mortgage documents within a few weeks of each other—representations that at a minimum exhibited gross negligence in financial matters that rendered her unfit to help manage national financial matters. Appl. App. 29a. Further, no amicus meaningfully disputes that the President plainly suffers irreparable harm from a judicial order countermanding a removal.

Rather, this case boils down to three questions. The first is whether the President needed to give Cook formal notice and some sort of hearing before exercising his power to remove her. The D.C. Circuit said yes, reasoning that the Due Process Clause requires a hearing before respondent is deprived of a purported property interest in her office. Now, Cook and her amici barely defend that holding and mainly argue that the statute required notice and a pre-removal hearing. Neither theory works. This Court has long held that public offices are not property for due-process purposes. And Congress authorized removal “for cause” here without mentioning notice or a hearing—strong evidence that no such processes are required, especially since Congress imposed such requirements in other statutes but not here, and in earlier versions of this statute. Moreover, no one—Cook, amici, or the lower courts—has ex-

plained what the hearing would look like or how it could make any difference here, given Cook's failure to identify in her briefs which factual allegations she would dispute or explain why those disputes would be material.

The second question is whether the President had cause to remove Cook. The D.C. Circuit ducked that question. Now, Cook and her amici variously argue that "cause" is limited to "inefficiency, neglect of duty, or malfeasance in office"; that it is similar but somewhat less protective; and that it bears a distinct common-law meaning that nonetheless precludes Cook's removal. Those interpretations are all incorrect. "For cause" gives the President discretion to remove officers for reasons related to an officer's conduct, ability, fitness, or competence—reasons beyond mere policy disagreement. The President's removal of Cook for her material misrepresentation (and, at minimum, gross negligence) in financial transactions easily qualifies.

The third question—which can alone resolve this stay application—is whether Cook is entitled to interim reinstatement while this litigation unfolds. She is not, and the D.C. Circuit's contrary precedent is erroneous. This Court has repeatedly held that courts of equity lack the power to grant injunctions restraining allegedly unlawful removals. Cook and her amici propose an exception for interim relief, but that would conflict with this Court's precedents and ignore the President's power to suspend an executive officer while a removal's lawfulness is resolved. Quite apart from those principles, moreover, the Civil Service Reform Act of 1978, 5 U.S.C. 1101 *et seq.*, precludes reinstatement here by pointedly *excluding* Senate-confirmed officers from its exclusive and comprehensive remedial scheme.

In sum, Congress has spoken decisively in deliberately selecting a discretion-laden “for cause” standard, omitting any procedural prerequisites, and expressly excluding Senate-confirmed officers like Cook from relief. President Trump acted well within his authority and discretion in removing Cook. This Court should grant the stay application.

A. Cook’s Procedural Claim Lacks Merit

Cook and her amici barely defend the sole theory on which the D.C. Circuit relied: that the Due Process Clause entitled Cook to notice and opportunity for a hearing before her removal. See Appl. App. 2a (Garcia, J., concurring). They instead press an alternative theory that neither lower court endorsed: that the Banking Act of 1935, ch. 614, 49 Stat. 684, implicitly requires notice and a hearing. Neither theory is sound.

1. Cook has no due-process right to a hearing

The fatal flaw in Cook’s due-process claim is that an office, even a tenure-protected one, is not property—so the Due Process Clause requires no process before removal. *Crenshaw v. United States*, 134 U.S. 99 (1890), rejected a naval cadet’s challenge to his removal, explaining that even “an officer appointed for a definite time or during good behavior” lacks a “vested interest or contract right in his office.” *Id.* at 104. *Taylor v. Beckham (No. 1)*, 178 U.S. 548 (1900), rejected a due-process challenge to a State’s procedures for resolving a disputed gubernatorial election, explaining that an “office is not property.” *Id.* at 576. And *Snowden v. Hughes*, 321 U.S. 1 (1944), “reaffirmed” *Taylor*’s holding that the denial “of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause.” *Id.* at 7.

Like Cook (Opp. 33-34), amicus Professor Shugerman (Br. 2-9) would confine those cases to their facts—if not implicitly overrule them—on the ground that offices were property under the Fifth Amendment’s original meaning. Not so. The Founding generation rejected the English theory that offices are property. See Reply 5. In the lead-up to the Decision of 1789, members of the First Congress argued that it should “never” “be said that [an officer] has an estate in his office”; “d[id] not admit that any man has an estate in his office”; and asked rhetorically, “Does any gentleman imagine that an officer is entitled to his office as to an estate?” 1 *Annals of Cong.* 493, 499, 565 (1789).

Early commentators agreed that “[p]roperty in an office” is “inconsistent with republican constitutions and principles,” 2 Francis Hilliard, *An Abridgment of the American Law of Real Property* 114 (1839); that, “in a republic,” officers “have no property in their offices,” 1 *Writings of Levi Woodbury* 125 (1852); and that, “[i]n America,” an officer “has no proprietorship or right of property in his office,” John Norton Pomeroy, *An Introduction to the Constitutional Law of the United States* 356 (1868). State courts, too, rejected the theory that “a public office is the [officer’s] property” as “repugnant to the institutions of our country.” *State ex rel. Mayor of Savannah v. Dews*, 1 Charlton 397, 400 (Ga. Super. Ct. 1835); see, e.g., *Knoup v. Piqua Branch*, 1 Ohio St. 603, 616 (1853).

Like Cook (Opp. 34), Professor Shugerman (Br. 9) invokes modern due-process cases like *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), which held that a tenure-protected civil servant has a property interest in his job. But, like Cook, Shugerman never explains how cases involving teachers, security guards,

and non-officer “employees,” *id.* at 544, could supersede earlier cases holding that “public offices” are “not property,” *Taylor*, 178 U.S. at 577. Courts of appeals post-*Loudermill* have thus recognized that they remain bound by the Court’s holdings that “a public office does not constitute property within the meaning of the Due Process Clause.” *Wilson v. Birnberg*, 667 F.3d 591, 598 (5th Cir. 2012).¹

Cook’s amici also do not address thorny questions that the due-process theory raises, such as whether the “property” in a public office is the salary, the power, or something else; whether Congress would need to pay just compensation when abolishing public offices; or what type of hearing the President would need to provide. See Appl. 15. This Court should apply its longstanding precedent, under which an office is not property and Cook has no due-process claim.

2. Cook has no statutory right to a hearing

The Banking Act provides that a Federal Reserve Governor may be “removed for cause by the President,” 12 U.S.C. 242, but omits any mention of notice or a hearing. Contrary to Cook’s (Opp. 30-32) and her amici’s (*e.g.*, Manners Br. 6-12) suggestion, the Act does not incorporate a purported background rule that statutes requiring cause for removal implicitly require notice and a hearing.

a. The Banking Act does not silently require notice and a hearing before the President removes a Federal Reserve Governor. As the government has explained,

¹ See *Fouts v. Warren City Council*, 97 F.4th 459, 469 (6th Cir. 2024); *Batagiannis v. West Lafayette Community School Corp.*, 454 F.3d 738, 740 (7th Cir. 2006); *Velez v. Levy*, 401 F.3d 75, 86-87 (2d Cir. 2005).

this Court usually does not read atextual requirements into statutes. See Reply 6. That is especially true of removal restrictions. Whether substantive or procedural, those restrictions require “clear and explicit language.” *Kennedy v. Braidwood Management, Inc.*, 606 U.S. 748, 771 (2025); see Reply 6.

More broadly, this Court presumes that “the only procedural requirements” a statute imposes on the Executive Branch “are those stated in the plain language.” *Vermont Yankee Nuclear Power Corp. v. NRDC, Inc.*, 435 U.S. 519, 548 (1978). Article II empowers the President, not courts, to decide how to execute statutes within the bounds set by Congress. See U.S. Const. Art. II, § 1, Cl. 1; § 3. Accordingly, when the statutory text does not require a particular procedure—and when no constitutional requirements are implicated—the Executive is “free to fashion” its “own rules of procedure” and “methods of inquiry.” *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940). Courts may not superimpose “judge-made procedural requirements.” *Garland v. Ming Dai*, 593 U.S. 357, 365 (2021). The Court’s cases “could hardly be more explicit in this regard” and have “upheld this principle in a variety of applications.” *Vermont Yankee*, 435 U.S. at 544; see, e.g., *FCC v. Schreiber*, 381 U.S. 279, 290 (1965). That principle applies with added force in cases involving the removal power, which lies at the “core” of Article II. *Trump v. United States*, 603 U.S. 593, 642 (2024); see *id.* at 620–621. It is one thing for Congress to regulate removals; it is quite another for courts to add their own extratextual procedural roadblocks.

Congress undoubtedly knows how to impose notice-and-hearing requirements on the Executive. The government has cited (Appl. 14) four statutes that ex-

pressly require notice and a hearing before for-cause removals—including the National Labor Relations Act, 29 U.S.C. 153(a), which was enacted just a month before the Banking Act. There are more than a dozen additional examples, applicable to both Senate-confirmed officers² and other officers.³ The Court’s usual “reluctance” to read atextual requirements into statutes “is even greater” where, as here, Congress shows that “it knows how to make such a requirement manifest.” *Jama v. ICE*, 543 U.S. 335, 341 (2005).

b. Cook and her amici err in claiming that the phrase “for cause” brings with it the purported old soil of requiring notice and a hearing before removal.

First, they misstate the background rule. As the government has explained, courts traditionally required notice and a hearing at most where specific causes for removal were “named in the statute,” *Shurtleff v. United States*, 189 U.S. 311, 317 (1903)—not where, as here, the statute requires cause but does not list specific causes. See Appl. 17; Reply 6-8. Cook (Opp. 30) and her amici (*e.g.*, Manners Br. 6) argue that whenever Congress specifies a fixed term, notice and a hearing are required even if the officer is removable for

² See, *e.g.*, 10 U.S.C. 942(c) (Court of Appeals for the Armed Forces); 26 U.S.C. 7443(f) (Tax Court); 28 U.S.C. 176(b) (Court of Federal Claims); 31 U.S.C. 703(e)(1)(B) (Comptroller General); 38 U.S.C. 7101(b)(2) (Chairman of Board of Veterans’ Appeals); 38 U.S.C. 7253(f)(2) (Court of Appeals for Veterans Claims).

³ See, *e.g.*, 15 U.S.C. 7217(d)(3) (Public Company Accounting Oversight Board); 16 U.S.C. 1852(b)(6)(B) (Regional Fishery Management Councils); 17 U.S.C. 802(i) (Copyright Royalty Board); 22 U.S.C. 4106(e) (Foreign Service Labor Relations Board); 28 U.S.C. 152(e) (bankruptcy judges); 28 U.S.C. 631(i) (magistrate judges); 31 U.S.C. 751(d) (General Accounting Office Personnel Appeals Board); 41 U.S.C. 7105(b)(3) (Civilian Board of Contract Appeals).

“cause.” But statutes fixing a “term of office” do not curtail “the power of the President to remove” “in the meantime.” *Parsons v. United States*, 167 U.S. 324, 342-343 (1897). A term “is a ceiling, not a floor, on the length of service,” and so leaves the removal power “untouched.” *Severino v. Biden*, 71 F.4th 1038, 1045 (D.C. Cir. 2023); see 35 Op. O.L.C. 98, 101 (2011) (“[s]pecification of a term of office does not” “restrict the President’s power to remove”). There is thus no reason to distinguish an officer with fixed tenure who is removable “for cause” from an officer without fixed tenure who is removable “for cause”; in neither case does the background rule require notice or a hearing before removal.

Second, the borrowed-meaning theory embraced by Cook and her amici works only if the phrase carried a “settled meaning” before being transplanted, and “does not apply” in cases of “divergence among courts” about the phrase’s meaning. See *Kousisis v. United States*, 605 U.S. 114, 124, 126 n.4. Here, there was no uniform or settled rule in 1935 (or any other time) that removals for “cause” required notice and a hearing. Amicus Professor Manners cites (Br. 6-12) cases imposing such a requirement, but many courts disagreed, instead reasoning that “the omission from [a for-cause removal provision] of any requirement of notice or hearing” indicates that “neither notice [n]or hearing is a necessary condition precedent to a valid removal.” *State ex rel. Ulrick v. Sanchez*, 255 P. 1077, 1086-1087 (N.M. 1926).⁴

⁴ See, e.g., *Patton v. Vaughan*, 39 Ark. 211, 215 (1882); *In re Carter*, 74 P. 997, 998 (Cal. 1903); *Trimble v. People*, 34 P. 981, 985-986 (Colo. 1893); *City of Hoboken v. Gear*, 3 Dutch. 265, 287 (N.J. 1859); *Hertel v. Boismenu*, 82 N.E. 298, 298 (Ill. 1907); *People ex rel. Shipley v. Mays*, 7 N.E. 660, 662 (Ill. 1886); *Wilcox v. People ex*

The law-review article on which Manners heavily relies (Br. 7, 9, 14) describes the necessity of “notice and a hearing” for a for-cause removal as “unsettled” and “disputed.” Alonzo H. Tuttle, *Removal of Public Officers from Office for Cause*, 3 Mich. L. Rev. 290, 293 (1905). It continues: “Many cases can be found holding that removal ‘for cause’ requires charges, notice and a hearing, and many can likewise be found holding that it does not.” *Id.* at 297. That lack of consensus “sounds the death knell” for Cook’s attempt to augment the statutory text with an unstated procedural requirement. See *Kousisis*, 605 U.S. at 129.

Third, nearly all the cases cited by Cook and her amici involve removals of state or local officers, not the President’s removal of a principal executive officer. They do not consider federal-specific reasons why “for cause” would not impose a notice-and-hearing requirement on the President, including Article II, the clear-statement rule for restricting the President’s removal power, and the many federal statutes that (unlike this one) expressly require notice and a hearing for removal.

Cook and her amici cite (*e.g.*, Opp. 30) only one case, *Shurtleff*, involving the President’s removal of an executive officer. But *Shurtleff* upheld a removal made with “no notice or opportunity to defend,” 189 U.S. at 314, so any statements about whether a hearing might be required were dicta. The statute in *Shurtleff* also authorized removal for inefficiency, neglect of duty, or malfea-

rel. Lipe, 90 Ill. 186, 204-205 (1878); *People ex rel. Stevenson v. Higgins*, 15 Ill. 110, 114-115 (1853); *O’Dowd v. City of Boston*, 21 N.E. 949, 950 (Mass. 1889); *People ex rel. Fonda v. Morton*, 42 N.E. 538, 540 (N.Y. 1896); *People ex rel. Gere v. Whitlock*, 47 Sickels 191, 197-198 (N.Y. 1883); *Conklin v. Cunningham*, 38 P. 170, 174 (N.M. 1894); *State ex rel. Kennedy v. McGarry*, 21 Wis. 496, 499 (1867).

sance in office, not “cause,” see *id.* at 313, and the Court’s analysis suggested at most that a hearing might be necessary when specific causes for removal are “named in the statute,” *id.* at 317. Further, *Shurtleff* explained that a removal restriction requires “clear and explicit language.” *Id.* at 315; see *id.* at 316 (“plain and explicit”); *id.* at 318 (“plain and unambiguous”). That reasoning cuts against interpolating an unstated notice-and-hearing requirement here.

Finally, Cook’s amici invoke (Former Fed. Reserve Governors Br. 22 & n.12) legislative history, which “is not the law,” *Azar v. Allina Health Services*, 587 U.S. 566, 579 (2019). They note that witnesses at a hearing advocated making Federal Reserve Governors removable “for cause and after notice and hearing” or “for cause and after appropriate notice and hearing.” Former Fed. Reserve Governors Br. 22 n.12 (quoting *Banking Act of 1935: Hearings Before the Senate Subcomm. of the Comm. on Banking and Currency*, 74th Cong., 1st Sess. 396, 548 (1935)). But the enacted text requires only cause, not notice and a hearing, which suggests—if anything—that Congress considered and rejected such additional requirements.

The legislative history of the Federal Reserve Act, ch. 6, 38 Stat. 251, further undercuts amici’s argument. The bill as first passed by the House of Representatives allowed the President to remove Federal Reserve Board members “for cause,” and the Board to remove officers of the Federal Reserve Banks “for cause stated in writing with opportunity of hearing.” S. Doc. No. 335, 63d Cong., 2d Sess. 25, 29 (1913). The House bill’s text confirms that Congress understood the difference between a substantive cause requirement and a procedural hearing requirement. And Congress later deleted

the hearing requirement for Federal Reserve Bank officers, see 12 U.S.C. 248(f), suggesting that Congress wanted no such requirements for any officers.

3. *Cook received adequate process*

Cook and her amici do not dispute that, even when some process is needed, a person is entitled to a hearing before his dismissal only if he can identify a “factual dispute” that has “some significant bearing” on the charges. *Codd v. Velger*, 429 U.S. 624, 627 (1977) (per curiam). Here, Cook still has not asserted that the charge against her—that she filed mortgage forms claiming two different principal residences at the same time, apparently to obtain more favorable interest rates for herself—is factually incorrect, or that the relevant facts would show her conduct to be justified.

Rather, in a November 17, 2025 letter sent to the Department of Justice months after her removal, after scores of pages of briefing, and two days before the deadline to file her supplemental brief in this Court, Cook has essentially conceded that her description of her Atlanta property as her primary residence was false (an “inadvertent notation” of undisputed inaccuracy). See Letter from Lisa D. Cook to Pamela J. Bondi, Att’y Gen., and Edward R. Martin, Jr., Assoc. Deputy Att’y Gen. 4. That letter is not part of the record, and regardless would be too little, too late. Cook’s letter belatedly appends documents that were always in her possession; none undercut the falsity of her statements in her applications. She merely argues that she did not misstate her primary residence with “specific intent to defraud,” *ibid.*, while ignoring the President’s independent determination that her conduct “exhibits the sort of gross negligence in financial transactions that calls into ques-

tion [her] competence and trustworthiness as a financial regulator,” Appl. App. 29a.

Cook’s failure to dispute that she made a false statement in her mortgage documents is “fatal” to her demand for a hearing. *Codd*, 429 U.S. at 627. Regardless, the proper remedy for any procedural defect would be, at most, to require a hearing, not to reinstate Cook.

B. Cook’s Challenge To Cause Lacks Merit

The district court also held that the President likely lacked cause to remove Cook. See Appl. App. 49a-50a. But courts may not review the President’s finding of cause under the unqualified “for cause” standard Congress selected here. Regardless, the President identified a valid cause for removing Cook: apparent fraud or gross negligence in a financial matter, which created a grave appearance of impropriety in her governance of Americans’ financial matters.

1. A court may not review the President’s finding that sufficient cause existed to remove Cook

Reviewing courts may “independently interpret the statute” to discern “‘the boundaries’” of the President’s power to remove Federal Reserve Governors for cause. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 395 (2024). Courts may also review a removal when “the President d[oes] not assert that he ha[s] removed [a Governor] in compliance with one of the * * * statutory causes for removal,” *Bowsher v. Synar*, 478 U.S. 714, 729 n.8 (1986)—for instance, if he cites no cause at all.

But—critically for this case—when, as here, the President provides a cause, courts may not review his factual findings or his application of the for-cause standard to the facts, or otherwise second-guess his judgment that the removal is justified. Where “the statute gives a

power of removal ‘for cause,’ without any specification of the causes,” the President’s stated cause “can not be reviewed.” *Reagan v. United States*, 35 Ct. Cl. 90, 105 (1900), *aff’d*, 182 U.S. 419 (1901); see *United States ex rel. Garland v. Oliver*, 6 Mackey 47, 53, 56 (1887).

Further, because the President is not an agency subject to the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, Cook’s only path to judicial review of the President’s determination of cause (as even Cook’s amici acknowledge) is a non-statutory ultra vires claim. See ACLU Br. 2. But the very nature of ultra vires review forecloses claims that the President has “exceeded his statutory authority” under a statute that grants him “discretion,” as here. *Dalton v. Specter*, 511 U.S. 462, 473-474 (1994); see *Dakota Central Telephone Co. v. South Dakota ex rel. Payne*, 250 U.S. 163, 184 (1919) (“mere excess or abuse of discretion in exerting a power given” not reviewable); *United States v. George S. Bush & Co.*, 310 U.S. 371, 380 (1940) (“exercise of [President’s] discretion” not reviewable).

Even if available, ultra vires review would be highly deferential. On ultra vires review, it is not enough for the plaintiff to show that the Executive “has arguably reached ‘a conclusion which does not comport with the law’”; the plaintiff must show that the Executive “has taken action entirely ‘in excess of its delegated powers and contrary to a specific prohibition’ in a statute.” *NRC v. Texas*, 605 U.S. 665, 681 (2025) (emphasis omitted). Amicus ACLU argues (Br. 16) that this standard applies only if “there is a statutory limitation on judicial review,” but there *is* such a limitation here: Congress limited judicial review under the APA to agency action, not presidential action. The demanding standard for “post-APA ultra vires review” helps ensure that ultra

vires review does not “become an easy end-run around the [APA’s] limitations.” *NRC*, 605 U.S. at 681.

The parties and amici have debated whether state courts traditionally reviewed for-cause removals. The government (Appl. 21) and its amici (Florida Br. 5-11) argue that they did not; Cook (Opp. 14-19) and her amici (Manners Br. 17-20) argue that they did. This Court need not resolve that debate because, whatever the rule in the States, Congress has never authorized courts to review the President’s for-cause removals of Federal Reserve Governors. Cf. Independent Counsel Reauthorization Act of 1987, Pub. L. No. 100-191, § 2, 101 Stat. 1305 (authorizing a removed independent counsel to “obtain judicial review of the removal”).

Contrary to amici’s suggestion (*e.g.*, Chamber of Commerce Br. 19-20), the lack of judicial review of the President’s discretionary judgments as to whether cause exists comports with courts’ role under the separation of powers. Congress could have expressly authorized judicial review, as it did in the independent-counsel statute. Here, however, Congress adopted the discretion-laden “for cause” standard without affirmatively authorizing judicial review. That courts may review the President’s exercise of discretion only with congressional authorization is black-letter administrative law, not a separation-of-powers problem. Congress, moreover, often precludes judicial review of statutory challenges to agency action, but no one thinks that such restrictions violate the Constitution. See, *e.g.*, *Patel v. Garland*, 596 U.S. 328, 347 (2022). Some amici invoke (*e.g.*, Former Government Officials Br. 21-22) the presumption in favor of judicial review that this Court has often applied to *agency* action, but the President is not an agency.

Amici are likewise wrong to argue (*e.g.*, Chamber of Commerce Br. 21) that *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), supports judicial review here. *Humphrey's Executor* involved a back-pay claim under an “inefficiency, neglect of duty, or malfeasance in office” statute, not an ultra vires claim under a bare for-cause statute. Moreover, “the President did not assert that he had removed the Federal Trade Commissioner in compliance with one of the enumerated statutory causes for removal.” *Bowsher*, 478 U.S. at 729 n.8. The Court has expressed doubt about whether, if he had, the “removal would be subject to judicial review.” *Id.* at 729.

2. *Regardless, the President identified cause here*

Even if judicial review were available, courts would owe significant deference to the President. See Appl. 25; pp. 14-15, *supra*. With or without deference, the President has identified a sufficient cause for removal here.

a. When Congress enacted the Banking Act and the Federal Reserve Act, the term “for cause” required a reason “relating to the conduct, ability, fitness, or competence of the officer.” *Black's Law Dictionary* 796 (3d ed. 1933); see Appl. 25-27; Reply 11. That standard precludes removal for no stated reason or based on mere policy disagreement, but it allows removal for misconduct, incompetence, failure to perform statutory duties, and any other faults “implying an unfitness for the place.” Montgomery H. Throop, *A Treatise on the Law Relating to Public Officers and Sureties in Official Bonds* § 366, at 362 (1892). This Court has thus recognized that “cause” includes an officer’s “misconduct,” *Morrison v. Olson*, 487 U.S. 654, 692 (1988), or lack of “rectitude,” *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, (2010) 502; *Wiener v. United States*, 357 U.S. 349, 356 (1958).

Cook errs in arguing (Opp. 26) that the government's position rests solely on "*Black's Law Dictionary*." Other sources from the early 20th century similarly defined "for cause" to require:

- A "substantial shortcoming which renders his continuance in office or employment detrimental." 1 Benjamin W. Pope, *Legal Definitions* 562 (1919).
- "[S]ome dereliction or general neglect of duty, some incapacity to perform the duties of the post, or some delinquency affecting the incumbent's general character and fitness for the office." William C. Anderson, *A Dictionary of Law* 876 (1913).
- A reason "affecting or concerning the ability or fitness of the incumbent." 3 *The American and English Encyclopedia of Law and Practice* 846 (William M. McKinney et al. eds., 1910).
- A reason "affecting or concerning the ability and fitness of the incumbent." 3 *Judicial and Statutory Definitions of Words and Phrases* (1904).

No one meaningfully disputes that, under those tests, the President had "cause" for removing Cook. The President determined that Cook engaged in "deceitful and potentially criminal conduct in a financial matter" or, at a minimum, acted with "the sort of gross negligence in financial transactions that calls into question [her] competence and trustworthiness as a financial regulator." Appl. App. 29a. That is a reason relating to Cook's "conduct," "fitness," and "rectitude." As the government's amici observe, "abusive and self-dealing pre-office conduct bears directly on Respondent's continued fitness for office," America First Legal Br. 9, and allowing Cook to remain in office "would tell markets and supervised institutions that the Board holds itself

to a lower standard than the banks it regulates,” Azoria Capital Br. 5.

b. Cook and her amici reject the ordinary meaning of “for cause,” but cannot agree with each other or with the district court about what test should take its place. The court held that pre-office misconduct could never be cause, see Appl. App. 49a, but Cook’s amici concede that the court’s categorical rule went too far, see *Manners* Br. 24-25. The court concluded that the for-cause standard is similar to but less protective than “inefficiency, neglect of duty, or malfeasance in office,” see Appl. App. 41a-42a; some amici argue that the two standards are the same, see *Former Fed. Reserve Governors* Br. 8-24; and other amici argue that “for cause” has its own, distinct, common-law meaning, see *Manners* Br. 17-25). All these interpretations fail.

i. Cook (Opp. 20) and some of her amici (*Former Fed. Reserve Governors* Br. 8-24) argue that, by using the term “for cause,” Congress invoked the “inefficiency, neglect of duty, or malfeasance in office” removal standard that it has adopted for some other federal agencies. That argument is wrong.

“For cause” and “inefficiency, neglect of duty, or malfeasance in office” are distinct standards. The former grants the President “more removal authority” than the latter. *Collins v. Yellen*, 594 U.S. 220, 255 (2021). A leading article on removal statutes explains: “Statutes that specify that an appointee cannot be removed except for ‘good cause’ confer the weakest protection. Statutes that protect the appointee from removal except in cases of ‘inefficiency, neglect of duty, or malfeasance in office’ confer stronger protection.” Kirti Datla & Richard L. Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 Cornell L.

Rev. 769, 788 (2013). Thus, as one of Cook’s amici, Professor Manners, has previously written, “the President’s power to remove Federal Reserve governors is greater than it is over many other independent agency heads.” Jane Manners & Lev Menand, *The Three Permissions*, 121 Colum. L. Rev. 1, 63 n.363 (2021).

Again, Congress knows how to distinguish between cause and “inefficiency, neglect of duty, or malfeasance in office.” Some statutes authorize removal “for cause,”⁵ while other statutes authorize removal for “inefficiency, neglect of duty, or malfeasance in office.”⁶ That “variation in terms suggests a variation in meaning.” Antonin Scalia & Bryan A. Garner, *Reading Law* § 25 (2012); see *DHS v. MacLean*, 574 U.S. 383, 391 (2015).

The Banking Act’s historical context reinforces that point. See Nielson Br. 19. Congress enacted the statute just months after this Court decided *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935). Yet Congress chose not to use the “inefficiency, neglect of duty,

⁵ See, e.g., 12 U.S.C. 4512(b)(2) (Federal Housing Finance Agency Director); 16 U.S.C. 1852(b)(6) (Regional Fishery Management Councils); 39 U.S.C. 202 (Postal Service Board of Governors); 39 U.S.C. 502(a) (Postal Regulatory Commission); 42 U.S.C. 254j(b) (National Advisory Council on the National Health Service Corps); 42 U.S.C. 902(c)(1) (Chief Actuary of Social Security Administration); 42 U.S.C. 1317(b)(1) (Chief Actuary of Centers for Medicare and Medicaid Services).

⁶ See, e.g., 5 U.S.C. 1202(d) (Merit Systems Protection Board); 15 U.S.C. 41 (Federal Trade Commission); 29 U.S.C. 661(b) (Occupational Safety and Health Review Commission); 30 U.S.C. 823(b)(1) (Federal Mine Safety and Health Review Commission); 42 U.S.C. 5841(e) (Nuclear Regulatory Commission); 46 U.S.C. 301(b)(3) (Federal Maritime Commission); 49 U.S.C. 1301(b)(3) (Surface Transportation Board); 49 U.S.C. 1111(c) (National Transportation Safety Board).

or malfeasance in office” test that was “famously at issue” in *Humphrey’s Executor*. Appl. App. 14a (Katsas, J., dissenting).

Cook contends (Opp. 20) that the term “for cause” incorporates removal grounds listed in other statutes, and that when the Banking Act was enacted, those grounds were limited to inefficiency, neglect of duty, malfeasance in office, and ineligibility. But the Act authorizes removal “for cause,” not “for causes that Congress has recognized as adequate in other removal statutes.” The Act does not incorporate other statutes by reference. Regardless, under the “reference canon,” a statute that “refers to a general subject” “adopts the law on that subject as it exists whenever a question under the statute arises.” *Jam v. IFC*, 586 U.S. 199, 209–210 (2019). Even if the term “for cause” incorporated other removal statutes, therefore, it would incorporate them as they exist today. Though some removal provisions today refer to “malfeasance *in office*,”⁷ others refer to “misconduct” or “malfeasance.”⁸

Amici observe (Former Fed. Reserve Governors Br. 24 n.13) that, in *Free Enterprise Fund*, this Court assumed that members of the Securities and Exchange Commission (SEC) are removable only for inefficiency, neglect of duty, or malfeasance in office even though no statutory provision addresses their removal. See 561

⁷ See, e.g., 15 U.S.C. 41 (Federal Trade Commission); 15 U.S.C. 2053(a) (Consumer Product Safety Commission).

⁸ See 10 U.S.C. 183(b)(3) (Department of War Board of Actuaries); 17 U.S.C. 802(i) (Copyright Royalty Board); 20 U.S.C. 1018(d)(3) (Chief Operating Officer of Department of Education Performance-Based Organization); 22 U.S.C. 4106(e) (Foreign Service Labor Relations Board); 22 U.S.C. 4135(d) (Foreign Service Grievance Board); 38 U.S.C. 7101(b)(2) (Board of Veterans’ Appeals).

U.S. at 487; see also *id.* at 545 (Breyer, J., dissenting) (observing that the Court “*assume[d]* without deciding” the point). But assumptions are not holdings, and any assumption that the SEC enjoys removal protection has been superseded by later cases clarifying that removal restrictions require “explicit language.” *Braidwood*, 606 U.S. at 771. In any event, it is one thing to assume that an implied removal restriction requires a showing of inefficiency, neglect of duty, or malfeasance in office, rather than broader causes. But it is another thing to narrow in that manner an *express* cause restriction enacted by Congress.

Amici cite (Former Fed. Reserve Governors Br. 8-24) the Banking Act’s legislative history, which, again, “is not the law.” *Allina*, 587 U.S. at 579. The cited history also shows that Congress was aware of *Humphrey’s Executor* when it enacted the Banking Act. But that point cuts against Cook. Though Congress knew about the standard in *Humphrey’s Executor*, it chose a for-cause standard here.

Congress’s choice to provide the Federal Reserve Board with less removal protection than other agencies makes sense in historical context. The Federal Reserve Board, as established in 1913, originally included the Secretary of the Treasury and Comptroller of the Treasury as voting members, with the Secretary serving as Chairman. See Federal Reserve Act § 10, 38 Stat. 260-261. The inclusion of the Secretary and Comptroller, whom the President could remove at will, shows that Congress meant to grant the President some influence over the Board. That choice is unsurprising, given that the Federal Reserve Act was “an intensely-bargained compromise” between “those who wanted a largely private system” and “those who favored a Government-

controlled national bank.” *CFPB v. CFSA*, 601 U.S. 416, 467 n.16 (2024) (Alito, J., dissenting).

Then, when Congress enacted the 1935 Banking Act soon after *Humphrey’s Executor*, Congress still did not adopt the “inefficiency, neglect of duty, or malfeasance in office” standard. Instead, after a political struggle between “advocates of presidential control” and advocates of bank independence, Former Fed. Reserve Governors Br. 9, it re-adopted the Federal Reserve Act’s for-cause standard, see Banking Act § 203(b), 49 Stat. 704. The for-cause standard thus reflects a legislative compromise between those who sought stronger, and those who sought weaker, tenure protections.

ii. Cook (Opp. 25 n.7) and amicus Professor Manners (Br. 20-25) also argue that pre-office misconduct was not cause at common law. But they rely on a line of cases about the “implied power” of a “corporation” to remove its officers if its bylaws do not expressly address removal. *Rex v. Richardson*, 97 Eng. Rep. 426, 434 (K.B. 1758) (cited at Opp. 25; Manners Br. 24). Those cases shed little light on the President’s power to remove principal officers of the United States under a statute authorizing removal “for cause.”

Regardless, Professor Manners accepts (Br. 21) that, at common law, pre-office conduct can be cause for removal if it has “a sufficient connection to the particular office and duties involved.” That concession gives up the case. The President determined that, because the Federal Reserve Board has “tremendous responsibility for setting interest rates and regulating” banks, the “American people must be able to have full confidence in the honesty of [its] members.” Appl. App. 29a. He found that, because of Cook’s “deceitful and potentially criminal conduct in a criminal matter,” the Amer-

ican people cannot “have such confidence in [her] integrity.” *Ibid.* He also found that, at a minimum, her “gross negligence in financial transactions” “calls into question [her] competence and trustworthiness as a financial regulator.” *Ibid.*

Still relying on cases involving the removal of corporate officers, Professor Manners argues (Br. 24-25) that pre-office misconduct can justify removal only if it results in a criminal conviction. But the ordinary meaning of “cause” does not require a crime, much less a conviction. The President would surely have “cause” to remove a Governor who has “committed murder,” engaged in “financial fraud,” or “bribed a Senator to ensure confirmation,” even if those charges have not been proved beyond a reasonable doubt or the statute of limitations has run. Appl. App. 15a (Katsas, J., dissenting). When Congress means to require a crime or a conviction for removal, it knows how to say so.⁹

c. Even though neither Cook nor her amici meaningfully defend her conduct, some amici suggest (Former Gov’t Officials Br. 18) that the President’s stated reason for removing Cook is a “pretext.” But this Court’s cases reject inquiries into the President’s subjective motives. See *Trump*, 603 U.S. at 618-619; *Trump v. Hawaii*, 585 U.S. 667, 701-702 (2018); *Nixon v. Fitzgerald*, 457 U.S. 731, 756 (1982). Such inquiries are both highly intrusive and practically unworkable. See *Trump*, 603 U.S. at 619. And they serve no useful purpose where, as here, the President’s action is supported by strong objective justifications. See *Hawaii*, 585 U.S. at 705-10.

⁹ See, e.g., 22 U.S.C. 4605(f)(1) (“conviction of a felony”) (United States Institute of Peace); 42 U.S.C. 2996c(e) (“offenses involving moral turpitude”) (Legal Services Corporation).

Other amici warn (Former Fed. Reserve Governors Br. 5) that interpreting “for cause” as affording the President latitude would allow Presidents to make pretextual but unreviewable removals of Federal Reserve Governors. But the presumption of regularity requires courts to presume that the President “will not use statutorily prescribed removal causes as pretexts,” *Bowsher*, 478 U.S. at 739 n.3 (Stevens, J., concurring in the judgment). In any event, this is a mere policy disagreement with the less restrictive standard that Congress adopted. “It is no answer that such a power may be abused, for there is no power which is not susceptible of abuse.” *Martin v. Mott*, 12 Wheat. 19, 32 (1827). If Congress believes that the for-cause standard insufficiently guards against pretextual removals, it is Congress’s job—not this Court’s—to strengthen that standard.

C. Cook Is Not Entitled To Interim Reinstatement

A stay is independently warranted because the preliminary injunction restoring Cook to office exceeded the district court’s remedial authority. At a minimum, preliminary relief is unavailable. Cook’s and her amici’s contention that courts of equity traditionally granted preliminary relief conflicts with this Court’s precedents. Their contention also fails to account for the President’s Article II power to suspend officers while courts resolve the lawfulness of their removal. And they ignore the modern-day CSRA framework—the exclusive avenue for relief for all federal officers and employees—in which Congress deliberately opted against relief for principal officers such as Cook.

1. The President may suspend Cook while courts resolve the lawfulness of her removal

The “power of suspension is an incident of the power of removal.” *Burnap v. United States*, 252 U.S. 512, 515 (1920). The President’s power to remove an executive officer includes the power to suspend the officer until the removal’s lawfulness is resolved. That power is vital because “sudden removals” are often “necessary.” *Braidwood*, 606 U.S. at 760. Delaying removals can prevent the President from acting with the “[d]ecision,” “activity,” and “dispatch” that the Framers expected from an energetic Executive. *The Federalist* No. 70, at 472 (Alexander Hamilton) (Jacob E. Cooke ed. 1961).

From the beginning, even skeptics of the President’s removal power have accepted the suspension power, even assuming ultimate removal may be unwarranted. See Appl. 15. For example:

- Members of the First Congress who thought that removals require Senate consent agreed that the President could suspend officers pending Senate action. See, *e.g.*, 1 Annals of Cong. 507 (Rep. Jackson); *id.* at 509 (Rep. Page); *id.* at 514 (Rep. Stone); *id.* at 524 (Rep. Gerry).
- The dissenters in *Myers v. United States*, 272 U.S. 52 (1926), distinguished removal from “mere suspension,” *id.* at 187 (McReynolds, J., dissenting), and accepted the President’s “constitutional power of suspension,” *id.* at 247 (Brandeis, J., dissenting).
- In *Wiener*, this Court held that the President could remove members of the War Claims Commission only for cause, but indicated that he could make a “suspensory removal until the Senate

could act upon it by confirming the appointment of a new Commissioner or otherwise dealing with the matter.” 357 U.S. at 356.

- Even the Tenure of Office Act of 1867, ch. 154, 14 Stat. 430, the most egregious congressional incursion on the President’s removal power, preserved the President’s authority to “suspend” an officer “until the case shall be acted upon by the Senate.” § 2, 14 Stat. 430.

Under those principles, the President has the power to suspend Cook while courts resolve the lawfulness of her removal. That authority precludes courts from granting Cook interim relief before finally deciding whether her removal is lawful.

2. *Interim reinstatement violates traditional equitable principles*

Courts of equity lack the power to issue interim relief restoring removed executive officers. See Appl. 31-34; Florida Br. 15-19. Traditionally, “a court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee.” *White v. Berry*, 171 U.S. 366, 377 (1898). Citing new scholarship by Professor Samuel Bray directed at this litigation, Cook’s amici argue (Borchers Br. 12-13) that courts of equity could issue reinstatement injunctions in narrow circumstances where necessary to preserve the status quo. See Samuel L. Bray, *Remedies in the Officer Removal Cases* (Oct. 20, 2025), <https://perma.cc/3XEP-2DL6>. That argument conflicts with this Court’s holding in *In re Sawyer*, 124 U.S. 200 (1888)—a case that involved a “preliminary injunction”—that “a court of equity” “has no jurisdiction” over “the removal of public officers.” *Id.* at 206, 210. Only Chief Justice Waite’s

dissent rejected that categorical rule, arguing instead that courts may grant relief in “rar[e]” cases to prevent “irremediable mischief.” *Id.* at 223. Professor Bray argues that “Chief Justice Waite’s view” reflects the “equity tradition” better than the Court’s rule, Bray 15, but the majority, not the dissent, is binding precedent.

Amici next contend (Borchers Br. 14-20) that injunctions are functionally equivalent to writs of mandamus preventing removals. But preliminary injunctions require only a likelihood of success, while mandamus requires a “clear and indisputable” right to relief. *United States v. Duell*, 172 U.S. 576, 582 (1899). Regardless of whether courts could prevent the removal of executive officers through mandamus—an issue this Court need not decide here, because the district court did not issue mandamus—the potential availability of mandamus does not support the availability of injunctive relief.

Amici also argue (Borchers Br. 5, 7, 12) that equitable rules are “‘not static,’” that “older cases” are not controlling, and that courts “today” have the power to enjoin removals. But this Court’s cases instead establish that “equitable powers of federal courts are limited by historical practice,” *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 44 (2021); that district courts may grant “only those sorts of equitable remedies ‘traditionally accorded by courts of equity’ at our country’s inception,” *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025); and that courts lack “the power to create remedies previously unknown to equity jurisprudence,” *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999).

The responsibility for creating new remedies belongs to Congress. See *Grupo Mexicano*, 527 U.S. at 332. Congress has enacted several statutes specifically

authorizing courts to award reinstatement. See, *e.g.*, 42 U.S.C. 2000e–5(g)(1) (fired employees); Independent Counsel Reauthorization Act, § 2, 101 Stat. 1305 (removed independent counsel). But Congress has not authorized such a remedy here.

3. *The Civil Service Reform Act precludes reinstatement*

Congress did not simply fail to authorize reinstatement (interim or otherwise) for removed Federal Reserve Governors; as the government’s amici argue, it affirmatively precluded relief in the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. 1101 *et seq.* See America First Legal Br. 6-8; America First Policy Br. 5-7. That statute provides a comprehensive scheme of remedies for federal officers and employees but deliberately excludes Senate-confirmed officers from relief—confirming that no remedies are available to them. See Gov’t Br. at 45-47, *Trump v. Slaughter*, No. 25-332 (oral argument scheduled for Dec. 8, 2025).

The CSRA establishes a comprehensive “framework for evaluating adverse personnel actions against federal employees,” *United States v. Fausto*, 484 U.S. 439, 443 (1988) (brackets omitted), including officers of the United States, see 5 U.S.C. 7511. The CSRA replaced the earlier “patchwork system” of remedies for various types of government officers and employees with an “integrated scheme” that delineates who may obtain relief; what actions they may challenge; how, when, and where they may do so; and what relief they may obtain. *Fausto*, 484 U.S. at 445.

For federal employees, “what you get under the CSRA is what you get.” *Nyunt v. Chairman, Broadcasting Board of Governors*, 589 F.3d 445, 449 (D.C. Cir. 2009) (Kavanaugh, J.). For covered employees, challenges to firings and other employment actions are gen-

erally channeled to the Merit Systems Protection Board (MSPB)—which may award reinstatement and back pay—with review in the Federal Circuit. See *Elgin v. Department of the Treasury*, 567 U.S. 1, 6 (2012). That review scheme is “exclusive.” *Id.* at 13. Employees covered by the CSRA generally must proceed to the MSPB and cannot obtain relief in district court. *Id.* at 10-15.

The CSRA also expressly withholds remedies from some types of “employees” otherwise within its scope, including presidential appointees like Federal Reserve Governors. Specifically, its remedial provisions “d[o] not apply” to those appointed “by and with the advice and consent of the Senate” (among other groups), 5 U.S.C. 7511(b)(1), even though such officers fall within the statute’s scope more generally, see, *e.g.*, 5 U.S.C. 2101(1). Congress thus did not allow removed Governors to seek relief, whether reinstatement or back pay.

For such individuals, the CSRA’s exclusive scheme precludes statutory claims such as the statutory challenges to the removal here. For instance, *Fausto* held that certain employees in the “excepted service,” with no path to review under the CSRA, may not bring back-pay claims (or others) outside the CSRA. 484 U.S. at 447. So too here. The CSRA is “exclusive” even if “the CSRA scheme ultimately would provide no relief.” *Nyunt*, 589 F.3d at 448-449.

* * * * *

Instead of focusing on the legal issues at the heart of this case, most of Cook’s amici emphasize policy arguments, touting the perceived benefits of the Federal Reserve Board’s independence in setting monetary policy. See, *e.g.*, Colorado Br. 6-12; Former Treasury Secretaries Br. 6-17. But policy preferences are not the law, and these particular preferences lack any logical limit. In-

deed, amici seemingly believe that Governors should never be removable—no matter that Congress authorized the President to remove Governors “for cause”—lest removals “harm the economy.” Economics Professors Br. 3. Meanwhile, they dismiss the limits of the government’s position here, which rests on Cook’s apparent (and undisputed) financial misconduct, which created an intolerable appearance of impropriety in someone charged with the weightiest responsibilities in our financial system. There is a world of difference between that removal and removals grounded in policy disagreements.

The application for a stay should be granted.

Respectfully submitted.

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