No. 25-____

IN THE

Supreme Court of the United States

GWYNNE A. WILCOX,
Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, and JAMES R. MURPHY, in his official Capacity as Chairman of the National Labor Relations Board,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May Congress constitutionally limit removal of members of the National Labor Relations Board to cases of "neglect of duty or malfeasance in office." 29 U.S.C. § 153(a)?

2. To the extent that the National Labor Relations Board possesses any residual "executive functions" in its bifurcated structure, is the appropriate remedy to sever that function rather than invalidate the entirety of the for-cause removal provision?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner Gwynne Wilcox was the plaintiff-appellant below.

Respondents Donald J. Trump and Marvin E. Kaplan were the defendants-appellees below. The current Chairman of the National Labor Relations Board, James R. Murphy, has been substituted for Marvin E. Kaplan in this petition.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- This case was before the U.S. District Court for the District of Columbia in *Wilcox v. Trump*, No. 25-cv-334 (D.D.C.).
- This case was before the U.S. Court of Appeals for the District of Columbia Circuit in *Wilcox v. Trump*, No. 25-5057 (D.C. Cir.).
- This case was twice before this Court in *Trump v. Wilcox*, No. 24A966 (application for a stay), and *Wilcox v. Trump*, No. 25-319 (petition for a writ of certiorari before judgment).

This case was previously considered in conjunction with *Harris v. Bessent*, which has a pending petition for certiorari in No. 25-1110. There are no other proceedings in state or federal court, or in this Court, that are "directly related" to this case within the meaning of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

The National Labor Relations Board is unique among independent federal agencies. Although Congress has created many other independent agencies over the last 150 years, it specifically responded to separation-of-powers concerns by refining the NLRB's original structure to impose a distinctive "separation of powers within the agency." *See NLRB v. United Food & Com. Workers Union, Loc. 23, AFL-CIO*, 484 U.S. 112, 118 n.5 (1987). In the Taft-Hartley Act of 1947, Congress reserved prosecutorial functions to the General Counsel, who serves at the pleasure of the President and is "independent of the Board's supervision and review." *Id.* at 117–18. By contrast, the agency's five-member Board is structured like an independent court in both form and function, with members acting as a panel of appellate judges, issuing mostly unanimous decisions by applying federal labor law to the record in the cases that come before it. *See* 29 U.S.C. § 160; *see also Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 393 (1998) (Breyer, J., concurring) (describing the Board as "rather like a common-law court").

Although the General Counsel is removable by the President at will, the members of the Board are not. To protect their independence as adjudicators, Congress limited the President's ability to remove Board members except "upon notice and hearing, for neglect of duty or malfeasance in office." 29 U.S.C. § 153(a). Just as life tenure allows Article III judges to decide cases free from political pressure or the threat of removal for unpopular decisions, the Board's removal protections ensure its legitimacy as a neutral arbiter of labor disputes. As this Court recognized in *Wiener v. United States*, an independent "adjudicatory body" cannot be expected to impartially apply the law with "the Damocles' sword of removal" hanging over it. 357 U.S. 349, 355–56 (1958).

In disregard of the NLRB's removal protections, President Trump removed petitioner Gwynne A. Wilcox from her role as a member of the Board without notice, a hearing, or cause. Ms. Wilcox's resulting case against the President has already come before this Court twice before. The first time, this Court declined the Solicitor General's request for certiorari before judgment, stayed the D.C. Circuit's decision in favor of Ms. Wilcox, and left the merits for that court to decide "after full briefing and argument." *Trump v. Wilcox*, No. 24A966, 145 S. Ct. 1415, 1415–16 (2025). The second time, this Court declined Ms. Wilcox's petition for certiorari before judgment (No. 25-319), deciding instead to first resolve the constitutionality of the Federal Trade Commission's removal restrictions in *Trump v. Slaughter* (No. 25-332). The Court thus once again left it to the D.C. Circuit in the first instance to determine the effect of the NLRB's unique structure on the constitutionality of the agency's removal protections.

As both the majority and dissent recognized below, that left the D.C. Circuit in the unenviable position of addressing an already difficult constitutional question while this Court was still "considering whether to overrule *Humphrey's Executor*." Pet. App. 20a; *see also* Pet. App. 41a (Pan, J., dissenting) (noting that "[t]he pendency of *Slaughter* places [the court] in an unusual position"). With *Slaughter* still pending, the court of appeals was forced to decide the case without the benefit of whatever constitutional framework this Court ultimately adopts in that case, let alone the opportunity to apply that framework to the unique characteristics of the NLRB.

Those characteristics go beyond the NLRB's distinctive structure. The Board stands apart in other ways: Like a court, it may resolve only the cases brought before it; it has no power to investigate or prosecute on its own. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 138–39 (1975). And, as Judge Oldham has observed, the NLRB "may be the only agency that needs a court's imprimatur to render its orders enforceable." *Dish Network Corp. v. NLRB*, 953 F.3d 370, 375 n.2 (5th Cir. 2020).

The only way any court will have an opportunity to apply *Slaughter* to these distinctive agency features in this case is if this Court grants the petition—either by granting, vacating, and remanding to the D.C. Circuit in light of *Slaughter*, or by granting plenary review. The alternative—to leave a critical federal agency under a cloud of constitutional uncertainty—is untenable. Every year, the Board decides hundreds of disputes brought by employers, employees, and unions. To leave its status under *Slaughter* unresolved would cast those decisions into doubt, depriving the agency's stakeholders, and the agency itself, of the certainty they urgently need.

OPINIONS BELOW

The district court's decision is reported at *Wilcox v. Trump*, 775 F. Supp. 3d 215 (D.D.C. 2025), and reproduced at Pet. App. 220a–261a. The order of the D.C. Circuit special panel granting a stay pending appeal is not reported but is available at 2025 WL 980278, and reproduced at Pet. App. 110a–216a. The order of the en banc D.C. Circuit denying a stay is not reported but is available at 2025 WL 1021435, and reproduced at Pet. App. 90a–109a. The D.C. Circuit's decision on the merits, Pet. App. 1a–86a, is reported at 160 F.4th 1235.

JURISDICTION

The D.C. Circuit issued its judgment on December 5, 2025. Pet. App. 87a–89a. On January 28, 2026, the D.C. Circuit denied Ms. Wilcox's petition for rehearing en banc. Pet. App. 266a. The Chief Justice granted Ms. Wilcox's application (No. 25A1164) to extend the time within which to file a petition for certiorari by 60 days, from April 28, 2026, to June 27, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 153(a) provides: "Any member of the [National Labor Relations Board] may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause."

STATEMENT

I. Statutory background

A. Congress created the NLRB as an independent multimember body to resolve labor disputes.

Congress established the National Labor Relations Board "in response to a long and violent struggle for workers' rights." Pet. App. 225a.[1] "In the latter part of the nineteenth century and the early decades of the [twentieth] century, … the American labor scene was often a sordid spectacle of violence, rioting, demonstrations, and sit-ins." Arnold Ordman, *Fifty Years of the NLRA: An Overview*, 88 W. Va. L. Rev. 15, 16 (1985). "The use of armed guards, police, and the military

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[1] Unless otherwise noted, all internal quotation marks, citations, alterations, brackets, and ellipses have been omitted from quotations throughout this brief.

was an all too familiar phenomenon." *Id.* For "the promotion of industrial peace," *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240, 257 (1939), Congress created the NLRB as an independent and impartial adjudicative body shielded from political pressures to serve "in the public interest." *Amalgamated Util. Workers v. Consol. Edison Co. of N.Y.*, 309 U.S. 261, 265 (1940). Congress gave the NLRB exclusive jurisdiction to adjudicate labor disputes and to protect both employers and employees from unfair labor practices. *See* 29 U.S.C. §§ 157–60.

Congress determined that the independence of Board members was critical to protect them "from being subject to immediate political reactions at elections." NLRB, 1 *Legislative History of the National Labor Relations Act*, at 1467 (1949). The National Labor Relations Act's sponsor, Senator Robert Wagner, explained that only an autonomous tribunal—"detached from any particular administration that happens to be in power"—could fairly adjudicate disputes between employers and employees. *Id.* at 1428.

Reflecting that congressional judgment, "the Board was designed to be an independent panel of experts that could impartially adjudicate disputes." Pet. App. 228a; *see* 29 U.S.C. § 153(a). Congress imbued the Board with the hallmarks of an independent agency, including statutory removal protection, specified tenure, a multimember structure, and adjudication authority. *See* Kirti Datla & Richard L. Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 Cornell L. Rev. 769, 825 (2013).[2] President Franklin D. Roosevelt signed

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[2] Unlike some independent agencies, the NLRB does not have a mandatory bipartisanship requirement. But because the President

the Act into law, lauding the creation of "an independent quasi-judicial body." Franklin D. Roosevelt, President of the United States, *Statement on Signing the National Labor Relations Act* (July 5, 1935); *see also* NLRB, *First Annual Report of the National Labor Relations Board* at 9 n.1 (1936).

As originally enacted in 1935, the NLRA "granted the Board plenary authority over all aspects of unfair labor practice disputes: The Board controlled not only the filing of complaints, but their prosecution and adjudication." *United Food & Com. Workers*, 484 U.S. at 117.

B. Congress bifurcated the prosecutorial and adjudicative functions within the agency.

A little over a decade later, Congress "determine[d] that the General Counsel of the Board should be independent of the Board's supervision and review." *United Food & Com. Workers*, 484 U.S. at 118. The Labor Management Relations Act of 1947 (also known as the Taft-Hartley Act) thus imposed a form of "separation of powers within the agency," dividing the agency's prosecutorial functions from its adjudicative ones. *See id.* at 118 n.5. As a result, the NLRB today is a "bifurcated

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names the Chair and because the Board's members serve staggered terms, every president has the "opportunity to shape its leadership and thereby influence its activities." *Seila Law LLC v. CFPB*, 591 U.S. 197, 206 (2020). The agency also has a long history and tradition of bipartisanship. The "NLRB has consistently held a 3-2 breakdown in membership: three Board members from the president's party and two Board members from the opposing party." Emma Barudi, *An Assumed Tradition: How the 3-2 Balance of the NLRB Is More Than the Sum of Its Appointments and an Argument for Its Continuation*, 26 N.Y.U. J. Legis. & Pub. Pol'y 817, 819 (2023).

agency." Pet. App. 226a; *see United Food & Com. Workers*, 484 U.S. at 117–18.

On one side of the split, Congress created an independent quasi-judicial Board charged with adjudicating appeals from administrative law judges. Pet. App. 226a. The Board is designed to be "judicial in character." *Chamber of Com. of U.S. v. NLRB*, 721 F.3d 152, 155 n.1 (4th Cir. 2013). It consists of five members appointed by the President "with the advice and consent of the Senate" for staggered five-year terms. 29 U.S.C. § 153(a). One member, designated by the President, serves as the Board's Chair. *See id.*

On the other side of the split are the General Counsel and several Regional Directors, who are charged with prosecuting unfair labor practices and enforcing labor law. *United Food & Com. Workers*, 484 U.S. at 117–18; *see* 29 U.S.C. § 153(d). The General Counsel is appointed by the President, removable at will, and "independent of the Board's" control. *United Food & Com. Workers*, 484 U.S. at 118. The General Counsel is the "final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints … and in respect of the prosecution of complaints before the Board." 29 U.S.C. § 153(d). This Court has held that the General Counsel has "unreviewable discretion to refuse to institute an unfair labor practice complaint," *Vaca v. Sipes*, 386 U.S. 171, 182 (1967), as well as exclusive authority to dismiss or informally settle charges, *United Food & Com. Workers*, 484 U.S. at 119–21.

Although the President can remove the General Counsel at will, he is authorized to remove a Board member only "upon notice and hearing, for neglect of duty or malfeasance in office." 29 U.S.C. § 153(a). Congress designed these protections to ensure the Board could operate as an independent and impartial adjudicative body "acting in the public interest." *Garner v. Teamsters, Chauffeurs & Helpers Loc. Union 776*, 346 U.S. 485, 493–94 (1953). The independence of Board members was critical to protect them "from being subject to immediate political reactions at elections." NLRB, 1 *Legislative History of the National Labor Relations Act*, at 1467 (1949); *see also* Datla & Revesz, *Deconstructing Independent Agencies*, 98 Cornell L. Rev. at 770–71 (describing the NLRB as a classic example of an agency designed to be independent).

II. Legal background

The Constitution provides explicit procedures for the "Appointments" of "Officers of the United States." U.S. Const. art II, § 2, cl. 2. But "[t]here is no express provision respecting removals." *Myers v. United States*, 272 U.S. 52, 109 (1926). The authority to remove executive-branch officials (at least by means other than impeachment) was not discussed at the Constitutional Convention. *See id.* at 109–10. And the Constitution likewise says nothing about the number and structure of executive-branch departments—leaving those details to Congress.

Congress, in turn, has a long tradition of creating impartial, expert-driven agencies that are "insulated from outside influence through structural features such as specified terms of tenure and bipartisan membership requirements." Datla & Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 Cornell L. Rev. at 770. Beginning nearly 150 years ago with the Interstate Commerce Commission, Congress has restricted the President's ability to remove these officers absent "inefficiency, neglect of duty, or malfeasance in office." Interstate Commerce Act, Pub. L. No. 49-41, ch. 104, § 11, 24. Stat. 379, 383 (1887). Since then, Congress established numerous additional independent agencies with similar for-cause removal protections, including, among others, the Federal Radio Commission in 1927, the Federal Power Commission in 1930, and the Federal Communications Commission in 1934. *See* Datla & Revesz, *Deconstructing Independent Agencies*, 98 Cornell L. Rev. at 771 n.2.[3]

In 1935, in *Humphrey's Executor v. United States*, this Court upheld Congress's power to restrict the grounds for removal of an FTC Commissioner to "inefficiency, neglect of duty, or malfeasance in office." 295 U.S. 602, 619 (1935). The Court found it "plain" that the President's power of removal was not "illimitable." *Id.* at 629. And, the Court reasoned, Congress has its own authority, "in creating quasi legislative or quasi judicial agencies, to require them to act in discharge of their duties independently of executive control." *Id.*

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[3] *See, e.g.*, 42 U.S.C. § 7412(r)(6)(B) (Chemical Safety and Hazard Investigations Board); 42 U.S.C. § 1975(e) (Commission on Civil Rights); 42 U.S.C. § 7171(b)(1) (Federal Energy Regulatory Commission); 5 U.S.C. § 7104(b) (Federal Labor Relations Authority); 46 U.S.C. § 46101(b)(5) (Federal Maritime Commission); 5 U.S.C. § 1202(d) (Merit Systems Protection Board); 30 U.S.C. § 823(b)(1) (Federal Mine Safety and Health Review Commission); 29 U.S.C. § 153(a) (National Labor Relations Board); 45 U.S.C. § 154 (National Mediation Board); 49 U.S.C. § 1111(c) (National Transportation Safety Board); 42 U.S.C. § 5841(e) (Nuclear Regulatory Commission); 29 U.S.C. § 661(b) (Occupational Safety and Health Review Commission); 39 U.S.C. § 502(a) (Postal Regulatory Commission); 49 U.S.C. § 1301(b)(3) (Surface Transportation Board); 39 U.S.C. § 202(a)(1) (United States Postal Service Board of Governors).

The Court in *Wiener v. United States* readily upheld removal protections for the War Claims Commission in 1958. 357 U.S. 349, 356 (1958). To determine the "nature of the function that Congress vested in the War Claims Commission," the Court looked to the history of its legislation. *Id.* at 353–55. Recognizing that the Commission was established after World War II as an adjudicating body to determine claims for injury or property damage at the hands of the enemy, the Court stressed "the intrinsic judicial character of the task with which the Commission was charged." *Id.* at 355.

In 2020, the Court further refined the functional analysis in *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020). To determine the applicability of *Humphrey's Executor* to the single director of the Consumer Financial Protection Bureau, the Court looked first and foremost to the agency's historical legacy and then to its structural accountability. *See id.* at 220–26. The Court stressed that the Bureau's "almost wholly unprecedented" single-member structure was "an innovation with no foothold in history or tradition." *Id.* at 220, 222. And the Court worried that the agency's "unique structure" lacked accountability "[w]ith no colleagues to persuade, and no boss or electorate looking over her shoulder." *Id.* at 225. As a result, the Court "declined to extend Congress's authority to limit the President's removal power" to "principal officers who, acting alone, wield significant executive power." *Id.* at 238.

III. Factual and procedural background

1. Ms. Wilcox's termination

The Senate confirmed Ms. Wilcox as a member of the Board in September 2023 for her second five-year term. Pet. App. 228a. In open disregard of the NLRA's for-cause removal provision, a letter sent by email to Ms. Wilcox on behalf of President Trump on January 27, 2025, informed her that she was "hereby removed from the office of Member[] of the National Labor Relations Board"—more than three years before her term was set to expire—without identifying any neglect of duty or malfeasance by Ms. Wilcox and without providing her with notice or a hearing. Pet. App. 171a, 228a–229a.

2. District court decision

The district court found that Ms. Wilcox's removal violated the National Labor Relations Act, 29 U.S.C. § 153(a). Pet. App. 225a. Rather than claim that it had complied with the statute, the government argued that the statute placed an unconstitutional limit on the President's removal powers. *Id.* Rejecting this argument, the district court concluded that "*Humphrey's Executor* and its progeny control the outcome of this case and require that plaintiff be permitted to continue her role as Board member of the NLRB." Pet. App. 261a. Accordingly, the district court granted Ms. Wilcox's motion for summary judgment and awarded her both declaratory judgment and injunctive relief. Pet. App. 217a–219a.

3. Emergency stay litigation

The government immediately appealed the district court's decision and sought an emergency stay pending appeal. Pet. App. 116a. A deeply divided special panel of the D.C. Circuit agreed with the government and issued a stay over a dissent, setting out its reasoning in three fractured opinions. Pet. App. 110a–216a. The en banc D.C. Circuit then vacated the panel's stay order, noting that this Court "has repeatedly stated that it was not overturning the precedent established in *Humphrey's*

Executor and *Wiener* for multimember adjudicatory bodies." Pet. App. 92a.

The government then asked this Court to reinstate the stay and to also grant certiorari before judgment. Gov't App. for a Stay, *Trump v. Wilcox*, No. 24A966 (Apr. 9, 2025). The Court did not grant certiorari before judgment, but stayed the case "pending the disposition of the appeal" in the D.C. Circuit "and disposition of a petition for a writ of certiorari, if such a writ is timely sought." *Wilcox*, 145 S. Ct. at 1415. The Court recognized that the President's removal power is "subject to narrow exceptions recognized by our precedents" and declined to "ultimately decide in this posture whether the NLRB … falls within such a recognized exception." *Id.* The Court left the merits for "resolution after full briefing and argument." *Id.*

4. *Trump v. Slaughter*

Ms. Wilcox was not alone in her unlawful termination. While this case progressed, parallel litigation concerning other agencies continued at a pace.[4]

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[4] *Harris v. Bessent*, which concerns the removal restrictions for the Merit Systems Protection Board (MSPB), was decided in conjunction with this case in the district court and D.C. Circuit. Alongside *Wilcox*, this Court granted a stay pending a decision on the merits. *Trump v. Wilcox*, 145 S. Ct. 1415 (2025). And, like in *Wilcox*, this Court denied Harris's later petition for certiorari before judgment. *Harris v. Bessent*, 146 S. Ct. 76 (2025) (mem.). A petition for certiorari (No. 25-1110) after the D.C. Circuit's decision is currently pending.

Trump v. Boyle, which concerns the removal restrictions governing the Consumer Product Safety Commission, also reached this Court. This Court stayed the district court's decision pending disposition of the merits. *Trump v. Boyle*, 145 S. Ct. 2653 (2025). Writing separately, Justice Kavanaugh noted that he "would have

Most relevant is *Trump v. Slaughter*, which concerns removal restrictions governing the Federal Trade Commission (the same agency at issue in *Humphrey's Executor* nearly a century ago). The district court found the President's removal of a Commissioner without cause to be unlawful. *Slaughter v. Trump*, 791 F. Supp. 3d 1 (D.D.C. 2025). When the D.C. Circuit denied the government's application for a stay pending appeal, the government turned to this Court. Gov't App. for a Stay, *Trump v. Slaughter*, No. 25A264 (Sept. 4, 2025).

Given this development, Ms. Wilcox filed her own petition for certiorari before judgment. Pet. for Writ of Cert. Before Judgment, *Wilcox v. Trump*, No. 25-319 (Sept. 15, 2025). Ms. Wilcox continued to argue that certiorari before judgment remained unnecessary in any case. *Id.* at 15–18. But, if the Court were nevertheless inclined to grant certiorari on the constitutionality of statutory removal limitations, then it should grant in this case as well to avoid "overlooking key agency-specific features and painting with too broad a brush." *Id*. at 18.

The Court granted certiorari in *Slaughter* and denied it here. The Court directed the parties to address two questions:

(1) Whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), should be overruled.

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granted certiorari before judgment in this case or in *Wilcox*." *Id.* at 2654.

(2) Whether a federal court may prevent a person's removal from public office, either through relief at equity or at law.

Order, *Trump v. Slaughter*, No. 25-332 (Sept. 22, 2025). That case has been fully briefed and argued. A decision is expected any day.

5. D.C. Circuit decision

Meanwhile, in this case, a sharply divided D.C. Circuit ruled for the government on the merits. In the opinion for the court, Judge Katsas reversed the district court's decision, concluding that the NLRB "wield[s] substantial powers that are both executive in nature and different from the powers that *Humphrey's Executor* deemed to be merely quasi-legislative or quasi-judicial." Pet. App. 9a. Judge Pan dissented, concluding in part that the NLRB is "predominantly adjudicatory, like the independent War Claims Commission that was approved in *Wiener*." Pet. App. 54a.

This Court's review in *Slaughter* loomed large over the D.C. Circuit's decision. The majority opinion recognized that the court "must apply *Humphrey's Executor* as best [it] c[ould], unless and until the Supreme Court overrules it." Pet. App. 20. But precisely what that meant was unclear. "Perhaps its most plausible application is to purely adjudicatory bodies like the War Claims Commission at issue in *Wiener*," but, the majority cautioned, "under today's separation-of-powers jurisprudence, even those bodies exercise the President's executive power." Pet. App. 19. Perhaps instead, "agencies with any 'substantial' power—quasi-judicial, quasi-legislative, or otherwise—fall outside *Humphrey's Executor* because that power is and must be executive." *Id.* Or still, "[m]aybe *Humphrey's Executor* … governs only agencies with purely advisory functions—like, say, the United States Commission on Civil Rights." Pet. App. 19a–20a.

In dissent, Judge Pan recognized that "[t]he pendency of *Slaughter* place[d] [the court] in an unusual position." Pet. App. 41a. "Although the constitutional arguments before us mirror those raised in *Slaughter*," the dissent explained, "the Supreme Court has rebuffed requests to hear the instant cases in conjunction with *Slaughter* and has instead left these cases for us to decide." *Id.* In this "odd procedural posture," the court was "duty-bound to apply *Humphrey's* until the Supreme Court overrules it" and *Humphrey*'s, the dissent reasoned, "requires … uphold[ing] the independence of the … NLRB." Pet. App. 42a.

Ms. Wilcox sought en banc review in the D.C. Circuit, which was denied. Pet. App. 266a–267a.

REASONS FOR GRANTING THE PETITION

I. This Court should grant certiorari either to remand for proceedings consistent with *Slaughter* or for plenary review.

In *Slaughter*, this Court is poised to resolve the continuing vitality of *Humphrey's Executor* as applied to the FTC. The Court's decision in that case, however, is unlikely to directly resolve the constitutionality of the NLRB's separate removal limit. That limit is not at issue in *Slaughter*. And as this Court recently reaffirmed in this case, the constitutionality of an agency's removal protections turns on its "unique[] structure[]" and "distinct historical tradition." *Wilcox*, 145 S. Ct. at 1415.

Whatever framework the Court ends up adopting in *Slaughter*, the NLRB's unique structure and history will likely affect the constitutional analysis here. The agency was originally designed to be an "independent quasi-judicial body." Franklin D. Roosevelt, President of the United States, *Statement on Signing the National Labor Relations Act* (July 5, 1935). And, unlike other agencies, Congress took additional steps to refine the NLRB's structure to resolve any remaining separation-of-powers concerns. Although the NLRA as originally enacted gave the Board "plenary authority over all aspects of unfair labor practice disputes," Congress changed that with the Taft-Hartley Act, creating a unique internal "separation of powers within the agency." *See United Food & Com. Workers*, 484 U.S. at 117–18 & n.5. As a consequence, the NLRB's adjudicatory and prosecutorial functions are now divided between the Board, whose five members act like a panel of appellate judges and can only be removed for cause, and a General Counsel, who is "independent of the Board's supervision and review" and removable by the President at will. *Id.* at 118; *see* 29 U.S.C. § 153(a), (d).

Like the War Claims Commission at issue in *Wiener*, claims before the Board are "adjudicated according to law … on the merits of each claim, supported by evidence and governing legal considerations." 357 U.S. at 355. In doing so, the Board acts "rather like a common-law court," *Allentown Mack Sales & Serv., Inc.*, 522 U.S. at 393 (Breyer, J., concurring), making "findings of fact" and issuing an "opinion" on whether an unfair labor practice has occurred, 29 U.S.C. § 160(c).

By contrast, the NLRB's power to investigate, to initiate complaints, and to prosecute violations is housed not with the Board, but with the General Counsel. *See* 29 U.S.C. § 153(d). Board members cannot investigate or prosecute violations on their own. *See Sears, Roebuck &*

Co., 421 U.S. at 138. Rather, the Board can act only after a charge is filed and the General Counsel (who is removable by the President) decides to issue a complaint—a decision that the Board lacks any authority to review. *See United Food & Com. Workers*, 484 U.S. at 119. "Because of the reactive nature of the Board's functions," it has "no roving investigatory powers." *Chamber of Com.*, 721 F.3d at 156. And the NLRB "may be the only agency that needs a court's imprimatur to render its orders enforceable"; the Board must seek enforcement in a federal court of appeals. *Dish Network*, 953 F.3d at 375 n.2 (Oldham, J.); *see* 29 U.S.C. §§ 154, 160(e).

Contrary to the D.C. Circuit's conclusion below, none of the Board's powers cast doubt on its essentially adjudicatory nature. Even if this Court were to conclude otherwise, the proper course would be to sever that power—not to strip the Board of the independence necessary to its impartial review of the disputes coming before it. *See United States v. Arthrex, Inc.*, 594 U.S. 1, 25 (2021).

But it is awkward and futile to undertake further analysis of the agency's structure and functions without the benefit of this Court's imminent guidance in *Slaughter*. Even the government, in its response to the parallel petition for certiorari in *Harris*, recognized the value of waiting for this Court's decision. *See* Gov't Br. at 13, *Harris v. Bessent*, No. 25-1110 (U.S. Apr. 22, 2026). After this Court issues its decision in *Slaughter* regarding the FTC, Ms. Wilcox intends to file a supplemental brief concerning the impact on the NLRB and its implications for this petition. *See* Rule 15.8.

While almost certainly instructive, *Slaughter* is unlikely to be dispositive given key differences between the two agencies at issue. To answer the pressing constitutional question on the specifics of the NLRB's structure, this Court should grant certiorari—either to vacate and remand for further proceedings consistent with *Slaughter* or for plenary review

II. Whatever the decision in *Slaughter*, it is critical to conclusively resolve its application to the NLRB.

The issues presented here need resolution. For almost a century, the NLRB's administrative process has governed the adjudication of unfair labor practices and the regulation of labor relations in the private sector. Today, the Board adjudicates hundreds of cases each year involving the rights of employers, employees, and unions—rights that touch on the ability to organize, to bargain collectively, and to lawfully operate a business. *See* NLRB, *Board Decisions Issued*, perma.cc/A8TY-Y3XG.

An unsettled question about the constitutionality of the NLRB's removal protections casts these decisions into doubt, undermining the certainty on which the NLRB's stakeholders depend. *See generally Collins v. Yellen*, 594 U.S. 220, 259 (2021); *see, e.g., Space Expl. Techs. Corp. v. NLRB*, 151 F.4th 761, 768–69 (5th Cir. 2025) (challenging the NLRB's authority based on constitutional challenge to removal protections); *NLRB v. Noel Canning*, 573 U.S. 513, 521–22 (2014). Without that certainty, employees may be chilled from exercising their rights, unions cannot organize with confidence, and employers face potential liability for policies adopted in good faith and must expend resources complying with orders that may later be unwound.

The agency's stakeholders, and the public at large, have a strong interest in a Board operating free of doubts about its authority to carry out its critical, congressionally mandated work. Only this Court can provide that certainty. And it should do so here—either by remanding for application of *Slaughter*'s framework or by addressing the NLRB's unique structure directly on plenary review.

CONCLUSION

This Court should either grant this petition, vacate the judgment below, and remand this case for further consideration in light of *Trump v. Slaughter*, No. 25-332, or grant this case for plenary review next Term.

Respectfully submitted,

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