No. 25-____

IN THE
Supreme Court of the United States

CATHY A. HARRIS,

Petitioner,

v.

SCOTT BESSENT, SECRETARY OF THE TREASURY, ET AL.,

Respondents.

On Petition for 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. Whether Congress may provide by statute that members of the Merit Systems Protection Board—an adjudicatory body—"may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office." 5 U.S.C. § 1202(d).

2. Whether, to the extent the Merit Systems Protection Board possesses some minimal non-adjudicatory powers, the appropriate remedy is to sever that authority rather than invalidate the for-cause removal provision.

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PARTIES TO THE PROCEEDING

Petitioner in this Court is Cathy A. Harris, in her personal capacity and in her official capacity as Member of the Merit Systems Protection Board.

Respondents are Scott Bessent, in his official capacity as Secretary of the Treasury; Trent Morse, in his official capacity as Deputy Assistant to the President and Deputy Director of the White House Presidential Personnel Office; Sergio Gor, in his official capacity as Director of the White House Presidential Personnel Office; Henry Kerner, in his official capacity as Acting Chairman of the Merit Systems Protection Board; Donald J. Trump, in his official capacity as President of the United States of America; and Russell T. Vought, in his official capacity as Director of the Office of Management and Budget.

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STATEMENT OF RELATED PROCEEDINGS

The case was before the U.S. Court of Appeals for the District of Columbia Circuit as *Harris* v. *Bessent*, No. 25-5055, and before the U.S. District Court for the District of Columbia as *Harris* v. *Bessent*, No. 1:25-cv-00412-RC.

The case was previously before this Court in *Trump* v. *Wilcox*, No. 24A966, and *Harris* v. *Bessent*, No. 25-312.

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INTRODUCTION

In *Trump* v. *Slaughter*, No. 25-332, this Court is considering whether to overturn *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), and permit the President to remove at will the members of the Federal Trade Commission (FTC), an independent agency that makes policy. This petition presents the critical question that *Slaughter* does not pose: whether Congress may enact a for-cause removal statute for a purely "adjudicatory body" that does not make policy, and instead applies the law to facts in discrete cases. *Wiener* v. *United States*, 357 U.S. 349, 356 (1958). Such adjudicatory bodies—which are sometimes referred to as "legislative courts" or "Article I courts"—

have existed since the Founding, and sound in a unique constitutional tradition separate and apart from *Humphrey's Executor*. But in the decision below, a split panel of the D.C. Circuit blew past this Court's precedent; invalidated the structure of one important tribunal; and, in doing so, provided a roadmap to invalidate other adjudicatory bodies. The Court should grant this petition and hear this case, as it presents the question bound up with but not squarely posed in *Slaughter*. At minimum, the Court should hold the petition, and then vacate the judgment and remand in light of *Slaughter*.

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Petitioner Cathy Harris is a member of the Merit Systems Protection Board (MSPB) whom the President purported to remove in February 2025. Like FTC commissioners, the MSPB's three members may only be removed for cause. Unlike the FTC, however, the MSPB does not launch investigations, promulgate substantive rules or regulations, fill up vague statutes, or otherwise engage in policymaking. Instead, the MSPB is a quintessential "legislative court[]." *Ex parte Bakelite Corp.*, 279 U.S. 438, 449 (1929). It hears appeals from civil servants and operates by deciding specific cases brought before it.

There is a long history of non-Article III adjudicatory bodies like the MSPB. In *Slaughter*, the United States recognized that for-cause removal statutes for at least some such bodies are constitutional. In the decision below, the D.C. Circuit likewise recognized the strong arguments for allowing "Congress" to "restrict the President's ability to remove officers with solely adjudicatory functions." Pet. App. 39a.

The D.C. Circuit nevertheless invalidated the MSPB's structure, in a decision issued just three days before this Court heard oral argument in *Slaughter*.

The D.C. Circuit reached that unprecedented result by concluding—based in part on arguments the government did not advance—that the MSPB has "policymaking responsibilities." Pet. App. 39a.

The D.C. Circuit panel is wrong. The MSPB does not make policy. Full stop. As Judge Pan underscored in her dissent, the Board is "purely adjudicatory." Pet. App. 42a. In fact, two years ago, this Court described the MSPB as "established to *adjudicate* federal employment disputes." *Harrow* v. *Dep't of Def.*, 601 U.S. 480, 482 (2024) (emphasis added). Many of MSPB's features that the D.C. Circuit deemed impermissible—such as the ability to issue final decisions—are quintessential judicial functions. But if the D.C. Circuit was correct, and the MSPB or another legislative court truly does contain some vestigial non-adjudicatory function, the appropriate remedy is not to allow the president to remove its adjudicators. The D.C. Circuit instead should have severed the offending authority, and left the essential aspect of the MSPB—its adjudicatory independence—intact.

It is imperative this Court hear this case. The decision below puts at risk not only the MSPB, but also other legislative courts like the Tax Court and the Court of Appeals for Veterans Claims. And should the Court invalidate the statute at issue in *Slaughter*, the attacks on these legislative courts will only grow. The government's strategy throughout these proceedings, moreover, has been to elide the MSPB with policymaking bodies and hope that no one notices the differences. That is not a serious way to decide once-in-a-generation constitutional questions. But it has serious consequences. Every Article I court now lives underneath "the Damocles' sword of removal." *Wiener*, 357 U.S. at 356. The President can now demand a Tax

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Court judge reward his allies or penalize his opponents, for example, and fire the judge if she refuses. These concerns are not hypothetical. They are happening *right now* at the MSPB. Over the past year, the government terminated hundreds of civil servants in ways that appear to facially violate landmark civil service statutes. In September 2025, the Office of Legal Counsel directed the MSPB how to rule in pending cases challenging the terminations—an instruction backed by the not-so-subtle threat those members will face Petitioner's fate should they refuse. This is an astonishing assault on the ability of the MSPB's members to apply the law without fear or favor—which is the whole purpose of that adjudicatory tribunal.

The Court should not leave the D.C. Circuit's decision as the last word on the constitutionality of this Article I court. It should grant the petition and hear this case. At minimum, the Court should hold the petition, and grant, vacate, and remand in light of the decision in *Slaughter*.

OPINIONS AND ORDERS BELOW

The D.C. Circuit's decision, Pet. App. 1a-90a, is reported at 160 F.4th 1235. The district court's decision, Pet. App. 93a-135a, is reported at 775 F.Supp.3d 164. The order of the D.C. Circuit special panel granting a stay pending appeal, Pet. App. 136a-257a, is not reported but is available at 2025 WL 980278. The order of the en banc D.C. Circuit denying a stay, Pet. App. 258a-278a, is not reported but is available at 2025 WL 1021435.

JURISDICTION

The D.C. Circuit issued its judgment on December 5, 2025, Pet. App. 1a-40a, and denied a timely filed petition for rehearing and rehearing en banc on

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January 9, 2026, Pet. App. 279a-282a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

5 U.S.C. § 1202(a) provides: "The term of office of each member of the Merit Systems Protection Board is 7 years."

5 U.S.C. § 1202(d) provides: "Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office."

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STATEMENT

A. The Merit Systems Protection Board

1. The Merit Systems Protection Board reflects a centuries-long effort to combat patronage in federal employment. As its name suggests, the tribunal reflects a national consensus that career civil servants should be hired and evaluated based solely on merit—not impermissible factors like political affiliation, race, sex, or nepotism.

At the Founding, George Washington embraced principles of merit-based service. Patricia Wallace Ingraham, *The Foundation of Merit: Public Service in American Democracy* 17 (1995). But Thomas Jefferson took the position that "party service was a valid criterion for appointment to," and removal from, public service. *Id*. at 18. By the Civil War, a spoils system had taken hold. The effects were "tragic," undermining "the effectiveness of the Union army and" "federal government" during the war. *Id*. at 22. President Grant "ran on a reform platform," but his administration faced "pressure from members of Congress looking for patronage appointments." *Id*. at 24. In 1871, Congress authorized a short-lived Civil Service Commission that shuttered two years later. *Id*.

After President Garfield's assassination by a would-be office-seeker, Congress passed the Pendleton Act in 1883, which established a Civil Service Commission of three members removable by the President at will. *Id.* at 25-27; ch. 27, 22 Stat. 403, 403. Just a few years later, this Court upheld Congress's authority to enact civil service statutes that regulated the circumstances in which the executive branch may remove civil servants. *See United States* v. *Perkins*, 116 U.S. 483, 485 (1886). In *Myers* v. *United States*, 272 U.S. 52 (1926), Chief Justice Taft's opinion for the Court—the historical high-water mark for the removal power—reaffirmed the constitutionality of the "Civil Service Law," *id.* at 173.

America's civil service initially encompassed only a portion of the federal workforce, Ingraham, *supra*, at 27, and Presidents continued to use "patronage removals and appointments" into the twentieth century, *id.* at 33; *see id.* at 46. Meanwhile, the "Civil Service Commission itself" soon emerged as "a problem" because it served inherently conflicting roles of "administer[ing] and protect[ing] the merit system" while simultaneously "advis[ing] and assist[ing] the president in patronage matters." *Id.* at 74.

Abuses in the Watergate Era brought matters to a head. Contemporary investigations uncovered "flagrant violations" of merit principles for partisan "political interests," creating employment processes that "approximate[d] a patronage system." Subcomm. on Manpower & Civil Serv. of the H. Comm. on Post Office & Civil Serv., 94th Cong., *Documents Relating to Political Influence in Personnel Actions at the Small Business Administration* 11, 13 (Comm. Print 1975).

The corruption extended to the Civil Service Commission itself. "[T]op Commission officials,"

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"including Commissioners," improperly sought to place individuals in positions of employment; "Commission officials" succumbed to "high-level pressures" to engage in patronage; and the Commission "failed to respond effectively" to "political interference in the operation of the Federal merit system." H. Comm. on Post Office & Civil Serv., 94th Cong., *A Self-Inquiry into Merit Staffing: Report of the Merit Staffing Review Team, United States Civil Service Commission* 39, 46, 65 (Comm. Print 1976).

2. President Jimmy Carter made civil service reform a component of his election campaign and spearheaded the passage of the Civil Service Reform Act. Ingraham, *supra*, at 75. Central to reform was creating a "strong and independent" Merit Systems Protection Board free of the pressures that had plagued the old Commission. S. Rep. No. 95-969, at 6-7 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2723, 2728-29 ("Senate Report").

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The defining feature of the independent MSPB was the for-cause removal statute protecting the judges who serve on this adjudicatory body from interference and arbitrary removal. The "lack of adequate protection" for the old Civil Service Commission had been "painfully obvious during the civil service abuses" "a few years" prior. *Id.* To combat that problem, Congress provided that the MSPB's three members "may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office." 5 U.S.C. § 1202(d).

The MSPB functions as a court that adjudicates federal employee appeals, including claims of political discrimination and whistleblower retaliation. *Id.* §§ 1204(a)(1), 2302(b)(1)(E), (b)(8). Its jurisdiction is circumscribed to avoid encroaching on the President's

core prerogatives. The Board may not hear appeals by political appointees, *id*. § 7511(b), has limited authority regarding senior executive managers, *id*. § 3592(a), and cannot wade into national security issues, *Kaplan* v. *Conyers*, 733 F.3d 1148, 1166 (Fed. Cir. 2013) (en banc). In addition, the President may exempt certain positions from the MSPB's jurisdiction if they possess a "policy-determining, policy-making or policy-advocating character." 5 U.S.C. § 7511(b)(2).

The MSPB does not make policy or bring enforcement actions. The MSPB may conduct "studies" relating to the civil service, *id*. § 1204(a)(3), in much the way the Judicial Conference issues annual reports to Congress with "recommendations for legislation," 28 U.S.C. § 331. But the MSPB lacks regulatory authority over civil service matters. The MSPB instead hears discrete cases involving civil servants, applying statutory law and precedent to the specific facts brought before it. The MSPB's decisions are in turn reviewable by Article III courts, usually but not always the Federal Circuit. *See* 5 U.S.C. § 7703; *see generally Perry* v. *MSPB*, 582 U.S. 420, 423 (2017). The Board lacks authority to enforce its own decisions.[1]

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The MSPB's history confirms its purely adjudicatory purpose. The Board's predecessor—the Civil Service Commission—handled both personnel management and adjudications. In 1978, Congress split the

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[1] When originally established, the Board could order the withholding of pay from federal employees who refused to comply with its decisions. 5 U.S.C. § 1204(e)(2)(A). But that mechanism required the involvement of the Comptroller General, who is a legislative officer. It became unconstitutional after *Bowsher* v. *Synar*, 478 U.S. 714, 733-734 (1986), leaving the modern Board without ability to enforce decisions unilaterally. *See infra* pp. 26-27.

Commission into multiple entities, including: (1) the Office of Personnel Management, to manage the federal workforce as a true organ of executive power; and (2) the MSPB, as an adjudicatory authority. Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111, 1119, 1121.

In 1989, Congress further cleaved off the Office of Special Counsel—a single-director-led entity that investigates and prosecutes violations of civil service rules—into a separate executive branch agency. Whistleblower Protection Act of 1989, Pub. L. No. 101-12, 103 Stat. 16. The result, today, is that the Board is a purely "adjudicatory body." *Wiener*, 357 U.S. at 356.

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B. District Court Proceedings

In 2022, Cathy Harris was confirmed as an MSPB member. Her term expires March 1, 2028. On February 10, 2025, Harris received an email stating the President had terminated her. The next day, she filed this lawsuit.

Before the district court, the government did not contest: (i) that the MSPB "does not establish policy," and does not "dictate or enforce policies regarding the federal workforce"; (ii) that the Board "performs no investigations of external parties and does not prosecute cases"; (iii) that the "Board does not initiate disciplinary actions" and lacks "enforcement units"; (iv) that it "does not order other agencies to conduct investigations or to produce written reports"; and (v) that "over 95% of the decisions" of the Board are "unanimous." D. Ct. Dkt. No. 22-2, at 7-9.

The district court ruled for Harris, explaining that the MSPB "conducts preliminary adjudications of federal employees' claims, which may then be appealed

to Article III courts." Pet. App. 107a (citing *Humphrey's Executor*, 295 U.S. at 624). "The Board does not regulate the conduct of private parties, nor does it possess its own rulemaking authority except in furtherance of its judicial functions." Pet. App. 107a. "It cannot initiate its own personnel cases, but must instead passively wait for them to be brought." Pet. App. 107a (quotation marks and citation omitted).

The district court also explained that Congress has unique authority to establish the MSPB, in particular, incident to its constitutional remit to "limit, restrict, and regulate the removal" of career civil servants. Pet. App. 109a (quoting *Perkins*, 116 U.S. at 485). Congress exercised that power when it enacted the Civil Service Reform Act, and the MSPB's "independence" is "structurally inseparable from the" Act itself. Pet. App. 109a.

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C. Stay Proceedings

1. The government appealed and sought a stay in the D.C. Circuit. From that point onward, the case was consolidated for briefing and oral argument with *Wilcox* v. *Trump*, No. 25-5057 (D.C. Cir.), which involves a removed member of the National Labor Relations Board (NLRB). Throughout these proceedings, the government's strategy has been to obfuscate the differences between the MSPB and NLRB—avoiding the distinct constitutional arguments that pertain to adjudicatory bodies.

The D.C. Circuit initially granted the stay pending appeal. Pet. App. 136a-257a. There was no majority opinion. In a concurrence, Judge Walker explained that he would strike down all removal protections unless the agency in question "is the identical twin of the 1935" FTC upheld in *Humphrey's Executor*. Pet. App.

168a. In another concurrence, Judge Henderson voted to grant the stay. But Judge Henderson stated that the MSPB's "powers are relatively more circumscribed" than the NLRB. Pet. App. 191a.

Judge Millett dissented. She emphasized that, in "the government's own words, the MSPB is 'predominantly an adjudicatory body.'" Pet. App. 211a (quoting Pet. App. 285a). The MSPB "has no investigatory or prosecutorial role," but is instead "passive and must wait for appeals to be initiated." Pet. App. 211a. The MSPB "has no independent means of enforcing its orders," and it does not make rules, except those "akin to the federal rules of procedure and local rules that courts adopt." Pet. App. 212a-213a.

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2. The en banc D.C. Circuit vacated the panel's order and denied the government's motion for a stay. Pet. App. 258a-278a.

The government then filed an application in this Court requesting a stay and seeking certiorari before judgment. This Court granted a stay but denied review. According to the Court, "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025) (per curiam). The Court did not opine on whether the government was likely to succeed on the merits. The Court instead stated that the President "may remove without cause executive officers who exercise" "power on his behalf, subject to narrow exceptions recognized by" "precedent[]." *Id.* The Court determined that whether the MSPB "falls within such a recognized exception" is a question "better left for resolution after full briefing and argument." *Id.*

Justice Kagan dissented, joined by Justices Sotomayor and Jackson. *Id*. at 1416-21.

D. *Trump* v. *Slaughter*

On September 4, 2025, the Government filed an application requesting a stay and seeking certiorari before judgment in *Trump* v. *Slaughter*, a case involving an FTC commissioner whom the President purported to remove without cause. In response, Harris filed a conditional petition for certiorari before judgment in this case, asking the Court to grant review in her case if it granted *Slaughter*. The Court granted certiorari before judgment in *Slaughter* and denied it in this case. *See Trump* v. *Slaughter*, 146 S.Ct. 18 (2025) (mem.); *Harris* v. *Bessent*, 146 S.Ct. 76 (2025) (mem.).

Harris subsequently filed an amicus brief in *Slaughter*, in which she urged the Court to avoid addressing the constitutionality of purely adjudicatory tribunals like the MSPB. *See* Amicus Br. for Cathy Harris in Supp. of Neither Party, *Trump* v. *Slaughter*, 25-332 (U.S. Oct. 17, 2025).

In *Slaughter*, the United States repeatedly acknowledged that purely adjudicatory tribunals present a distinct constitutional question from policymaking independent agencies like the FTC. For example, in its brief, the United States stated that Congress may limit the President's removal power with respect to at least some Article I courts. *See* Br. for the Pet'rs 23, *Trump* v. *Slaughter*, 25-332 (U.S., Oct. 10, 2025) ("U.S. Slaughter Br."). At oral argument, the Solicitor General further stated that "the determination" regarding the constitutionality of Article I courts "would have to be made on a court-by-court basis." Oral Arg. Tr. 20, *Trump* v. *Slaughter*, 25-332

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(U.S., Dec. 8, 2025). According to the Solicitor General, "when it comes to non-Article III courts," there are "hard questions." *Id.* at 27-28.

Members of this Court likewise indicated that for-cause removal protections for adjudicatory bodies pose a distinct constitutional question from whether FTC commissioners must be removable at will. *See, e.g.*, *id.* at 16 (Roberts, C.J.) (noting that it "strikes me that *Humphrey's* may be the issue," that "it doesn't mean that *Wiener* falls with it," and that would preserve "the Court of Appeals of the Armed Forces or the Tax Court or all those others"); *id.* at 25-26 (Alito, J.) (noting that the Court will likely face questions "about a number of different agencies" "in the near future because of actions that the President has taken," and asking how the Court could rule in *Slaughter* "without reaching some of the agencies that have been mentioned, like the Tax Court and the Claims Court"); *id.* at 49 (Kavanaugh, J.) (noting that "non-Article III courts" are "different"); *id.* at 90 (Alito, J.) ("[T]he Solicitor General was pressed quite legitimately about things like the Tax Court and the Claims Court, et cetera, et cetera.").

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At oral argument, the Chief Justice also asked the Solicitor General whether it would be possible to "sever out" any impermissible executive functions from "an agency" which is predominantly judicial. *Id.* at 21. In response, the Solicitor General stated that such a remedy could be possible in at least some cases. *Id.*

E. D.C. Circuit Merits Decision

1. The D.C. Circuit issued its decision in this case on December 5, 2025, three days before this Court heard oral argument in *Slaughter*. Judge Katsas

wrote the opinion for the court, which Judge Walker joined. Pet. App. 1a.-40a. Judge Pan dissented. Pet. App. 41a-90a.

The majority framed the test for whether Congress may insulate principal officers from removal as whether those officers "wield substantial executive power." Pet. App. 9a. According to the majority, so long as an agency possesses "powers" which "exceed ones that *Humphrey's Executor* deemed" permissible for the FTC in 1935, its members exercise substantial executive power and must be removable at will. Pet. App. 21a-22a. At the same time, the majority acknowledged that Congress may enact for-cause removal protections for "purely adjudicatory bodies." Pet. App. 28a.

The majority started with the NLRB, concluded that the NLRB engages in policymaking, and held its members therefore exercise substantial executive authority. According to the majority, the NLRB "possesses 'broad rulemaking authority.'" Pet. App. 26a (quoting *Am. Hosp. Ass'n* v. *NLRB*, 499 U.S. 606, 613 (1991)). Moreover, to the extent the NLRB performs adjudications, it does not apply law to fact like a judicial tribunal. Instead, the NLRB "is tasked with 'developing and applying national labor policy,'" and "routinely" uses adjudication to create "a bevy of requirements that are akin to 'statutory' rules or 'ones established by regulation.'" Pet. App. 28a-29a (brackets omitted) (quoting *NLRB* v. *Curtin Matheson Sci., Inc.*, 494 U.S. 775, 786 (1990) and *Republic Aviation Corp.* v. *NLRB*, 324 U.S. 793, 804-805 (1945)). "The NLRB routinely invokes 'policy' considerations not only to create rules by adjudication, but also to overrule them." Pet. App. 29a (citation omitted).

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The majority next turned to the Merit Systems Protection Board. Over the course of its decision, the majority acknowledged that the MSPB does not perform the same kind of policymaking functions that the NLRB does. But the majority nevertheless held that MSPB members are also removable at will.

The majority started by (incorrectly) concluding that the MSPB possesses substantive rulemaking authority. The government never made this argument. As support, the majority cited a single decision from the Federal Circuit, *Tunik* v. *MSPB*, 407 F.3d 1326 (Fed. Cir. 2005), which appears nowhere in the government's briefing. The majority acknowledged that MSPB's "rulemaking authority" (to be clear: it really has none) "does not rival the broad rulemaking authority of the NLRB." Pet. App. 33a. But the majority nevertheless concluded that "the existence of at least some substantive rulemaking power"—again, an argument the government never advanced—required invalidating the MSPB's structure. Pet. App. 33a.

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With respect to adjudication, the majority likewise acknowledged that the MSPB—in sharp contrast to the NLRB—does not engage "in naked appeals to shifting policy preferences." Pet. App. 33a. But the majority concluded that the MSPB's adjudicatory powers nevertheless cross the line and require its members to be removable at will. To reach that conclusion, the majority pointed to a mélange of factors, such as the fact that the MSPB issues final decisions and may order relief including backpay and reinstatement. Pet. App. 34a-36a.

2. As to remedy, the majority recognized that the supposed "constitutional problem" the court faced "arises from two features" of the MSPB and NLRB: (1) the majority's conclusion that each "agency has been

vested with significant executive power"; and (2) the fact that "Congress has restricted the President's ability to remove its members." Pet. App. 38a.

The majority recognized that it could "solve" the supposed "constitutional problem" by invalidating the "agency powers" it found to cross the line, "rather than by declining to enforce the removal restrictions." Pet. App. 38a. But the majority declined to choose that more modest remedy for either the MSPB or the NLRB—which it said would require it "to blue-pencil provisions from among the full panoply of the executive powers of each agency"—and instead chose to "disregard the statutory removal restrictions." Pet. App. 39a.

3. Judge Pan dissented.

She emphasized that the "the MSPB" "is purely adjudicatory and does not touch upon core constitutional functions assigned to the President." Pet. App. 42a. As she explained, if "the MSPB cannot be independent," then "no agencies can be independent." Pet. App. 42a-43a.

As Judge Pan detailed, the "MSPB functions more like a court than a regulator." Pet. App. 59a. "[T]he MSPB's mission is 'to adjudicate federal employment disputes.'" Pet. App. 59a. (quoting *Harrow*, 601 U.S. at 482). "The MSPB is passive and must wait for appeals and cases to be initiated." Pet. App. 60a. It does not engage in investigations. Instead, "the Office of Special Counsel" "investigates and prosecutes certain kinds of misconduct." Pet. App. 60a. "Moreover, the MSPB does not regulate through rulemaking." Pet. App. 60a.

Judge Pan criticized the majority's "discussion of the MSPB's supposedly substantial 'executive'

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powers" as "unconvincing." Pet. App. 61a n.11. "[T]he features" the majority "highlight[s]" are classic adjudicatory functions. Pet. App. 61a n.11. For example, "many courts issue final decisions, under many different statutes, and award legal and equitable relief." Pet. App. 61a n.11. In short, as Judge Pan explained, "the MSPB is so clearly adjudicatory and free of quintessential executive responsibilities that if it exercises" an impermissible degree of authority "then every agency does." Pet. App. 61a.

This petition follows.

REASONS FOR GRANTING THE PETITION

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The decision below invalidated a law of Congress that has been on the books for nearly half a century and that has created the architecture of employment disputes with the federal government for millions of civil servants. Whatever the Court decides in *Slaughter* with respect to policymaking bodies, this case is fundamentally different. The Merit Systems Protection Board is a purely "adjudicatory body." *Wiener*, 357 U.S. at 356. As the United States effectively acknowledged in *Slaughter*, there is a "historical precedent" dating to the Founding, *Free Enter. Fund* v. *PCAOB*, 561 U.S. 477, 505 (2010) (citation omitted), of Congress establishing non-Article III "legislative Courts" like the MSPB. *Am. Ins. Co.* v. *356 Bales of Cotton*, 26 U.S. 511, 546 (1828) ("*Canter*"). Under this "time-honored reading of the Constitution," these "legislative tribunals," *Freytag* v. *Comm'r of Internal Revenue*, 501 U.S. 868, 889 (1991), may hear matters arising in the territories, *id.* at 889-890, offenses committed by servicemembers, *Ortiz* v. *United States*, 585 U.S. 427, 437 (2018), and disputes regarding "public rights," *SEC* v. *Jarkesy*, 603 U.S. 109, 130 (2024); *see N. Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458

U.S. 50, 64-70 (1982). Members of these "legislative courts" may be protected from removal at will, and may "hold [office] for such term as Congress prescribes." *Ex parte Bakelite*, 279 U.S. at 449.

The D.C. Circuit blew past that rich constitutional tradition—which stands separate and apart from *Humphrey's Executor*—and issued a decision that threatens the independence of all Article I courts. Throughout these proceedings, the government's strategy has been to conflate the MSPB, which does not make policy, with FTC and NLRB, which do. This is not a proper way to make constitutional law, and this matter cries out for this Court's review. The Court should hear this case, which is a natural follow on to *Slaughter*. At minimum, the Court should hold this petition, vacate the judgment, and remand in light of *Slaughter*, so that the D.C. Circuit can reconsider its analysis with the benefit of this Court's decision in that matter.

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I. THE MERIT SYSTEMS PROTECTION BOARD'S REMOVAL PROVISIONS ARE CONSTITUTIONAL.

A. Purely Adjudicatory Bodies Sound In A Unique Constitutional Tradition.

History, structure, and precedent, separate and apart from *Humphrey's Executor*, confirm that Congress may enact for-cause removal provisions for purely adjudicatory bodies.

1. Start with history. In the first years of the new nation, Congress passed laws under which non-Article III territorial judges were removable by the President but also held their commissions during good

behavior.[2] In a landmark decision, Chief Justice Marshall explained that these tribunals were "legislative Courts," not Article III courts. *Canter*, 26 U.S. at 546. Prior to the Civil War, Congress created the Court of Claims, a "legislative [c]ourt" whose judges were likewise protected from arbitrary removal. *Humphrey's Executor*, 295 U.S. at 629.[3] Congress afforded removal protection to the Board of General Appraisers in 1890, and to the United States Court for China in 1906.[4]

In 1924, Congress established the Board of Tax Appeals—a precursor to the modern Tax Court—the members of which could "be removed by the President for inefficiency, neglect of duty, or malfeasance in office, but for no other reason." Revenue Act of 1924, Pub. L. No. 68-176, § 900(b), 43 Stat. 253, 337. Two years later, in 1926, Congress reconstituted the Board of General Appraisers as the United States Customs Court, providing the new court's officers the same "tenure of office" as the old Board. Act of May 28, 1926, Pub. L. No. 69-304, § 2, 44 Stat. 669, 669.

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2. Long before *Humphrey's Executor* upheld removal restrictions for the FTC, this Court recognized that Congress may enact removal restrictions for "an adjudicatory body." *Wiener*, 357 U.S. at 356. That precedent was a predicate to, and is analytically distinct from, *Humphrey's Executor*.

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[2] *See* An Act to provide for the Government of the Territory North-West of the river Ohio, ch. 8, 1 Stat. 50, 51, 53 (1789); Act of Apr. 7, 1798, ch. 28, § 3, 1 Stat. 549, 550.

[3] *See* Act of Feb. 24, 1855, ch. 122, § 1, 10 Stat. 612, 612.

[4] *See* Act of June 30, 1906, Pub. L. No. 59-403, § 7, 34 Stat. 814, 816; Act of June 10, 1890, ch. 407, § 12, 26 Stat. 131, 136.

In its 1891 decision in *McAllister* v. *United States*, 141 U.S. 174 (1891), for example, this Court explained that Congress, "in the respective acts providing for the organization of" legislative "courts," may provide that its members will "hold their offices during good behavior" or for some other period. *Id.* at 186. In *Ex parte Bakelite*, the Court unanimously confirmed that "legislative courts" "are prescribed by Congress independently of section 2 of article 3; and their judges hold for such term as Congress prescribes, *whether it be a fixed period of years or during good behavior*." 279 U.S. at 449 (emphasis added). In *Myers*—the historical high-water mark for the President's removal power—Chief Justice Taft's opinion for the Court acknowledged precedent regarding legislative courts, and noted that at minimum, territorial judges are constitutionally distinct from other executive branch officials whom the Constitution required to be removable at will. 272 U.S. at 156-158; *see id.* 182 n.2 (McReynolds, J., dissenting) (noting that the majority opinion's holding that principal officers must be removed at will carved out an exception for "nonconstitutional judicial officers").

Indeed, two years before *Humphrey's Executor*, this Court heard *Williams* v. *United States*, 289 U.S. 553 (1933), in which a judge on the Court of Claims sued after his salary had been reduced. *Id.* at 560. This Court upheld the reduction in the judge's salary because the Court of Claims was a legislative court, not an Article III court whose judges' salaries cannot be constitutionally "diminished during their Continuance in Office." U.S. Const. art. III, § 1. The Court explained that Congress has broad discretion to "confer upon an executive officer or administrative board, or an existing or specially constituted court, or retain

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for itself, the power to hear and determine controversies respecting claims against the United States." *Williams*, 289 U.S. at 580. When Congress chooses to establish a legislative court to hear such claims, as Congress did when it established the Court of Claims, Congress may determine "the tenure of" "offices" for its members. *Id*. at 562.[5]

Two years later, the Court decided *Humphrey's Executor*. In that decision, the Court cited *Williams*, analogized the FTC to the Court of Claims, and viewed the FTC's for-cause removal provision as bound up with the independence of non-Article III tribunals. *Humphrey's Executor*, 295 U.S. at 629. Much as in this case, the Solicitor General in *Humphrey's Executor* had advanced a maximalist view of the President's removal authority, which would apply not only to the FTC but also to "the Court of Claims." *Id*. This Court rejected that notion, concluding instead that "the judges of the legislative Court of Claims" need not "continue in office only at the pleasure of the President." *Id*. For better or worse, the Court then upheld the FTC too—not distinguishing the FTC's functions from those of "legislative [c]ourt[s]." *Id*. at 628-629.

Fast forward two decades to *Wiener*, in which the Court again rejected an unlimited conception of the President's removal authority. *Wiener* involved the President's efforts to remove a member of the War

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[5] In 1953, Congress declared the Court of Claims an Article III court. *See* An Act to amend title 28, United States Code, Pub. L. No. 83-158, 67 Stat. 226, 226 (1953); *Glidden Co.* v. *Zdanok*, 370 U.S. 530, 531-532 (1962). In 1982, Congress reversed course and designated the newly constituted Claims Court an Article I court. *See* Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 105, 96 Stat. 25, 27.

Claims Commission. In ruling for the removed official, the Court stressed that the Commission was a truly "adjudicatory body" that decided "claims for compensating internees, prisoners of war, and religious organizations" "who suffered personal injury or property damage at the hands of the enemy in connection with World War II." *Wiener*, 357 U.S. at 350, 356. Its decisions were final and were "not subject to review" "by any court." *Id*. at 354-355 (citation omitted). In the Court's words, the Commission decided cases with "all the paraphernalia by which legal claims are put to the test of proof." *Id*. at 354. "Congress could" "have given jurisdiction over the[] claims to the District Courts or to the Court of Claims." *Id*. at 355. But instead, Congress "chose to establish a Commission to 'adjudicate according to law' the classes of claims defined in the statute," and that choice "did not alter the intrinsic judicial character of" its "task." *Id*.

Two points about *Wiener* bear emphasis. *First*, the Court could not have more clearly rejected the notion that the President may remove the members of an adjudicatory body: "[T]he Constitution" does not provide the President the ability to "remove a member of an adjudicatory body like the War Claims Commission merely because he wanted his own appointees." *Id*. at 356. For all the reasons described below, the MSPB is an adjudicatory body, and *Wiener*'s emphatic holding directly applies to this case. *See infra* pp. 24-29. *Second*, in its analysis, *Wiener* quoted *Humphrey's Executor* and referenced its "philosophy." *Id*. But the history and precedent of adjudicatory tribunals demonstrates that *Wiener* reflects a unique tradition that stands all on its own.

3. There are strong structural reasons Congress may provide a measure of independence for

adjudicatory bodies, even if the Court concludes in *Slaughter* that Congress cannot do so for policymaking agencies.

For starters, adjudicatory bodies do not pose the same purported "accountability" concerns as policymaking bodies. In *Slaughter*, the government argued that presidential removal for members of the FTC is necessary to protect against a "headless Fourth Branch" that governs important aspects of American life yet remains immune from democratic "accountability." U.S. Slaughter Br. 4, 5, 20 (quoting *FCC* v. *Consumers' Rsch.*, 606 U.S. 656, 708 (2025) (Kavanaugh, J., concurring)). But by their nature, purely adjudicatory bodies do not promulgate new rules, make substantive policy, or exercise "vast power" over our lives. *Id.* at 20. Rather, like this branch of government, Article I courts apply the law that Congress enacts to discrete cases before them. *Cf.* Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (1962). At times, this Court has even said that the "power exercised by some non-Article III tribunals *is* judicial power." *Freytag*, 501 U.S. at 889 (citing *Williams*, 289 U.S. at 565-566); *see Ortiz*, 585 U.S. at 457, 463 (Thomas, J., concurring) (concluding that military tribunals within the executive branch exercise "judicial power"). There is thus no more of a democratic "accountability" gap for adjudicatory entities like the MSPB and Tax Court than there is for this Court.

Allowing Congress to provide removal protections for purely adjudicatory entities, moreover, furthers critical due process values. A "fair tribunal is a basic requirement of due process," and that rule "applies to administrative agencies which adjudicate as well as to courts." *Withrow* v. *Larkin*, 421 U.S. 35, 46 (1975)

(quotation marks and citation omitted). In certain circumstances, Congress may reasonably determine that an adjudicator "who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will." *Wiener*, 357 U.S. at 353 (citation omitted). This does not mean that the Constitution's guarantee of due process requires that all agency adjudicators be independent from at-will removal. But Congress may determine that in certain circumstances—for example, in disputes regarding partisan retaliation by the executive branch against its own employees—a measure of independence is necessary to ensure both the reality and appearance of impartiality.

B. The Merit Systems Protection Board Is Purely Adjudicatory.

1. The MSPB fits comfortably within the long tradition of non-Article III tribunals that, as *Wiener* emphatically held, Congress may reasonably protect from undue interference.

The MSPB is "purely adjudicatory." Pet. App. 42a (Pan, J., dissenting). "The Board does not regulate the conduct of private parties, nor does it possess its own rulemaking authority except in furtherance of its judicial functions." Pet. App. 107a. "It cannot initiate its own personnel cases, but must instead passively wait for them to be brought." Pet. App. 107a (quotation marks and citation omitted). Even the government agrees "the MSPB is 'predominantly an adjudicatory body.'" Pet. App. 211a (Millett, J., dissenting) (quoting Pet. App. 285a). In fact, "the MSPB is so clearly adjudicatory and free of quintessential executive responsibilities that if it exercises" an impermissible degree of executive authority, no Article I court is safe. Pet. App. 61a (Pan, J., dissenting).

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The comparison between MSPB and the NLRB drives the point home. As the D.C. Circuit majority acknowledged, the MSPB does not decide cases based on "naked appeals to shifting policy preference[]." Pet. App. 33a. In contrast, the NLRB "routinely invokes 'policy' considerations not only to create rules by adjudication, but also to overrule them." Pet. App. 29a (citation omitted). That is why this Court has repeatedly referred to the NLRB as engaged with the "spacious domain of policy," Pet. App. 29a (quoting *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177, 194 (1941)), but recently described the MSPB's "mission" as "*to adjudicate* federal employment disputes." Pet. App. 59a (Pan, J., dissenting) (emphasis added) (quoting *Harrow*, 601 U.S. at 482).

2. None of the D.C. Circuit's flawed reasons for invalidating the MSPB hold merit. Make no mistake: If this decision is allowed to stand, it will call into question the independence of every non-Article III tribunal, such as the Tax Court and the Court of Appeals for Veterans Claims.

Consider what might be the D.C. Circuit's most egregious holding, the notion that the Board makes policy via substantive rules. The government never made that argument below. Because it is wrong. The majority relied on a single case, *Tunik* v. *MSPB*, 407 F.3d 1326 (Fed. Cir. 2005), which if anything demonstrates that the Board is not a policymaking entity. Prior to *Tunik*, the MSPB had issued a decision in a case called *Doyle* regarding ALJ removals. *Id.* at 1333. As courts often do, the Board promptly "reorganize[d] and update[d]" "its rules of practice and procedure" to reflect *Doyle*, "for the benefit of the Board's customers." Practices and Procedures, 63 Fed. Reg. 42,685, 42,685 (Aug. 11, 1998). In other words, the

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Board changed its local rules to reflect new precedent—just like a federal court might enact local rules after a significant decision requiring a change in procedure. This kind of procedural rule is not the stuff of a policymaking entity. It is the hallmark of an adjudicatory body.

The MSPB subsequently concluded it had erred in *Doyle*, relying on the tools of statutory interpretation and intervening precedent. *Tunik* v. *Soc. Sec. Admin.*, 93 M.S.P.R. 482 (2003). This kind of reversal happens rarely at the MSPB, and more rarely still on partisan lines—itself a sign that the MSPB is not a policymaking entity like the NLRB. But in *Tunik*, the Federal Circuit incorrectly concluded that the MSPB was nevertheless bound by its old court rules until such time as the Board repealed the rules via notice and comment—despite the Administrative Procedure Act exempting "rules of agency organization, procedure, or practice" from that process. 5 U.S.C. § 553(b)(A). That the D.C. Circuit majority cited only this one outlier case—which involves internal rules and procedures that should have been exempt from the Administrative Procedure Act—proves the point: The MSPB does not engage in substantive rulemaking. The D.C. Circuit should not have relied on a needle in a haystack, which the government did not brief, to cripple the tribunal.

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We could go on. The majority also theorized that the MSPB can withhold the salaries of executive branch officials to enforce compliance with its orders. Pet. App. 36a-37a. The Board cannot. The MSPB originally had that statutory authority in the 1980s. But the statute required the involvement of the Comptroller General, and it has been considered unconstitutional since this Court's decision in *Bowsher*, which

held in 1986 that the Comptroller General is a legislative branch official. *See supra* p. 8 n.1. To the extent the MSPB could wield this power today, even after *Bowsher*, it would simply mirror a court's power of contempt—and if it were a problem, it is entirely severable. [6]

The majority noted that, in rare circumstances, the statutory scheme designates the MSPB as the respondent in litigation, and the MSPB's attorneys appear in court. Pet. App. 37a-38a. This statutory device permits the Board's expert attorneys to provide specialized knowledge to courts in complex procedural appeals. It bears no relationship to litigation brought by executive branch agencies like the Department of Justice, is akin to a district court responding to a mandamus petition, and is easily severable to boot. *See, e.g.*, Fed. R. App. P. 21(b)(4) (permitting trial judges to respond to mandamus petitions).

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The panel concluded that the Board's (highly deferential) review of the reasonableness of an agency's penalty imposed on an employee under *Douglas* v. *Veterans Admin.*, 5 M.S.P.R. 280 (1981), is policymaking. Pet. App. 35a. Not so. In *Douglas* itself, the Board stressed it is not "free simply to substitute its judgment for that of the employing agencies." *Id*. at 300. Like an Article III court reviewing a criminal

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[6] The majority sought to distinguish *Bowsher* on the theory that the statute "does not give the Comptroller General any discretion" to withhold salaries. Pet. App. 37a (citing 5 U.S.C. § 1204(e)(2)(A))). But nothing prevented the Comptroller General from ignoring the Board's order. And if "the power to withhold the salary of a government official is" truly impermissibly "executive," as the majority concluded, then the involvement of a legislative branch official in that process is presumably not constitutional under the D.C. Circuit's rubric. Pet. App. 37a.

sentence, the MSPB narrowly analyzes whether "the agency's penalty is within the range allowed by law," whether it "was based on a consideration of the relevant factors," and whether "there has not been a clear error of judgment." *Id.* at 301 (brackets, quotation marks, and citation omitted).

But here's the real kicker: The majority faulted the MSPB for hearing cases involving multiple statutes, Pet. App. 34a-35a; for issuing relief such as backpay and damages, Pet. App. 35a-36a; and for issuing "final" "decisions" that are reviewable in Article III courts, Pet. App. 34a. This gives the game away. These are *all* quintessential adjudicatory functions. If these extremely modest functions nudge the MSPB over the line, then the Tax Court and every other legislative court is at risk. It bears emphasis: The majority's analysis is impossible to square with *Wiener*. As Judge Pan underscored in dissent, *Wiener* "upheld for-cause removal protections for the leaders of the War Claims Commission, which enjoyed 'finality of determination' over a 'large number of claimants with a diversity in the specific circumstances giving rise to their claims,' and which could order 'compensation for internees, prisoners of war, and religious organizations.'" Pet. App. 61a n.11 (brackets omitted) (quoting *Wiener*, 357 U.S. at 350, 354-355). If the MSPB is not constitutional, then neither was the War Claims Commission in 1958 and neither is the Tax Court today.

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The majority offered no response. That silence is telling. The decision below jeopardizes all non-Article III adjudicatory bodies.[7]

C. If The Merit Systems Protection Board Has Some Impermissible Authority, It Is Severable.

The majority erred in a second, critical respect: If there was some vestigial authority that tipped the balance—say, a mote of never-exercised regulatory authority—the proper remedy was not to blow up the MSPB's structure, but instead to invalidate that dormant power and keep this quintessential judicial body intact.

This Court adopted that remedy in *United States* v. *Arthrex, Inc.*, 594 U.S. 1 (2021). There, a party had challenged removal protections for administrative patent judges. The Court utilized "a tailored approach" that preserved the removal statute but invalidated other portions of the statutory scheme. *Id*. at 25. The same remedy would be appropriate here. In "the government's own words, the MSPB is 'predominantly an adjudicatory body.'" Pet. App. 211a (Millett, J., dissenting) (quoting Pet. App. 285a). To the extent some minuscule facet of the MSPB's design makes the Board insufficiently judicial, the response is to invalidate that limited power—not invalidate a tribunal central to the entire civil service system. Notably, the Chief Justice suggested the possibility of this remedy

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[7] As the district court explained, the MSPB additionally stands on unique constitutional footing because Congress has authority to establish the Board incident to its constitutional power to "limit, restrict, and regulate the removal" of inferior officers and employees. Pet. App. 109a (quoting *Perkins*, 116 U.S. at 485). The D.C. Circuit notably failed to address this point too.

at oral argument in *Slaughter*, and the Solicitor General agreed it could be appropriate in some cases. *See supra* p. 13.

That "tailored" remedy best comports with the principles of judicial modesty because it effectuates Congress's intent in creating an independent adjudicatory body to hear civil service cases. *Arthrex*, 594 U.S. at 25. There is simply no reason to believe that Congress would have wanted to neuter the MSPB's independence, which was a cornerstone of modern civil service reform. Indeed, in 1978, Congress expressly stated that it would have been "unlikely" that it "would have granted" OPM "the power it has" without the MSPB's "mandate for independence." Senate Report at 7. In contrast, it would be a massive judicial power grab to hand the MSPB's functions to the President—the very thing Congress sought to avoid—based on hairsplitting technicalities.

Tellingly, the D.C. Circuit majority never mentioned *Arthrex*, nor engaged in any meaningful analysis on remedy. In a brief paragraph, the majority stated that courts "*typically*" "disregard[] the removal restriction"—admitting that courts can and do choose other remedies. Pet. App. 39a (emphasis added). The majority then asserted that it would not "blue-pencil provisions from among *the full panoply* of the executive powers of each agency." Pet. App. 39a (emphasis added).

That is a strawman. The MSPB does not exercise a "full panoply of" "executive powers," requiring the court to "blue-pencil" an entire statutory scheme. Whatever might be said of the FTC or the NLRB, when it comes to the MSPB, the D.C. Circuit was not being asked to revise a massive agency structure with vast executive functions. Instead, the D.C. Circuit

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majority invalidated the MSPB's removal provisions based in no small part on a handful of inconsequential provisions—such as nonexistent rulemaking authority that the MSPB does not exercise—none of which are central to the function of the tribunal. To the extent a vestigial provision tipped the balance, the solution was to excise it, not to blow up a central feature of the agency's structure.

II. THIS CASE WARRANTS THIS COURT'S REVIEW.

This Court should not leave the D.C. Circuit's flawed decision as the final word in this matter. Declaring "an Act of Congress unconstitutional" "is the gravest and most delicate duty" this branch may perform, *Blodgett* v. *Holden*, 275 U.S. 142, 147-148 (1927) (Holmes, J., concurring), and the Court will often hear matters in which "lower courts hold federal statutes unconstitutional" even absent a circuit-split, *County of Maricopa* v. *Lopez-Valenzuela*, 575 U.S. 1044, 1045 (2015) (mem.) (Thomas, J., dissenting from denial of certiorari). But this case is especially important. The D.C. Circuit's decision directly contradicts *Wiener* and calls into question the constitutionality of non-Article III courts from the Tax Court on down. If the judiciary is to take that extraordinary step and invalidate the structure of institutions with roots tracing to the Founding (to be clear: it should not), that decision should come—if at all—from this Court. *See* S. Ct. R. 10(c).

This case is not *Slaughter* redux. Even if the Court in *Slaughter* invalidates for-cause removal statutes for policymaking agencies and overturns *Humphrey's Executor*, this case presents the important question which *Slaughter* does not: whether Congress may limit the President's ability to interfere with and remove non-Article III adjudicators. That question

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deserves to be analyzed on its own merits, and the Court should not reward the government's tactic of obfuscating that important and distinct issue. Throughout these proceedings, the government has muddled the distinctions between MSPB and policymaking bodies like the FTC and the NLRB. And in *Slaughter*, the government invited the Court to overturn *Wiener* in a drive-by holding. *See* U.S. Slaughter Br. 30 n.1. At the stay stage, the Court recognized then that this matter deserved the benefit of "full briefing and argument." *Wilcox*, 145 S. Ct. at 1415. The time has come. The Court should hear the case and definitively decide this matter, as only it can.

Recent events, moreover, have made the independence of the MSPB particularly salient, perhaps more so than any other Article I court. Over the last year, the executive branch terminated hundreds of civil servants in ways that appeared to facially violate civil service laws. Then, in September 2025, the Office of Legal Counsel issued a decision directing the MSPB how to rule in cases challenging those terminations. *See The Merit Systems Protection Board's Authority to Adjudicate Constitutional Questions within an Administrative Proceeding*, 49 Op. O.L.C. (Sep. 26, 2025) (slip op.). This is astonishing. Congress created the MSPB as a tribunal to rule—without fear or favor—in disputes involving the civil service. The MSPB cannot be expected to fulfill that judicial function, and engender public confidence in its decision-making, when one party can order the Board how to decide a case and threatens to remove members if they do not comply.

This Court is already facing serious legal questions about the implications of the MSPB's loss of independence. *See Margolin* v. *Nat'l Ass'n of Immigr. Judges*, No. 25A662, 2025 WL 3684278 (U.S. Dec. 19, 2025)

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(mem.). Removed civil servants who lack confidence in the MSPB's fairness are seeking to bypass the MSPB and proceed instead to district court. *See, e.g.*, *Comey* v. *DOJ*, No. 1:25-cv-7625 (S.D.N.Y) (Maureen Comey's constitutional challenge to an allegedly unlawful termination from career position as an Assistant United States Attorney). The Court should put an end to the uncertainty, hear this case, preserve the structure of the Civil Service Reform Act, and restore confidence in the MSPB.

At minimum, the Court should hold this petition pending *Slaughter*, and grant, vacate, and remand this case in light of its decision. To the extent *Slaughter* clarifies any aspect of the legal framework surrounding removal, this approach will allow the D.C. Circuit—including the en banc court—to reanalyze the issues in this case with the benefit of the Court's decision.

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CONCLUSION

The Court should grant the petition. In the alternative, the Court should hold the petition pending *Slaughter*, and then grant it, vacate the judgment, and remand to the D.C. Circuit.

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