No. 25-332

In the Supreme Court of the United States

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

v.

REBECCA KELLY SLAUGHTER, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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The Decision of 1789 resolved what this Court's cases have since reaffirmed: Article II empowers the President "to remove those who assist him in carrying out his duties." *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 204 (2020). Just two Terms ago, the Court cited "the President's 'exclusive power of removal in executive agencies' as an example of 'conclusive and preclusive' constitutional authority." *Trump* v. *United States*, 603 U.S. 593, 609 (2024). That authority extends to heads of multimember agencies such as the Federal Trade Commission (FTC), who wield immense executive power and must be subject to the President's oversight, lest the Executive Branch "slip from the Executive's control, and thus from that of the people." *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477, 499 (2010).

Humphrey's Executor v. *United States*, 295 U.S. 602 (1935), upheld the FTC's removal restrictions based on the erroneous premise that the 1935 FTC exercised no executive power at all—something no one says of today's FTC. The conclusion that the 1935 FTC did not exercise executive power "has not withstood the test of time." *Seila Law*, 591 U.S. at 216 n.2. The Court should repudiate anything that remains of *Humphrey's Executor* and ensure that the President, not multimember agency heads, controls the executive power that Article II vests in him alone. To remove any doubt, the Court should further hold that, consistent with universal practice until this year, courts cannot reinstate removed agency heads.

Respondent argues that Congress may convert any executive agency into an independent commission so long as the agency does not exercise preclusive Article II powers (which respondent limits to the commander-in-chief, treaty, and criminal-prosecution powers). That novel theory conflicts with this Court's cases, which have rejected efforts to limit the removal power to areas like "foreign relations and war." *Seila Law*, 591 U.S. at 229 n.11. And respondent's theory is as sweeping as it is illogical. It would allow Congress to convert the Labor Department into the Labor Commission, even as it would doom removal restrictions for the FTC itself, which exercises foreign-affairs powers plus "quintessentially executive" civil-enforcement powers that are no less preclusive than criminal-prosecution powers. *Id.* at 199.

Respondent's remaining points are reruns of past dissents. She questions whether the Constitution grants the President any removal power at all. See *Seila Law*, 591 U.S. at 264-269 (opinion of Kagan, J.); but see *id.* at

213-215 (majority opinion). She challenges the clarity of the Decision of 1789. See *Free Enterprise Fund*, 561 U.S. at 517-518 (Breyer, J., dissenting); but see *id.* at 492 (majority opinion). She cites independent agencies beginning with the Interstate Commerce Commission. See *Myers* v. *United States*, 272 U.S. 52, 181 (1926) (McReynolds, J., dissenting); but see *id.* at 171 (majority opinion). She insists that *Humphrey's Executor* allows removal protections even for agency heads exercising significant executive power. See *Seila Law*, 591 U.S. at 263 (opinion of Kagan, J.); but see *id.* at 218 (majority opinion). And she extols the policy virtues of agency independence. See *Collins* v. *Yellen*, 594 U.S. 220, 292 (2021) (Sotomayor, J., concurring in part and dissenting in part); but see *id.* at 251-252 (majority opinion). None of these oft-rejected points justifies shackling the President's removal power, which "follows from the text of Article II," "was settled by the First Congress," and has been "confirmed" by precedent. *Seila Law*, 591 U.S. at 204.

I. THE FTC'S STATUTORY REMOVAL PROTECTIONS ARE UNCONSTITUTIONAL

The President's removal power extends to heads of multimember agencies like the FTC. *Humphrey's Executor* erred in upholding the 1935 FTC's tenure protections; anything that remains of that decision should be overruled.

A. The Removal Power Is Not Restricted To Officers Exercising Preclusive Authority

Respondent advances a counter-theory of the removal power that no court has endorsed. In her telling (Br. 12), Congress may convert agencies that do not exercise "conclusive and preclusive" authority into inde-

pendent commissions. Only agencies that exercise the "commander-in-chief, criminal-prosecution, or treaty-making powers" (Br. 25) must have heads removable at will. That theory is untenable.

First, the theory ignores that the President must control *all* exercises of executive power, not just preclusive powers like treaty-making. By vesting the President with the "entire 'executive Power,'" *Seila Law*, 591 U.S. at 213, and requiring him to "take Care that the Laws be faithfully executed" by his subordinates, U.S. Const. Art. II, § 3, Article II confers on the President the "general administrative control of those executing the laws," *Myers*, 272 U.S. at 164. Because "the activities of administrative agencies" are exercises of "the 'executive Power,'" those agencies' heads must remain accountable to the President through at-will removal. *Seila Law*, 591 U.S. at 216 n.2. This Court accordingly has held that the "power of removal" is *itself* "conclusive and preclusive." *Trump*, 603 U.S. at 609. Thus, Congress may not restrict removal even if it possesses "concurrent authority," Resp. Br. 26, over the officer's activities.

No one has understood the removal power as limited to officers who exercise *other* preclusive presidential powers. Quite the contrary, the First Congress deemed the removal power "beyond the reach of the Legislative body" even outside areas such as foreign relations and war. *Seila Law*, 591 U.S. at 227 (quoting 1 Annals of Cong. 464 (1789) (James Madison)). For instance, it recognized that the President could remove the Secretary of Treasury at will. See *Myers*, 272 U.S. at 145.

Likewise, even though Congress may "establish Post Offices," U.S. Const. Art. I, § 8, Cl. 7, the President's power to remove postmasters (who exercise executive

power by executing post-office laws) is "unrestricted," *Myers*, 272 U.S. at 134, and "illimitable," *Humphrey's Executor*, 295 U.S. at 627. So too, the Court has invalidated tenure protections for the Public Company Accounting Oversight Board (*Free Enterprise Fund*), Consumer Financial Protection Bureau (CFPB) (*Seila Law*), and Federal Housing Finance Agency (*Collins*), even though Congress may regulate those agencies' functions. And *Seila Law* specifically rejected the argument that Congress may regulate the President's removal power outside areas like "'foreign relations and war,'" stating that the "carveout makes no logical or constitutional sense." 591 U.S. at 229 n.11.

Second, respondent's theory extends *Humphrey's Executor* far beyond "what up to now have been the outermost constitutional limits of permissible congressional restrictions on the President's removal power." *Seila Law*, 591 U.S. at 218. Respondent concedes (Br. 25) that some agencies—such as the State, War, and Justice Departments—help the President exercise his treaty, commander-in-chief, and criminal-prosecution powers. But most executive agencies (in respondent's telling) do not exercise those powers, and respondent's theory would invite Congress to convert them all into independent commissions. This Court has already refused to elevate *Humphrey's Executor* into "a free-standing invitation" for further congressional "intrusions on Article II," and it should not backtrack now. *Seila Law*, 591 U.S. at 228.

Third, respondent's account of preclusive powers is incomplete. To expand the range of agencies eligible for transformation into independent commissions, respondent (Br. 25) counts as preclusive only the "commander-in-chief, criminal-prosecution, and treaty-making pow-

ers," but ignores (for instance) that the power to bring civil enforcement suits is the "special province of the Executive." *Heckler* v. *Chaney*, 470 U.S. 821, 832 (1985); see *United States* v. *Texas*, 599 U.S. 670, 678-679 (2023); *Seila Law*, 591 U.S. at 199. Thus, even under a preclusive-powers theory, most independent-agency heads should be removable at will. Most such agencies, including the FTC, may bring civil enforcement suits, see Gov't Br. 25-26; at least one, the Consumer Product Safety Commission, may bring criminal cases too, see 15 U.S.C. 2076(b)(7).

Indeed, the FTC's removal protections are doubly invalid even under respondent's theory, since the FTC conducts foreign relations by assisting foreign law-enforcement agencies and negotiating agreements to obtain similar assistance from other countries. See Gov't Br. 28. Respondent notes (Br. 27 n.3) that the Secretary of State supervises the FTC's negotiation of agreements to obtain assistance from other countries. But (1) he does not supervise the FTC's provision of assistance to other countries; (2) respondent's theory turns (Br. 11) on whether the agency helps the President exercise "preclusive constitutional authorities," not whether the President has alternative means of supervision; and (3) the power to supervise an agency's "activities" does not "substitute for" "the power to remove" its members. *Free Enterprise Fund*, 561 U.S. at 504. Respondent proposes (Br. 27 n.3) severing the FTC's foreign-relations functions, but the normal remedy for a removal defect is to sever the "removal restrictions," not to "blue-pencil" the agency's "powers." 561 U.S. at 509. That is especially so here, since the problem would extend beyond the FTC's foreign-affairs powers to its civil-enforcement powers.

B. Respondent's Other Arguments Lack Merit

Respondent's remaining arguments do not show that the President's removal power stops short of the heads of multimember agencies like the FTC. Some arguments suggest that the President lacks any Article II removal power; others suggest an ad hoc carveout for multimember agencies. None is sound.

No removal power. Invoking a recent essay by Professor Caleb Nelson, respondent rehashes (Br. 24-25) objections to the removal power that the Court has repeatedly rejected:

- Respondent contends (Br. 24) that the Executive Vesting Clause does not address removal. But the Court has determined that "the executive power include[s] a power to oversee executive officers through removal." *Seila Law*, 591 U.S. at 214; see *Free Enterprise Fund*, 561 U.S. at 492; *Myers*, 272 U.S. at 115-118.
- Respondent dismisses (Br. 24-25) the Take Care Clause. But the Court has explained that withholding the removal power "would make it impossible for the President to take care that the laws be faithfully executed." *Seila Law*, 591 U.S. at 214 (ellipsis omitted); see *Free Enterprise Fund*, 561 U.S. at 484; *Myers*, 272 U.S. at 117.
- Respondent argues (Br. 29) that "scholars have contested the precise contours of the First Congress's debates." But the Court has consistently treated the "First Congress's recognition of the President's removal power" as "'contemporaneous and weighty evidence of the Constitution's meaning.'" *Seila Law*, 591 U.S. at 214; see *Free Enterprise Fund*, 561 U.S. at 492; *Myers*, 272

U.S. at 114-115; see also Wurman Amicus Br. 12-19; Meese Amicus Br. 12-26.

Echoing Justice Kagan's dissent in *Seila Law*, see 591 U.S. at 266 n.3, respondent adds (Br. 28) that, if Article II grants the President the greater power of removal, the Opinions Clause need not have spelled out the lesser power to demand written opinions. Again, that just attacks the removal power's existence. See Wurman Amicus Br. 28-30. Regardless, the Opinions Clause works to distinguish America's Executive from Great Britain's, not to cabin the rest of Article II. See Akhil Amar, *Some Opinions on the Opinion Clause*, 82 Va. L. Rev. 647 (1996). Whereas the King could obtain advisory opinions from judges, *id.* at 656, the President may require opinions only from "executive" officers, U.S. Const. Art. II, § 2, Cl. 1. And whereas the Privy Council collectively advised the King, Amar 661-662, "the principal Officer in each" department advises the President about that officer's "respective" duties, Art. II, § 2, Cl. 1.

Founding-era practice. Respondent cites (Br. 14-16 & n.2) three early agencies that purportedly included non-removable members. That argument proves too much by suggesting that Congress could insulate agency heads from removal even for cause, and also fails on its own terms.

This Court has already rejected respondent's "lead example," Br. 14—the Sinking Fund Commission, which comprised three Cabinet Secretaries, the Vice President, and the Chief Justice. See *Collins*, 594 U.S. at 253 n.19. That agency was within "the President's control" because three of its five members "were part of the President's Cabinet" and indisputably "removable at will." *Ibid.* Further, though the President could not

remove the Vice President and Chief Justice from their underlying offices, no statute limited his power to remove them from the Commission. See Aditya Bamzai & Saikrishna Prakash, *The Executive Power of Removal*, 136 Harv. L. Rev. 1756, 1842-1843 (2023); cf. *Mistretta* v. *United States*, 488 U.S. 361, 410 (1989) (distinguishing between removing judges "as judges" and removing them from other posts).

Respondent's second agency, the Mint Board—comprising three Cabinet Secretaries, the Comptroller of the Treasury, and the Chief Justice, see Act of Apr. 2, 1792, ch. 16, § 18, 1 Stat. 250—is similarly inapt. Four members (the Secretaries and Comptroller) were removable at will from their underlying positions, and the Chief Justice could be removed at will from the Board.

As for the Revolutionary War Debt Commission: Congress did not expressly limit the removal of its members, see Act of Aug. 5, 1790, ch. 38, § 1, 1 Stat. 178, so they were removable at will, see *Kennedy* v. *Braidwood Management, Inc.*, 606 U.S. 748, 770-771 (2025). Respondent notes (Br. 15) that members served a "fixed term," but terms set ceilings, not floors, on tenure; they do not restrict removal before the terms end. See *Parsons* v. *United States*, 167 U.S. 324, 343 (1897); *Severino* v. *Biden*, 71 F.4th 1038, 1044-1047 (D.C. Cir. 2023). Respondent adds (Br. 16) that members' commissions stated that they would hold office until specified dates, not "during the [President's] pleasure." That phrasing just reflects the fixed terms; members could not serve longer even if the President desired.

Modern practice. Jumping ahead a century, respondent (like previous dissents) invokes (Br. 16) the modern practice of creating independent agencies, beginning with the Interstate Commerce Commission in 1887. See

Seila Law, 591 U.S. at 275 (opinion of Kagan, J.); *Myers*, 272 U.S. at 181-182 (McReynolds, J., dissenting). But as *Myers* explained, the President's "unrestricted" removal power extends to "administrative boards" like the "Interstate Commerce Commission." 272 U.S. at 171-172 (majority opinion). And because of that practice's dubious foundations, the Court has declined to extend it to new contexts, such as sole agency heads, see *Seila Law*, 591 U.S. at 220, and multiple layers of protection, see *Free Enterprise Fund*, 561 U.S. at 501.

Regardless, a practice that started in 1887—soon after the Tenure of Office Act of 1867, ch. 154, 14 Stat. 430, and near the height of interbranch disputes over Congress's ability to regulate removal—cannot restrict a power that "follows from the text of Article II" and was "settled by the First Congress." *Seila Law*, 591 U.S. at 204. A congressional practice that has been contested by the other branches carries little weight. See *id.* at 221; *Myers*, 272 U.S. at 169. The Executive Branch has repeatedly objected to removal restrictions since 1887. Contra Resp. Br. 17. For example:

- President McKinley removed a member of the Board of General Appraisers without cause, despite a statute making members removable "for inefficiency, neglect of duty, or malfeasance in office." *Shurtleff* v. *United States*, 189 U.S. 311, 314 (1903). The Court avoided the constitutional issue by holding that the statutory removal grounds were not exclusive. See *id.* at 318.
- President Wilson stated in a veto message that "Congress is without constitutional power to limit" the President's "power of removal." 59 Cong. Rec. 8609 (1920).

- In *Myers*, the Coolidge Administration argued that the President's removal power extends to "every officer in the Executive Department." Tr. of Oral Arg. at 60, *Myers*, *supra* (No. 2).
- President Franklin D. Roosevelt concluded that the FTC's removal restrictions violate Article II. See *Humphrey's Executor*, 295 U.S. at 619.
- President Reagan issued a signing statement questioning statutory "restrictions" "upon the power of the President to remove" members of the Commission on Civil Rights. Public Papers of the Presidents, Ronald Reagan, Vol. II, Nov. 30, 1983, at 1635 (1985).

Even if some Presidents felt differently, "the separation of powers does not depend on the views of individual Presidents," and one President cannot "bind his successors by diminishing their powers." *Free Enterprise Fund*, 561 U.S. at 497.

Moreover, "past practice does not, by itself, create power." *Medellín* v. *Texas*, 552 U.S. 491, 532 (2008) (brackets omitted). *Myers* invalidated the practice of requiring Senate consent for removals, which began in 1867 and extended to "the great majority" of inferior officers appointed by the President. 272 U.S. at 243-244 (Brandeis, J., dissenting). And *INS* v. *Chadha*, 462 U.S. 919, 944 (1983), invalidated the legislative veto, even though, "[s]ince 1932, when the first veto provision was enacted into law, 295 congressional veto-type procedures ha[d] been inserted in 196 different statutes." *Id.* at 944.

Finally, the government has not "concede[d]" the constitutionality of the Federal Reserve Board's removal protections. Contra Resp. Br. 28. The government's position (Br. 29) is only that, "[i]f an exception to

the removal power exists for the Federal Reserve Board—a question the Court need not decide—it would be an agency-specific 'anomaly.'" Any such exception would be limited to the Federal Reserve, given its quasi-private structure and the history of the Banks of the United States (which date to the Founding) in setting monetary policy. See Chamber of Commerce Amicus Br. 17-23.

Policy arguments. Respondent touts (Br. 20-23) independent agencies' supposed policy benefits. But the belief that a law is "efficient, convenient, and useful" "will not save it if it is contrary to the Constitution." *Free Enterprise Fund*, 561 U.S. at 499. Besides, agency independence does not "protect individual liberty." Contra Resp. Br. 21. Bureaucratic features like "multimember deliberation," Resp Br. 31, are no substitute for the "political accountability" that was "central to the Framers' design," *Braidwood*, 606 U.S. at 794.

Nor do removal protections insulate agencies from "partisan direction." Contra Resp. Br. 22 (brackets omitted). Independent agencies are insulated "from the President," "not from politics." *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 523 (2009) (plurality opinion). "[A]bsent presidential control, congressional oversight and appropriations powers become the only concern for the officers of the allegedly 'independent' agencies." Steven G. Calabresi & Saikrishna B. Prakash, *The President's Power To Execute the Laws*, 104 Yale L.J. 541, 583 (1994). One of the chief sponsors of the bill establishing the FTC thus anticipated that the agency would be "at all times under the power of Congress." 51 Cong. Rec. 13,047 (1914) (statement of Sen. Cummins). Upholding the FTC's tenure protections would simply provide "a blueprint for extensive expansion of the leg-

islative power," *Free Enterprise Fund*, 561 U.S. at 500, and impermissibly "reserve in Congress control over the execution of the laws," *Bowsher* v. *Synar*, 478 U.S. 714, 726 (1986).

Finally, the government's position would not "wreak havoc" by inviting litigants to argue that "Congress granted authority to multimember agencies" based on the belief that they "would enjoy some independence." Contra Resp. Br. 38. This Court resolves constitutional flaws by applying a "presumption of severability," not by "imaginatively reconstruct[ing] a prior Congress's hypothetical intent." *Barr* v. *AAPC, Inc.*, 591 U.S. 610, 625 (2020) (plurality opinion). The solution to a removal defect is to sever the invalid removal restriction, not to speculate about which powers Congress would have wanted the agency to exercise. See Gov't Br. 36.

C. *Humphrey's Executor* Does Not Justify Removal Restrictions For The Modern FTC

1. *Humphrey's Executor* rested on the premise that "the old [FTC], before it acquired many of its current functions," "merely assisted Congress and the courts in the performance of their functions," *Mistretta*, 488 U.S. at 423 (Scalia, J., dissenting), and thus "did not exercise executive power," *Seila Law*, 591 U.S. at 216 n.2. Respondent does not dispute that today's FTC exercises executive power. That alone establishes that the modern FTC is subject to at-will removal.

Seila Law, moreover, confined *Humphrey's Executor* to "the characteristics of the agency before the Court" and "the set of powers the Court considered as the basis for its decision." 591 U.S. at 215, 219 n.4. The modern FTC exercises more power than *Humphrey's Executor* attributed to the 1935 FTC. See Gov't Br. 25-28; Eli Nachmany, *The Original FTC*, 77 Ala. L. Rev. 1

(2025). Respondent concedes that the FTC has "gained the ability to 'commence a civil action to obtain a civil penalty,'" Br. 7, a "quintessentially executive power not considered in *Humphrey's Executor*," *Seila Law*, 591 U.S. at 219. That, too, makes the modern FTC subject to the general rule of at-will removal.*

Respondent maintains (Br. 32-33) that *Humphrey's Executor* treated the 1935 FTC as exercising executive power and nonetheless approved removal restrictions. Respondent ignores all the passages refuting her view. *Humphrey's Executor* reasoned that the 1935 FTC occupied "no place in the executive department," was not "an arm or an eye of the executive," was "independent of executive authority," was "wholly disconnected from the executive department," was "an agency of the legislative and judicial departments," and acted as a "legislative" or "judicial" "aid." 295 U.S. at 625, 628, 630. Respondent cites the Court's statements that the FTC exercised "no part of the executive power *vested by the Constitution in the President*," Br. 32 (quoting *Humphrey's Executor*, 295 U.S. at 628). But no part of the executive power is vested elsewhere; the "entire 'executive Power' belongs to the President alone." *Seila Law*, 591 U.S. at 213. Respondent also highlights the Court's statement that the FTC did not exercise executive power "*in the constitutional sense*," Br. 32 (quoting

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* Respondent is wrong (Br. 7-8) that later developments like the President's ability to select the FTC's Chairman compensate for his inability to remove FTC Commissioners at will. The Commission still exercises the agency's enforcement, rulemaking, adjudicatory, investigative, and foreign-relations powers. Gov't Br. 25-28. Even when exercising his own authority, the Chairman remains "subject to the general policies of the Commission." 16 C.F.R. 0.8.

Humphrey's Executor, 295 U.S. at 628), but she does not explain what other sense there is.

Respondent similarly errs in defending (Br. 33-34) *Humphrey's Executor* for distinguishing between "quasi-legislative or quasi-judicial" officers and "purely executive" ones. 295 U.S. at 629, 632. Noting the "difficulty of defining such categories," the Court has since explained that the constitutional analysis "cannot be made to turn" on whether an officer is "classified as 'purely executive.'" *Morrison* v. *Olson*, 487 U.S. 654, 689 & n.28 (1988). Respondent notes that rulemaking and adjudication "take 'legislative' and 'judicial' forms." Br. 33. But, as this Court has repeatedly held, rulemaking and adjudication are still "exercises of * * * the 'executive Power'" that must be subject to the President's oversight. *Seila Law*, 591 U.S. at 216 n.2. Respondent cites (Br. 33) decisions before *Humphrey's Executor* that used terms such as "quasi-legislative" and "quasi-judicial," but they did not suggest that those labels had constitutional significance, much less that they could justify exempting an agency from presidential control.

2. Respondent cites (Br. 18) *Wiener* v. *United States*, 357 U.S. 349 (1958), which applied the "philosophy of *Humphrey's Executor*" to hold that the President needed cause to remove a member of the War Claims Commission, despite the absence of an express statutory removal restriction. *Id.* at 356. *Wiener*, like *Humphrey's Executor*, rested on the erroneous premise that the agency at issue was not "part of the Executive establishment." *Id.* at 353. Its logic does not extend to agencies, like the modern FTC, that concededly exercise executive power. This Court, moreover, has already effectively abrogated *Wiener* by holding that

Congress must use "explicit language" to restrict at-will removal. *Braidwood*, 606 U.S. at 771.

Respondent also invokes (Br. 19) *Free Enterprise Fund*, but its reasoning "cannot be reconciled" with *Humphrey's Executor*. *Seila Law*, 591 U.S. at 250 (Thomas, J., concurring in part and dissenting in part). *Free Enterprise Fund* explained that Article II, the Decision of 1789, and *Myers* had established the President's "power to oversee executive officers through removal." 561 U.S. at 492. True, *Free Enterprise Fund* did not overrule *Humphrey's Executor* or "take issue with" a single layer of for-cause protection, *id.* at 501—but no party asked the Court to do so, and so the Court merely "decide[d] the case" on the parties' (erroneous) "understanding" that the Securities and Exchange Commission had tenure protection, *id.* at 487.

Finally, respondent is incorrect that "*Seila Law* recognized that Congress can 'give for-cause removal protections to a multimember body of experts.'" Br. 19 (quoting 591 U.S. at 216). The relevant sentence reads: "In short, *Humphrey's Executor* permitted Congress to give for-cause removal protections to a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions *and was said not to exercise any executive power*." *Seila Law*, 591 U.S. at 216 (emphasis added). *Seila Law* in no way endorsed removal protections for commissions that do exercise executive power. Respondent cites (Br. 19-20) the remedial portion of *Seila Law*, in which three Justices stated that their "severability analysis does not foreclose Congress from pursuing alternative responses to the problem—for example, converting the CFPB into a multimember agency." 591 U.S. at 237 (opinion of Roberts, C.J.). But that statement means

only that the Court's "severability analysis" did not "foreclose" reconstituting the CFPB as a multimember agency. The Court did not resolve whether Article II would allow Congress to grant tenure protection to such a hypothetical agency.

D. Anything That Remains Of *Humphrey's Executor* Should Be Overruled

Humphrey's Executor was always egregiously wrong. Later cases only confirm its errors, which continue to generate confusion in the lower courts. Respondent offers no basis to retain it. See Gov't Br. 30-37; Schmitt Amicus Br. 13-24.

1. Respondent invokes *stare decisis* but conspicuously declines to defend the actual rationale of *Humphrey's Executor*—that the 1935 FTC exercised "no part of the executive power." 295 U.S. at 628; compare Resp. Br. 13-31. *Stare decisis* "is a doctrine of preservation, not transformation." *Citizens United* v. *FEC*, 558 U.S. 310, 384 (2010) (Roberts, C.J., concurring). It does not "license the Court to invent and adopt new principles of constitutional law solely for the purpose of rationalizing its past errors, without a proper analysis of whether those principles have merit on their own." *Ibid.*

Humphrey's Executor also conflicts with later cases. *Morrison* discarded its line between quasi-legislative or quasi-judicial and purely executive officers, see 487 U.S. at 687 & n.25; *Seila Law* explained that its "conclusion that the FTC did not exercise executive power has not withstood the test of time," 591 U.S. at 216 n.2; and *Free Enterprise Fund*, *Seila Law*, *Collins*, and *Trump* rejected its reasoning while cabining its holding. In just the last two years, judges have offered at least seven different understandings of which agencies' tenure protections *Humphrey's Executor* still allows. Gov't Br.

35-36. Respondent now adds (Br. 12) a proposed eighth category: "multimember agencies" that do not exercise "preclusive" authority. *Humphrey's Executor* has no fixed meaning, and its retention would undermine the values of stability and predictability that *stare decisis* is meant to serve.

2. Respondent urges (Br. 34-35) that Congress, not this Court, should address concerns with independent agencies. But that would leave the fox in charge of the henhouse by trusting Congress to correct its own constitutional violations. That approach would be particularly inappropriate here because removal restrictions aggrandize Congress at the President's expense. See pp. 12-13, *supra*; *Morrison*, 487 U.S. at 698-699 (Scalia, J., dissenting).

Respondent argues (Br. 36-38) that Congress has relied on *Humphrey's Executor* in establishing new independent agencies. But *Humphrey's Executor* was limited to agencies that wield "no part of the executive power," 295 U.S. at 628; statutes insulating agencies that wield executive power exceed its scope. Further, Congress's enthusiasm for an unconstitutional practice "sharpen[s] rather than blunt[s]" the Court's review. *Chadha*, 462 U.S. at 944. That Congress may grow accustomed to exceeding constitutional bounds cannot outweigh "the reliance interests of the American people" in maintaining the Constitution's structure. *Ramos* v. *Louisiana*, 590 U.S. 83, 111 (2020).

Respondent speculates (Br. 39) that private parties rely on *Humphrey's Executor* because they "have structured their affairs on the understanding that their regulators function in a particular way." But regulated parties would presumably prefer regulators with electoral accountability. See, *e.g.*, Chamber of Commerce

Amicus Br. 7-16. Regardless, any reliance on *Humphrey's Executor* is hard to fathom when no one seems to agree on what that decision means. See pp. 17-18, *supra*; cf. *Loper Bright*, 603 U.S. at 410. And private parties "have been on notice for years regarding this Court's misgivings about [*Humphrey's Executor*]." *Janus* v. *AFSCME*, 585 U.S. 878, 927 (2018); see, *e.g.*, *Seila Law*, 591 U.S. at 216 n.2.

Respondent observes (Br. 39) that the Court decided *Humphrey's Executor* 90 years ago. But ensuing developments have destroyed the decision's foundations, and age alone is insufficient reason to retain a grievous constitutional misinterpretation. It took 58 years to overturn *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), see *Brown* v. *Board of Education*, 347 U.S. 483 (1954), and 74 years to overrule *Korematsu* v. *United States*, 323 U.S. 214 (1944), see *Trump* v. *Hawaii*, 585 U.S. 667 (2018). Far older and more pressing than *Humphrey's Executor* is the Constitution itself, which requires that those who exercise executive power "remain dependent on the President, who in turn is accountable to the people." *Seila Law*, 591 U.S. at 238. Because *Humphrey's Executor* thwarts that principle and continues to generate confusion and error, anything that remains of it should be overruled.

II. COURTS MAY NOT PREVENT THE REMOVAL OF EXECUTIVE OFFICERS

This Court should additionally hold that courts may not issue relief, equitable or legal, blocking the removal of an executive officer—especially one appointed by the President. Such relief violates Article II, traditional remedial principles, and the CSRA. See Gov't Br. 37-47.

1. Judicial orders blocking the removal of executive officers contravene Article II. The government is not

"double-count[ing]" its "merits points," Resp. Br. 48; distinct Article II concerns arise from orders requiring the President to entrust executive power to "an agency head whom he has already removed." *Dellinger* v. *Bessent*, No. 25-5028, 2025 WL 559669, at *16 (D.C. Cir. Feb. 15, 2025) (Katsas, J., dissenting). Until 2025, "the only remedy ever granted" to a removed executive officer "was a judgment for salary"; "[r]estoration to the office itself apparently ha[d] never been granted to an official removed by the President." William Van Alstyne, *A Critical Guide to Marbury v. Madison*, 1969 Duke L.J. 1, 10. Respondent concedes (Br. 50) that most removed officers did not even ask for judicial reinstatement. That is strong evidence that such relief was understood to be unavailable.

2. Traditional remedial principles, too, preclude courts from blocking removals of executive officers.

Injunctions. Respondent concedes (Br. 45-48) that courts traditionally did not grant final injunctions against such removals but argues that preliminary injunctions were available. But this case involves only final relief. See J.A. 90-91.

Regardless, respondent's preliminary-injunction carveout conflicts with this Court's cases, which categorically hold that "a court of equity has no jurisdiction over the appointment and removal of public officers." *In re Sawyer*, 124 U.S. 200, 212 (1888); see *White* v. *Berry*, 171 U.S. 366, 376-378 (1898). The Court's first case involving that rule, *Sawyer*, involved a "preliminary injunction." 124 U.S. at 206 (statement of the case). Chief Justice Waite's *dissent* opined that a court could issue a "temporary restraining order" while the removed officer awaits "the tardy remed[y] of *quo war-*

ranto," *id.* at 223, but it is the majority opinion, not the dissent, that constitutes binding precedent.

Declaratory relief. Because the same equitable principles that govern injunctions also govern declaratory judgments, courts likewise may not issue declarations blocking removals of executive officers. See Gov't Br. 42-43. Respondent argues (Br. 43-44) that courts traditionally declined to enjoin removals only because the removed officers had adequate remedies at law, and that the Declaratory Judgment Act, 28 U.S.C. 2201, authorizes declaratory relief regardless of whether the litigant has alternative remedies. But *White*—the case that established that a court may not "restrain [a federal] executive officer from making a wrongful removal"—did not rely on the adequacy of legal remedies. 171 U.S. at 377. *White* explained that restoring removed executive officers would "invade the domain" "of the executive," impair "the discretion" of "the Executive Department," and "lead to the utmost confusion in the management of executive affairs," *id.* at 376, 378—concerns equally applicable to declaratory relief.

Mandamus. Though federal executive officers have challenged their removals throughout the Nation's history, respondent cites no case from before this Administration in which such an officer sought (let alone received) a writ of mandamus restoring him to office. Respondent cites (Br. 42) *Marbury* v. *Madison*, 1 Cranch 137 (1803), but that decision involved a judicial officer (a justice of the peace). The distinction between judicial and executive officers is not "gerrymandered," Resp. Br. 43; orders restoring executive officers "invade the domain" of "the executive" in ways that orders restoring judicial officers do not, *White*, 171 U.S. at 376. Respondent also cites (Br. 41-42) inapt English, state, and

District of Columbia cases, which did not implicate or consider the separation-of-powers principles that constrain a federal court's issuance of the writ against the federal Executive. Further, a party seeking mandamus must show a clear right to relief—a bar respondent cannot overcome. See Gov't Br. 44.

Quo warranto. Respondent errs in invoking (Br. 42 n.6) the writ of quo warranto. A quo warranto action involving a federal office may be instituted only "by the Attorney General." *Andrade* v. *Lauer*, 729 F.2d 1475, 1498 (D.C. Cir. 1984); see *Wallace* v. *Anderson*, 5 Wheat. 291, 292 (1820) (Marshall, C.J.). Quo warranto exists to enable the government to oust usurpers, not to enable removed officers to cling to power.

3. Whatever the historical scope of equitable and legal remedies, today the CSRA is the exclusive scheme for redressing unlawful personnel actions against federal employees, including Senate-confirmed principal officer like respondent. The CSRA integrates prior statutes and remedies into a comprehensive scheme—but deliberately withholds relief from Senate-confirmed officers, see 5 U.S.C. 7511(b)(1), thus barring such relief, see Gov't Br. 45-47.

Respondent argues (Br. 52) that the CSRA concerns only "'personnel actions taken against members of the civil service'" and that principal officers "are not civil servants." But "the 'civil service' consists of all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services." 5 U.S.C. 2101(1). The "civil service" thus includes all civil officers, "up to and including those who are subject to Senate confirmation." *Free Enterprise Fund*, 561 U.S. at 538 (Breyer, J., dissenting). Indeed, there would have

been no need to specifically withhold remedies from Senate-confirmed officers if such officers were outside the statute's scope anyway.

Respondent also attempts (Br. 52) to confine *United States* v. *Fausto*, 484 U.S. 439 (1988), which recognized the CSRA's exclusivity, to the specific category at issue ("nonpreference members of the excepted service"). But the exclusion in *Fausto* appears in the same section as the exclusion here. See 5 U.S.C. 7511(a)(1)(C) and (b)(1). And *Fausto*'s logic goes beyond a specific exclusion. *Fausto* explained that the CSRA establishes a "comprehensive" scheme to "govern personnel actions taken against members of the civil service," and that its "exclusion[s]" show "a clear congressional intent to deny" relief. 484 U.S. at 445, 447-448. That rationale applies to Senate-confirmed officers, who are members of the civil service but are expressly excluded from the statute's remedial scheme.

Relatedly, respondent argues (Br. 52) that, because the CSRA provides her with no remedies "at all," she may pursue "preexisting legal and equitable remedies." But the CSRA is "exclusive" even when it "ultimately would provide no relief." *Nyunt* v. *Chairman, Broadcasting Board of Governors*, 589 F.3d 445, 448-449 (D.C. Cir. 2009) (Kavanaugh, J.). The CSRA "cover[s] the field" of federal personnel claims, and "those left out of this scheme are left out on purpose." *Filebark* v. *U.S. Department of Transportation*, 555 F.3d 1009, 1014 (D.C. Cir.), cert. denied, 558 U.S. 1007 (2009). Its "exclusion of certain parties from judicial review is 'not an invitation to those parties to sue under other statutes.'" *AFGE* v. *Secretary of Air Force*, 716 F.3d 633, 638 (D.C. Cir. 2013) (brackets omitted).

At a minimum, this Court should require a clear statement from Congress before concluding that Congress authorized courts to take the extraordinary step of reinstating removed executive officers. See Gov't Br. 44-45. None exists here.

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The judgment of the district court should be reversed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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