

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.*,

Respondents.

**On Writ of Certiorari Before Judgment
to the United States Court of Appeals
for the District of Columbia Circuit**

**BRIEF FOR RESPONDENT
REBECCA KELLY SLAUGHTER**

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QUESTIONS PRESENTED

This Court directed the parties to brief and argue the following questions:

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

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

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**On Writ of Certiorari Before Judgment to the
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**BRIEF FOR RESPONDENT
REBECCA KELLY SLAUGHTER**

INTRODUCTION

This case raises momentous questions. In creating “some two-dozen multimember independent agencies,” *Seila Law LLC v. CFPB*, 591 U.S. 197, 230 (2020), has Congress violated the Constitution some two-dozen times over the last 150 years? In approving those agencies and commissioning their officers, have Presidents of both parties consistently supported “clear” invasions of an “indispensable” presidential power? U.S. Br. 2. And in blessing removal protections for

traditional multimember agencies—first in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and then, time and again, in succeeding cases involving the constitutionality of such protections—has this Court gotten it wrong for the last 90 years?

No, no, and no: All three branches of government have not collectively and protractedly labored in error. Multimember independent agencies are deeply ingrained in our Nation's history and tradition, from the First Congress to the present day. That history confirms that they are fully compatible with our Constitution's text and structure—indeed, Justice Jackson's seminal separation-of-powers opinion identifies the removal provision upheld in *Humphrey's Executor* as the paradigmatic example of a valid statutory limitation on the President's powers. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 & n.4 (1952) (Jackson, J., concurring). And the political branches' joint decision to employ the independent, multimember structure “helps to prevent arbitrary decisionmaking and abuse of power.” *PHH Corp. v. CFPB*, 881 F.3d 75, 183 (D.C. Cir. 2018) (Kavanaugh, J., dissenting). In short, “the original design, common understanding, and consistent historical practice of independent agencies as multi-member bodies reflect the larger values of the Constitution.” *Id.* at 187.

Petitioners offer little to upend the settled understanding of the three branches. Petitioners stress the general rule of at-will presidential removal while failing to square their arguments with the longstanding, historically grounded exceptions to that rule—including petitioners' own requested exception for the Federal Reserve. They contend that the First Congress's

choices answer the question presented, but ignore that the First Congress itself created multimember bodies over which the President did not have the “illimitable” and “unrestricted” removal power they posit. They seek to vindicate the principle of democratic political accountability by asking unelected and politically unaccountable courts to jettison longstanding laws enacted by the people’s elected representatives. And they demand that this Court respond to the growing power of the Executive Branch by transferring to the Presidency vast *new* powers that Congress and prior Presidents, working together, chose not to vest in the President alone.

And all of that is before *stare decisis* comes into play. Petitioners identify no special justification for overruling a 90-year-old line of precedent on which much of modern governance is based. As the collective wisdom and experience of all three branches attests, those decisions are neither egregiously wrong nor unworkable. And any remaining concerns about the structure or power of multimember agencies could be more appropriately addressed by the political branches, which may consult agency-specific facts and real-world risks in assessing whether such concerns are best resolved by eliminating an agency’s independence or curtailing its statutory authorities.

Overruling a century of precedent at this late date, on the other hand, would profoundly destabilize institutions that are now inextricably intertwined with the fabric of American governance. For almost a century, the political branches have created dozens of traditional independent agencies—and vested them with sensitive and critical responsibilities—in good-faith

reliance on this Court’s precedents upholding removal protections of the kind at issue here. Retroactively eliminating the “independence” of traditional independent agencies would destroy those reliance interests—and deprive the public of the regulatory stability, and related protections for individual liberty, that multimember agencies provide. In short, it is “hard to imagine a precedent whose overruling could more radically upend existing institutions.” Daniel B. Rice & Jack Boeglin, *Confining Cases to Their Facts*, 105 Va. L. Rev. 865, 917 (2019).

Petitioners’ remedial arguments similarly defy our Nation’s legal history. Since before the Founding, courts of law and equity have granted relief—through mandamus, declaratory judgments, and injunctions—to unlawfully removed officials. Nothing in the Constitution or federal law displaces that unbroken, centuries-old tradition. This Court should not create an ahistorical remedial rule that would allow a President to override valid statutory removal protections with impunity.

STATEMENT

A. The Federal Trade Commission

In 1914, Congress passed, and President Wilson signed, the Federal Trade Commission Act, which established the FTC to prevent “unfair methods of competition in commerce.” J.A. 42. Drawing on the structure of existing agencies—most notably, the Interstate Commerce Commission (ICC) and the Federal Reserve—the Act provided that the FTC “shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate ... for terms of seven years” and that

Commissioners are removable by the President only for “inefficiency, neglect of duty, or malfeasance in office.” 15 U.S.C. § 41. Because it was “essential that [the Commission] should not be open to the suspicion of partisan direction,” the Act provided that no more than three members of the Commission may be of the same party. S. Rep. No. 63-597, at 11 (1914).

The structure of the FTC was essential to its mission. During the legislative debate, “[a]t no point was it proposed that a commission ought to be set up unless it be independent or that an independent officer should be created rather than a commission”; the two concepts were “inextricably bound together.” Robert Cushman, *The Independent Regulatory Commissions* 188 (1941). The FTC’s structural provisions gave the Commission “greater prestige and independence” and “an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience,” all with the hope that “its decisions ... will be more readily accepted as impartial and well considered.” S. Rep. No. 63-597, at 9, 11.

Congress endowed the FTC with the powers it found were necessary to protect the American economy from unfair methods of competition in commerce. The agency was authorized to issue “complaint[s] stating ... charges” related to unfair competition—and then, after a hearing, to issue cease-and-desist orders enforceable in federal court. Pub. L. No. 63-203, ch. 311, § 5, 38 Stat. 717, 719-20 (1914). The FTC was also authorized to perform investigations into business practices and issue and enforce subpoenas, *id.* § 9, 38 Stat. 722, to exercise certain rulemaking authorities, *id.* § 6(g), 38 Stat. 722, to assist courts in

drafting decrees for antitrust cases, *id.* § 7, 38 Stat. 722, and to aid the Attorney General in seeking compliance with antitrust orders by performing investigations and reporting findings, *id.* § 6(c), 38 Stat. 721.

The scope of the FTC's powers was promptly considered by this Court, *see FTC v. Brown Shoe Co.*, 384 U.S. 316, 320-22 (1966) (recounting this history), but its structure was not tested until President Roosevelt attempted to fire Commissioner William Humphrey in 1933. This Court unanimously ruled that the attempted removal was unlawful. *Humphrey's Executor*, 295 U.S. at 632. In reaching that conclusion, the Court characterized the FTC as "predominantly quasi-judicial and quasi-legislative," *id.* at 624, deploying the language that courts and legislators had been using for the prior 50 years to describe similar agencies. *See, e.g., ICC v. Cincinnati, N. O. & T. P. R. Co.*, 167 U.S. 479, 499, 501 (1897). Recognizing that the validity of the removal protections for "members of the Federal Trade Commission necessitated a like view in respect of the Interstate Commerce Commission," the Court found it "plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named." *Humphrey's Executor*, 295 U.S. at 629.

The core provisions regarding the appointment and removal of FTC Commissioners affirmed in *Humphrey's Executor* have remained intact since 1914—with one notable exception, which substantially increased the President's control over the Commission's leadership. One change gave the FTC Chair enhanced authority over the Commission and empowered the President to select the Chair from among the Commission's

members. See Reorganization Plan No. 8 of 1950, § 1, 64 Stat. 1264, 1264 (Mar. 13, 1950). As a result, today, the President's chosen Chair presides at FTC meetings and hearings, controls the agency's expenditures, and is responsible for all personnel decisions. See 15 U.S.C. § 41; 16 C.F.R. § 0.8; Reorganization Plan No. 8 of 1950, § 1(a), 64 Stat. 1264. To promote alignment with his agenda, the President is free at any time to change his designation of Chair to any of the other sitting Commissioners.

In the 90 years since *Humphrey's Executor*, Congress and the President have continued to actively manage the FTC's authority. In 1938, Congress modified Section 5 of the FTC Act to outlaw "unfair or deceptive acts or practices in commerce," Wheeler-Lea Act § 3, Pub. L. No. 75-447, 52 Stat. 111, 111-12 (1938), and also gave the FTC the power to seek injunctions, *id.* § 4, 52 Stat. 114-15. The FTC has likewise gained the ability to "commence a civil action to obtain a civil penalty" in federal court for unfair or deceptive trade acts or practices conducted in knowing violation of a previously issued cease-and-desist order or a Commission rule. See 15 U.S.C. § 45(m)(1).

In the decades since *Humphrey's Executor*, Congress has also restricted the FTC's powers in various ways. For example, in the Federal Trade Commission Improvement Act of 1980, Congress restricted the FTC's authority over children's advertising, the funeral industry, and investigations of the insurance industry. See Pub. L. No. 96-252, §§ 5, 11, 19, 94 Stat. 374, 375, 378, 392. In the Federal Trade Commission Act Amendments of 1994, Congress limited the FTC's authority over agriculture cooperatives and required

the Commission to consider any countervailing benefits to consumers before declaring a practice unfair under Section 5. *See* Pub. L. No. 103-312, §§ 2, 9, 108 Stat. 1691, 1695. And in 2010, under the Dodd-Frank Act, Congress transferred certain FTC rulemaking authorities to a different agency. *See* Pub. L. No. 111-203, § 1061(b)(5), 124 Stat. 1376 (2010).

Congress continues to debate the authority and structure of the FTC. In recent years, Congress has debated hundreds of bills to add, subtract, or alter the FTC's authority and structure. Shortly before this action was filed, for example, Congress considered legislation to transfer the FTC's antitrust authority to the Department of Justice. *See* One Agency Act, S. 1059, 119th Cong. (introduced Mar. 13, 2025); H.R. 385, 119th Cong. (introduced Jan. 14, 2025).

B. The Present Controversy

In 2018, President Trump nominated, and the Senate unanimously confirmed, respondent Rebecca Slaughter to serve as a Commissioner of the FTC. J.A. 29-30, 44. In 2023, President Biden nominated, and the Senate again unanimously confirmed, Commissioner Slaughter to serve a second term. J.A. 30. Her current term expires on September 25, 2029. J.A. 29-30.

On March 18, 2025, Commissioner Slaughter received an email with a message from President Trump that purported to remove her as Commissioner of the FTC. J.A. 26-28. The sole ground was that her “continued service on the FTC is inconsistent with my Administration’s priorities.” *Id.* The President did not assert that Commissioner Slaughter had engaged in “inefficiency, neglect of duty, or malfeasance,” J.A. 37,

39-40, and cited only his “authority under Article II of the Constitution,” J.A. 28. The purported firing of Commissioner Slaughter and Alvaro M. Bedoya would leave the FTC with only three Commissioners, all Republicans.¹

Commissioner Slaughter filed suit against the President, the FTC’s Chairman, and other FTC personnel (collectively, the petitioners in this action), alleging that the President’s attempt to remove her without cause violated the FTC Act. J.A. 1. She sought a declaration, a permanent injunction, or mandamus. J.A. 3.

The district court granted Commissioner Slaughter’s motion for summary judgment and “declared that [her] purported removal” from the FTC “was unlawful” and “without legal effect.” J.A. 90. It enjoined the non-presidential defendants from “interfering with [her] right to perform her lawful duties as an FTC Commissioner until the expiration of her term or unless she is lawfully removed by the President for ‘inefficiency, neglect of duty, or malfeasance in office.’” J.A. 91. The court ruled in the alternative that “mandamus relief would be proper if injunctive relief were to become unavailable.” J.A. 87-88 n.12. The court denied a stay pending appeal. J.A. 92-99.

The D.C. Circuit denied petitioners’ application for a stay pending appeal. J.A. 102-121; *see* J.A. 122-137 (Rao, J., dissenting). Over the votes of three dissenting Justices, this Court granted the application for a

¹ President Trump also purported to fire Commissioner Bedoya without cause. Commissioner Bedoya sued alongside Commissioner Slaughter, but the district court dismissed his claims when he formally resigned his position. J.A. 47, 90.

stay, construed the application as a petition for a writ of certiorari before judgment, and granted the petition.

SUMMARY OF THE ARGUMENT

I. Statutory removal protections for members of the FTC are consistent with the separation of powers.

A. Since the beginning, Congress has exercised its powers under the Commerce Clause and other enumerated authorities by creating multimember agencies with members protected from at-will removal. Founding-era examples include the Sinking Fund Commission of 1790—created at Alexander Hamilton’s request to include both the Vice President and the Chief Justice—and the Revolutionary War Debt Commission, whose members President Washington understood did not serve at his pleasure. Additional agencies with removal protections include the ICC of 1887; the Federal Reserve of 1913; the FTC itself; and dozens more since then. Presidents supported the creation and continued operation of those agencies.

Like the political branches, this Court has repeatedly reaffirmed the constitutionality of such agencies. The key decision is *Humphrey’s Executor*, which considered the same removal protection at issue here and held that Congress could structure the FTC as a multimember body of experts with protection from at-will removal. Subsequent decisions have cemented the line that *Humphrey’s Executor* drew. The Court considered for-cause protections for traditional multimember agencies in *Wiener v. United States* and *Free Enterprise Fund v. PCAOB*; in both cases, the Court unanimously concluded that a single layer of removal protection does not violate the separation of powers.

By choosing those multimember structures, Congress reasonably effectuated its broad constitutional authorities—including, and not least of all, by prioritizing the protection of individual liberty. Multimember agencies limit arbitrary decision-making by avoiding extreme concentrations of power and requiring both collective deliberation and individualized judgment. They promote stability through commissioners’ staggered terms. And commissioners’ dissents can serve as fire alarms by alerting Congress, the public, and reviewing courts that an agency may be diverging from its mission.

B. Petitioners identify no persuasive arguments to overcome the settled understanding of all three branches. This Court’s precedents recognize a general rule of at-will removal and require that the President be able to remove those who help him exercise his conclusive and preclusive constitutional authorities. But that general power is not without limit; and, as Justice Jackson’s canonical concurrence in *Youngstown* explains, removal protections for traditionally independent agencies like the FTC implicate “an area of congressional control” and supply the paradigmatic example of permissible statutory restrictions on the President’s implied removal power. *Youngstown*, 343 U.S. at 638 n.4 (Jackson, J., concurring).

C. At a minimum, *stare decisis* requires retaining *Humphrey’s Executor*. The decision is not egregiously wrong; it is not unworkable; and any issues with the FTC are best addressed by Congress and the President, which are fully empowered to alter the agency’s structure or authorities. Reliance interests powerfully support adherence to the line drawn by *Humphrey’s*

Executor: Congress has structured dozens of administrative agencies based on *Humphrey's Executor* and its progeny, and the regulated public relies on those agencies' structural provisions in organizing private conduct. Petitioners have not shown any special justification for overruling a 90-year-old precedent on which much of modern governance is based.

II. Courts have authority to redress unlawful presidential removals.

A. Since before the Founding, courts of law and equity granted relief to officials whose removals they declared unlawful. That relief can take the form of mandamus, declaratory judgment, or injunction. Each form of relief is amply supported by centuries of case law.

B. Petitioners' contrary arguments lack merit. If Article II does not give the President an absolute ability to remove every Executive Branch official, it does not preclude historically grounded remedies to redress unlawful removals. Nor does any federal statute clearly displace the lengthy common-law and equitable tradition of affording remedies to improperly removed officials.

ARGUMENT

I. The Statutory Removal Protections for Members of the Federal Trade Commission Are Consistent with the Separation of Powers.

This case does not come to the Court on a blank slate. Since the Founding era, Congress has created—and Presidents have approved—multimember agencies that do not exercise the President's conclusive and preclusive Article II authority and that have some

degree of independence from presidential control. And every time a constitutional question about the structure of such agencies has come to the Court, it has unanimously affirmed removal protections of the kind at issue here. Those decisions are correct—and, if there were any doubt, principles of *stare decisis* would support retaining the traditional independence of such multimember bodies.

A. All three branches have blessed for-cause-removal protections for multimember commissions like the FTC.

All three branches of government have long approved multimember agencies whose members are protected from at-will removal. In doing so, they have recognized that this agency structure advances the liberty interest that the separation of powers exists to protect.

1. *Since the Founding, Congress and Presidents have created and empowered multimember independent agencies.*

“In separation-of-powers cases this Court has often put significant weight upon historical practice.” *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 23 (2015) (citation and internal quotation marks omitted). Here, “our whole experience as a nation” supports the constitutionality of multimember agencies that do not exercise the President’s inherent and exclusive constitutional powers and whose members cannot be removed at will by the President. *NLRB v. Noel Canning*, 573 U.S. 513, 557 (2014) (citation omitted).

- a. Start with the First Congress, whose legislative actions are “contemporaneous and weighty evidence”

of the Constitution’s true meaning. *Marsh v. Chambers*, 463 U.S. 783, 790 (1983) (citation omitted). Recent historical research demonstrates that the First Congress “experimented with independent boards and commissions” whose members exercised substantial power and were not all subject to unrestricted presidential removal. Christine Kexel Chabot, *Is the Federal Reserve Constitutional? An Originalist Argument for Independent Agencies*, 96 Notre Dame L. Rev. 1, 27 (2020) (quoting Jerry L. Mashaw, *Recovering American Administrative Law: Federalist Foundations, 1787-1801*, 115 Yale L.J. 1256, 1340 (2006)).

The lead example is the “independent Sinking Fund Commission,” a multimember body—with some members who could not be removed by the President—created in 1790 to disburse funds for repayment of public debt. Chabot, *supra*, at 3-5, 33-35; see *Collins v. Yellen*, 594 U.S. 220, 253 n.19 (2021). The Sinking Fund Commission was created on the suggestion of Treasury Secretary Alexander Hamilton to ensure “the proper funding of the present debt,” which Congress had determined was essential to the Nation’s long-term “honor and prosperity.” Alexander Hamilton, *Report Relative to a Provision for the Support of Public Credit* (Jan. 9, 1790), <https://perma.cc/BW99-R9XR>. Hamilton “propose[d]” that Congress create a five-member commission consisting of the Vice President, the Speaker of the House of Representatives, the Chief Justice, the Treasury Secretary, and the Attorney General, any “three of” whom could authorize the payment of debt. *Id.* Congress generally accepted Hamilton’s proposal, substituting the Secretary of State for the Speaker of the House but leaving two

commissioners unremovable by the President. Chabot, *supra*, at 40.

The Sinking Fund Commission represents the first exercise of executive power—specifically, fiscal decision-making—by officers insulated from presidential control. Indeed, that insulation was essential to the commission’s design, because the First Congress knew that, in England, “political actors” would “raid[]” sinking funds “over and over for spending purposes other than debt redemption.” Chabot, *supra*, at 37-38 (internal quotation marks omitted). And in an early example of the Commission’s operation, Chief Justice Jay convinced a majority of the Commission to approve “open market purchases” that Thomas Jefferson, as Secretary of State, opposed. *Id.* at 43-46.²

The First Congress also enacted other multimember commissions that included officials whom the President could not remove. One notable body was the Revolutionary War Debt Commission—a “board, to consist of three commissioners,” charged with settling debt claims between the United States and the thirteen States. Act of Aug. 5, 1790, ch. 38, § 1, 1 Stat. 178, 178. Hamilton described those commissioners, who served a fixed term until 1792, as “distinct and Independ[e]nt Officers, charged with a special and delicate Trust.” Letter from Alexander Hamilton to Benjamin Hawkins (Mar. 12, 1794),

² The Chief Justice was also part of a five-member commission to inspect the coinage at the mint; the votes of any three commissioners could “disqualif[y]” the mint’s officers by concluding that “the gold and silver” was “inferior” to the statutory standard. See An Act Establishing a Mint, and Regulating the Coins of the United States, ch. 16, § 18, 1 Stat. 246, 250 (1792).

<https://perma.cc/9T7F-XH39>. President Washington did not include in those commissioners' commissions the typical language stating that they served "during the pleasure" of the President. Christine Kexel Chabot, *The Interstitial Executive: A View from the Founding* 20 (Oct. 28, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5673491. This commission accordingly was independent in every modern sense.

b. Thus, as the United States entered its second century, there was ample historical evidence that Congress had authority to create multimember agencies whose members the President could not remove at his pleasure. And under its broad powers to regulate interstate commerce, "establish[]" federal offices, and "make all Laws which shall be necessary and proper for carrying into Execution" its own powers and "all other Powers" vested "in any Department or Officer," see U.S. Const. art. I, § 8, cl. 3, 18; art. II, § 2, cl. 2, Congress repeatedly exercised its authority to create multimember independent agencies. See *PHH Corp.*, 881 F.3d at 173 (Kavanaugh, J., dissenting) (listing agencies). In 1887, Congress established the ICC, whose members could be removed only for "inefficiency, neglect of duty, or malfeasance in office." Act of Feb. 4, 1887, ch. 104, § 11, 24 Stat. 379, 383. In 1913, it created the Federal Reserve, whose members could be removed only "for cause by the President." Federal Reserve Act, Pub. L. No. 63-43, § 10, 38 Stat. 251, 260 (1913). And in 1914, Congress established the FTC, protecting its commissioners from removal except for "inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. At each step, Congress concluded that the "special instrumentality" of a

multimember commission was “essential” to successful regulation of a critical economic issue. *See, e.g.*, S. Rep. No. 49-46, at 213 (1886).

In short, multimember agencies whose officers held removal protections have “deep historical roots.” *PHH Corp.*, 881 F.3d at 174 (Kavanaugh, J., dissenting). So this case comes to the Court “more than two centuries into an unbroken congressional practice, beginning at the beginning,” of Congress creating multimember agencies that can operate with some degree of independence from the President. *CFPB v. Cmty. Fin. Servs. Ass’n*, 601 U.S. 416, 445 (2024) (Kagan, J., concurring).

Presidents have not merely acquiesced in the centuries-old congressional practice of creating multimember commissions. They have signed into law numerous bills creating, funding, and empowering “some two-dozen multimember independent agencies,” *Seila Law*, 591 U.S. at 230, and commissioned countless appointees protected from their own at-will removal. Presidents have even proposed the creation of agencies with for-cause-removal protections. *See, e.g.*, Reorganization Plan No. 7 of 1961, § 102(a), 75 Stat. 840 (President Kennedy’s later-enacted proposal to create the Federal Maritime Commission).

2. This Court has repeatedly upheld independent multimember agencies as consistent with the separation of powers.

The extensive legislation creating these multimember agencies has not flown under this Court’s radar—to the contrary, this Court has affirmed these laws time and again.

The key decision is *Humphrey's Executor*, which unanimously held that Congress had authority to “limit[]” the removal of FTC commissioners to “specific causes.” 295 U.S. at 621. The Court reasoned that Congress’s authority to create a multimember agency like the FTC “includes, as an appropriate incident, power to fix the period during which [its members] shall continue [in office], and to forbid their removal except for cause in the meantime.” *Id.* at 629. In reaching that conclusion, the Court had no trouble distinguishing *Myers v. United States*, 272 U.S. 52 (1926), as inapplicable to “officers of the character of those just named”—that is, to members of multimember “administrative bod[ies]” that “carry into effect legislative policies.” 295 U.S. at 628-29. The nine-Justice majority in *Humphrey's Executor* included all four of the still-serving Justices who also joined *Myers*, including Justice Sutherland, who delivered the opinion of the Court.

Humphrey's Executor has been repeatedly reaffirmed. *Wiener v. United States*, 357 U.S. 349 (1958), doubled down on “the philosophy of *Humphrey's Executor*” by protecting commissioners of a multimember agency—the War Claims Commission, tasked with making final and unreviewable decisions on compensation for prisoners of war. *Id.* at 354-55. That was so even though Congress did not expressly vest those commissioners with for-cause protection. *Id.* at 356.

Free Enterprise Fund v. PCAOB, 561 U.S. 477 (2010), explained the case as holding “that Congress can, under certain circumstances, create independent agencies run by principal officers ... whom the President may not remove at will but only for good cause.”

Id. at 483. As relevant here, all nine members of the Court concluded that a single layer of for-cause protection for the multimember PCAOB did not violate the separation of powers, even though the Board wielded “expansive powers to govern an entire industry.” *Id.* at 485. The five-Justice majority cured the separation of powers violation arising out of double for-cause removal by crafting a “solution to the problem” that “leaves the Board removable by the Commission at will, and leaves the President separated from Board members by only a single level of good-cause tenure.” *Id.* at 508-10 (emphasis added). And the four dissenting Justices were of the view that the statute “violates no separation-of-powers principle.” *Id.* at 514 (Breyer, J., dissenting).

In short, *Humphrey’s Executor*, *Wiener*, and *Free Enterprise Fund* all considered removal protections for traditional multimember agencies; all three times, the Court unanimously concluded that a single layer of for-cause protection does not violate the separation of powers.

Cases not involving traditional independent agencies are consistent with those precedents. For example, this Court’s decision in *Seila Law* recognized that Congress can “give for-cause removal protections to a multimember body of experts.” 591 U.S. at 216. *Seila Law* held that Congress lacked the authority to create an “almost wholly unprecedented” single-member agency, the Consumer Financial Protection Bureau (CFPB), insulated from presidential control. *Id.* at 220. It explained that, in creating that agency, “Congress deviated from the structure of nearly every other independent administrative agency in our history”—

that is, from the longstanding tradition of “expert agencies led by a *group* of principal officers removable by the President only for good cause.” *Id.* at 203-04. Notably, seven Justices agreed that, although the CFPB “wields significant executive power,” *id.* at 204, “converting [it] into a multimember agency” would be an “alternative response[] to the problem” caused by the CFPB’s novel structure—a remedy that would make no sense if removal protections for traditional multimember agencies were impermissible, *id.* at 237 (plurality opinion); *see id.* at 298 (Kagan, J., concurring in the judgment with respect to severability and dissenting in part).

3. *The multimember structure of the FTC advances the separation of powers.*

a. The line drawn by history and this Court’s precedent is grounded in the separation of powers. The “structural principles secured by the separation of powers protect the individual,” *Stern v. Marshall*, 564 U.S. 462, 483 (2011), by “preserving liberty,” *Bowsher v. Synar*, 478 U.S. 714, 730 (1986). This Court’s removal jurisprudence has taken that “liberty” interest into account. *See, e.g., Free Enter. Fund*, 561 U.S. at 501.

Multimember agencies are structured to respect these liberty principles. A multimember agency structure “helps to prevent arbitrary decisionmaking and abuse of power” and thus “protect[s] individual liberty.” *PHH Corp.*, 881 F.3d at 183 (Kavanaugh, J., dissenting). Before a multimember agency can “infringe” a person’s “liberty in some way”—for instance, by regulating one’s use of property—“a majority of commissioners must agree.” *Id.* That need for

consensus—and the “deliberative decisionmaking” it fosters—will generally produce less “extreme” decisions. *Id.* at 184 (citations omitted). After all, “[a] multi-member agency can go only as far as the middle vote is willing to go.” *Id.* Because multimember agencies face internal constraints that lead to more modest actions, they better protect individual liberty than an agency that concentrates power “in the hands of a single individual accountable to no one.” *Seila Law*, 591 U.S. at 224.

In addition, “a multi-member independent agency (particularly when bipartisan) supplies a built-in monitoring system for interests on both sides because that type of body is more likely to produce a dissent if the agency goes too far in one direction.” *PHH Corp.*, 881 F.3d at 185 (Kavanaugh, J., dissenting) (citation and internal quotation marks omitted). A dissent “can serve as a ‘fire alarm’ that alerts Congress and the public at large that the agency’s decision might merit closer scrutiny.” *Id.* (citation and internal quotation marks omitted). As FTC Chairman Ferguson put it: “[I]f you have an agency that is exceeding the law, abusing the companies that it purports to regulate, it’s helpful for markets, for Courts, for litigants, for government transparency, to have people on the other party pointing this out and saying it in dissents.” J.A. 32.

b. Accordingly, the longstanding practice of creating independent agencies with a multimember structure “is not an accident.” *PHH Corp.*, 881 F.3d at 186 (Kavanaugh, J., dissenting). Rather, Congress and Presidents have chosen that path by balancing the need for a “body of experts” to regulate certain sectors

of the economy, *Humphrey's Executor*, 295 U.S. at 624, with the need to protect the President's Article II prerogatives and individual liberty.

The FTC exemplifies that balance. Congress has tasked the five-member FTC with promoting fair competition. In furtherance of that role, it has—since the agency's creation—assigned the FTC a blend of civil enforcement, adjudication, and rulemaking responsibilities. *See supra* at 5-6. As the agency has succeeded at those tasks, Congress has assigned it further powers as “outgrowth[s]” of its original authorities, *see* J.A. 68, 111, but when its interventions were unwelcome, Congress has restricted its powers, *see supra* at 6-8.

The FTC's structure is critical to the successful discharge of these responsibilities. Congress believed that effective regulation required the FTC's members to have “a proper knowledge of ... the practical affairs of industry,” 295 U.S. at 624, and thus gave Commissioners “staggered terms” that generally “prevent[] complete turnovers in agency leadership and guarantee[] that there would always be some Commissioners who had accrued significant expertise,” *Seila Law*, 591 U.S. at 218. Congress also believed it was critical for the FTC to have “independence” and to act with “impartial[ity]” free from “the suspicion of partisan direction,” S. Rep. No. 63-597, at 11, and thus required bipartisan membership and allowed the President to remove Commissioners for “inefficiency, neglect of duty, or malfeasance in office,” 15 U.S.C. § 41, but not merely for arbitrary or partisan reasons, *see Humphrey's Executor*, 295 U.S. at 629. And, since 1950, the President has had the further power to select the Chair of the FTC, *see* 15 U.S.C. § 41, which “serve[s]

as a check on the” Commission’s “authority and help[s] bring the agency in line with the President’s preferred policies.” *Seila Law*, 591 U.S. at 225. The President also has the power to “recommend or veto spending bills that affect the operation of administrative agencies,” thus allowing him “to influence the[ir] policies.” *Id.* at 226 (citation omitted).

For more than a century, the framework that Congress and President Wilson created has allowed the FTC to protect Americans from anticompetitive and predatory behavior. And for the 90 years between *Humphrey’s Executor* and the start of this case, 15 Presidents of both parties have made appointments, designated chairmen, signed legislation, and passed budgets supporting the FTC, while accepting that Commissioners are not subject to their at-will removal.

B. Petitioners offer no sound basis to upend Congress’s settled authority to enact for-cause removal protections for multimember agencies.

Petitioners provide no persuasive argument to overcome the established understanding of all three branches that Congress can structure multimember agencies by including for-cause removal protections.

1. The Constitution’s text and structure do not require an absolute rule of at-will removal.

Petitioners err in insisting (at 24, 29) that the “Constitution’s text” and “structure” require that the President have unlimited power to remove the heads of traditional multimember regulatory commissions.

a. To start, nothing in the Constitution’s text confers an absolute, unrestricted power to remove such officers at “the President’s will.” U.S. Br. 2. The only provision specifically addressing removal does not give the President any removal power. U.S. Const. art. II, § 4 (providing that “all civil Officers ... shall be removed from Office” on impeachment and conviction). And while this Court has explained that the Vesting Clause and the Take Care Clause create a “general rule” of at-will removal, that rule is not an absolute command applicable to all officers in all circumstances, *Seila Law*, 591 U.S. at 204, 215.

For good reason: As Chief Justice Rehnquist explained for the Court, “extrapolat[ing]” an unrestricted removal power from such “general constitutional language” is “more than the text will bear.” *Morrison v. Olson*, 487 U.S. 654, 690 n.29 (1988). Indeed, one noted scholar recently explained that “the Vesting Clause does not carry this hidden but dramatic message” because “the power to execute the law is itself subject to the law.” Caleb Nelson, *Must Administrative Officers Serve at the President’s Pleasure?*, Democracy Project, Sept. 29, 2025, <https://perma.cc/Z25B-36UD>. “[N]either the Vesting Clause nor anything else in Article II compels the inference that after officers have been duly appointed, and after the President has issued the commissions that the Constitution requires, the President must be able to terminate the appointments and rescind the commissions at will.” *Id.*

A similar analysis applies to the Take Care Clause. “In the framework of our Constitution,” the Take Care Clause “refutes the idea that [the President] is to be a

lawmaker.” *Youngstown*, 343 U.S. at 587. Thus, “if Congress reasonably decides that the President should be able to remove some duly appointed officers only for certain causes and through certain processes, the President could discharge his obligations under the Take Care Clause by going through those processes when warranted.” Nelson, *supra*. The FTC’s structure is fully consistent with that obligation. The statutory “inefficiency, neglect of duty, or malfeasance in office” standard, 15 U.S.C. § 41, uses “the terms courts traditionally used to describe an official’s failure to faithfully execute his office,” Jane Manners & Lev Menand, *The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence*, 121 Colum. L. Rev. 1, 71 (2021). It thus allows removal for precisely “the official misbehavior that the Take Care Clause ... obliges the President to prevent.” *Id.* at 8; see *Free Enter. Fund*, 561 U.S. at 498, 509.

b. That is not to say that the Constitution imposes no limitations on Congress’s power to regulate the President’s removal authority. Where the President’s power to act stems “from the Constitution itself,” his authority is “sometimes ‘conclusive and preclusive,’” and Congress cannot restrict it through removal protections or otherwise. *Trump v. United States*, 603 U.S. 593, 607 (2024) (citations omitted). Thus, Congress could not require the President to exercise his commander-in-chief, criminal-prosecution, or treaty-making powers through a multimember agency with removal protections. See U.S. Br. 28. That is because, “[b]y the constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion,” such that the officers who assist him in those

duties must “conform precisely to the will of the President.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 165-66 (1803); see *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 610 (1838).

“But of course not all of the President’s official acts fall within his ‘conclusive and preclusive’ authority.” *Trump*, 603 U.S. at 609. “Congress has concurrent authority over many government functions, and it may sometimes use that authority to regulate the President’s official conduct.” *Id.* at 652 (Barrett, J., concurring); see *id.* at 651 n.1 (rejecting argument that “all exercises of the Take Care power fall within the core executive power”). As an exercise of its substantive regulatory authority (for example, under the Commerce Clause), its authority to establish federal offices, and its Necessary and Proper Clause authority, Congress may seek to temper and safeguard its grant of regulatory power to an agency by establishing a multimember structure with for-cause removal protections—the very structure that protects individual liberty against the arbitrary exercise of power. See *supra* at 20-23.

That is what Congress has done with the FTC and the many other agencies that it has created to help regulate the American economy. Congress determined that a purely executive department would be ineffective, see S. Rep. No. 63-597, at 6, and so created the FTC to “carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed” on matters of competition. *Humphrey’s Executor*, 295 U.S. at 628. Those economic-policy decisions fall outside of the President’s “conclusive and preclusive” Article II powers. *Trump*,

603 U.S. at 607; *see also Kendall*, 37 U.S. at 610 (rejecting the “alarming doctrine” that every executive official “is under the exclusive direction of the President”).³ And if there were any doubt, history would dispel it: For all petitioners’ sky-is-falling concerns, Congress has never sought to vest the President’s conclusive and preclusive power in a multimember agency, deploying that structure primarily for economic bodies like the Sinking Fund Commission, the ICC, the Federal Reserve, and the FTC itself.

Youngstown confirms that the President has no inherent authority to remove an FTC commissioner. Justice Jackson’s canonical concurrence observed that the President’s “power is at its lowest ebb” when he “takes measures incompatible with the express or implied will of Congress.” 343 U.S. at 637. And as the sole example of that principle in action, Justice Jackson pointed to “President Roosevelt’s effort to remove a Federal Trade Commissioner,” which, he explained, was “found to be contrary to the policy of Congress and impinging upon an area of congressional control, and so his removal power was cut down accordingly.” *Id.* at 638 n.4 (citing *Humphrey’s Executor* and distinguishing *Myers*). This Court’s foundational separation-of-powers framework thus incorporates the rule of *Humphrey’s Executor* and confirms that the

³ Petitioners briefly suggest (at 28) that the FTC “conducts foreign relations.” But as petitioners’ own discussion indicates, the FTC is empowered to enter into agreements with its international counterparts only after “final approval ... by the Secretary of State.” 15 U.S.C. § 46(j)(4). And if that provision were somehow problematic, the right remedy would not be to overhaul the FTC’s entire structure—it would be to invalidate that single authority.

extraordinarily broad claim of executive authority made here “must be scrutinized with caution.” *Id.* at 638.⁴

c. The Opinion Clause further undermines petitioners’ assertion of an illimitable Presidential removal authority. That clause authorizes the President to “require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices.” U.S. Const. art. II, § 2, cl. 1. That provision is strong evidence that there can be some principal officers who enjoy some protections from presidential removal: “[T]he fact that the Constitution specifies this relatively minor respect in which the President can command principal officers suggests that the Vesting Clause does not give the President a *general* authority to ... remove all who displease him.” Nelson, *supra*; see John F. Manning, *Separation of Powers as Ordinary Interpretation*, 124 Harv. L. Rev. 1939, 2035 (2011) (similar). Multimember agencies’ commissioners are among the principal officers whose views the President may require but whose removal without cause he cannot effect.

d. Indeed, petitioners’ own arguments confirm that the Constitution’s text and structure do not require that the President have authority to remove all executive officers at will. Petitioners concede (at 29-30) that

⁴ Petitioners thus err (at 16) in claiming that the *Youngstown* concurrence (as quoted in *Trump*, 603 U.S. at 608) supports the principle that the President’s removal power is beyond all congressional regulation. The opinion says precisely the opposite: It recognizes that, under *Humphrey’s Executor*, there are “area[s] of congressional control” where the removal power is subject to legislation.

one multimember, historically independent agency—the Federal Reserve—may warrant an exception from the “general rule” of at-will removal. Why? Not because the Federal Reserve does not exercise executive power. *See, e.g.*, 12 U.S.C. § 504 (civil penalties); *id.* § 4009(c) (enforcement authority); *see also* U.S. Br. 3 (arguing that the “activities” of agencies “*must* be” executive). Rather, petitioners assert (at 29) that the agency’s “history” allows for an exception to the general rule.

That concession to history should be fatal to petitioners’ arguments. If the Vesting and Take Care Clauses can accommodate one historical exception to the general rule of at-will removal, they can accommodate others equally grounded in history, too. The FTC is part of a lengthy historical tradition of multimember regulatory bodies whose members can be granted statutory for-cause removal protections—the same tradition into which the Federal Reserve also falls.

2. The First Congress’s actions support rather than reject the creation of independent multimember agencies.

Contrary to petitioners’ assertions, none of this analysis is inconsistent with “[t]he Decision of 1789,” in which Congress made the Secretary of Foreign Affairs, the Secretary of the Treasury, and the Secretary of War removable at will. U.S. Br. 15-16. Since *Myers*, scholars have contested the precise contours of the First Congress’s debates. The modern consensus is that those debates evince thoughtful views about the President’s removal power but “do not show a consensus for any particular interpretation of the Constitution” outside of the specific agency-structuring choices

made during those debates. Nelson, *supra*; see, e.g., Saikrishna Prakash, *New Light on the Decision of 1789*, 91 Cornell L. Rev. 1021, 1073 (2006); Manning, *supra*, at 2031.

This Court need not delve into those questions to decide this case: the First Congress’s decision (at the Washington Administration’s urging) to create the Sinking Fund and Revolutionary War Debt Commissions in 1790 confirms that the Decision of 1789 did not preclude the creation of multimember agencies with some insulation from removal. Those two decisions, taken by the same legislators one year apart, must be understood in harmony. Petitioners’ categorical rule fails to cohere the First Congress’s two choices—choices that foreshadow the differing results in *Myers* and *Humphrey’s Executor*.

3. *Petitioners’ policy objections are misplaced.*

Finally, petitioners’ rhetorical flourishes and policy arguments do not advance their case. Contrary to petitioners’ claim (at 5), this case does not involve “empowering unelected agency heads to wield executive power walled off from presidential control and electoral accountability.” Nor does it leave the President “a spectator in an Executive Branch of multimember agencies.” U.S. Br. 29. The President appointed a new FTC chair on his first day in office, and no one contests that authority. Nor does anyone contest that “[a]ny Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office,” a standard that the President has not sought to satisfy here. 15 U.S.C. § 41.

Rather, the only question is whether the President may override Congress and remove any member of a

traditional multimember agency without cause simply because he perceives the member as unwilling to conform to his “will.” U.S. Br. 2. The Constitution does not compel that result. The lengthy history described above confirms that Congress can impose a for-cause removal standard to ensure that agencies can effectively exercise the economic regulatory powers conferred on them.

Petitioners also get it backwards in claiming (at 34) that “the growth of the administrative state since 1935” requires at-will removal. The power of the Executive Branch—both absolutely and relatively to Congress—has indeed increased since *Humphrey’s Executor*. But it would be perverse for this Court to respond to those developments by giving the President *additional* power that Congress has denied him. Particularly given that individual liberty is protected—not undermined—through multimember deliberation and dissent, petitioners’ identified problem points in the opposite direction as their proposed solution.

C. *Stare decisis* requires retaining *Humphrey’s Executor* and related precedents.

Because the long line of precedent beginning with *Humphrey’s Executor* is “correct,” there is “no need for th[e] principle” of *stare decisis* “to prop it up.” *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015). But even if the Court would have come out the other way 90 years ago, it should retain this “entrenched” body of precedent. *In re Aiken Cnty.*, 645 F.3d 428, 446 (D.C. Cir. 2011) (Kavanaugh, J., concurring). Indeed, each of the traditional *stare decisis* factors cuts against petitioners’ request that the Court overhaul “some two-dozen multimember independent agencies.” *Seila*

Law, 591 U.S. at 230. Petitioners thus have not met their “burden of justif[ying]” such a radical change. Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 Tex. L. Rev. 1711, 1711 (2013).

1. *This Court’s many removal cases are neither egregiously wrong nor unworkable.*

Petitioners’ *stare decisis* arguments principally repeat their merits points. For the reasons set out above, those arguments from text, structure, history, and policy are incorrect. *See also Gamble v. United States*, 587 U.S. 678, 691 (2019) (explaining that to overturn a longstanding precedent, the “historical evidence must” be “better than middling”). But at a minimum, petitioners have identified nothing “egregious[]” or “unworkable” about 90 years of this Court’s precedents. *Dobbs v. Women’s Health Org.*, 597 U.S. 215, 286, 293 (2022).

a. Petitioners’ criticisms of *Humphrey’s Executor* miss the mark.

The first problem is one of selective quotation. Petitioners contend that “[t]he decision rests on the erroneous and now-repudiated premise that the 1935 FTC exercised only ‘quasi-legislative or quasi-judicial powers,’ ‘as distinguished from executive power.’” U.S. Br. 31 (quoting 295 U.S. at 628). That is incorrect. *Humphrey’s Executor* said that the FTC “exercises no part of the executive power *vested by the Constitution in the President*,” and that “[t]o the extent that it exercises any executive function, *as distinguished from executive power in the constitutional sense*, it does so in the discharge and effectuation of its quasi legislative or quasi judicial powers.” 295 U.S. at 628 (emphases added). And the decision embraced *Marbury’s*

conclusion that “there was a distinction between” a justice of the peace, who could be protected from removal, “and officers appointed to aid the President in the performance of his constitutional duties,” who must be “removable at will.” *Id.* at 631 (citing 5 U.S. (1 Cranch) at 162, 165-66). Thus—just as Justice Jackson noted—*Humphrey’s Executor* determined that the FTC did not exercise the President’s conclusive and preclusive powers. That was correct in 1935 and remains correct now.

And in using the phrase “‘quasi legislative’ or ‘quasi judicial,’” 295 U.S. at 628, the *Humphrey’s Executor* Court did not commit a “grievous[]” error, U.S. Br. 31. No less a constitutional authority than James Madison described a Treasury Department official as “partak[ing] of a judiciary quality as well as executive.” 1 Annals of Cong. 636. And this Court described the ICC’s “quasi judicial” and “quasi legislative” powers two decades before *Humphrey’s Executor*. *Baer Bros. Mercantile Co. v. Denver & Rio Grande R.R. Co.*, 233 U.S. 479, 483 (1914). This Court has more recently recognized that activities can “take ‘legislative’ and ‘judicial’ forms,” even though they are carried out by officials in the Executive Branch. *City of Arlington v. FCC*, 569 U.S. 290, 305 n.4 (2013). That is what the *Humphrey’s Executor* Court meant when it described the FTC commissioners—whose methods of deliberation do indeed resemble a legislature or a court, and who exercise both rulemaking and adjudication functions—as quasi-legislative and quasi-judicial. And regardless, as petitioners note (at 32), this Court’s later decisions have reaffirmed or declined to revisit *Humphrey’s Executor* while recognizing that the FTC

wields executive authority. *See, e.g., Seila Law*, 591 U.S. 216 n.2; *Morrison*, 487 U.S. at 690 n.28.

Thus, while some statutes enacted after *Humphrey's Executor* have assigned the FTC additional responsibilities, *see* U.S. Br. 25-28, the constitutionality of the FTC's removal protections does not depend on whether the FTC has been granted more powers than it had in 1914 or 1935, or even whether any of those old or new authorities are "executive." After all, this Court has held that all agency activities can be characterized as "executive." *Seila Law*, 591 U.S. at 216 n.2. And it has also held that the "constitutionality of removal restrictions" does not "hinge[] on" the "relative importance of" an agency's "regulatory and enforcement authority." *Collins*, 594 U.S. at 253. Those precedents foreclose petitioners' attempt to distinguish the FTC of 1935 from the FTC of 2025.

b. Petitioners are also wrong to question (at 34-35) the workability of the precedent. Which multimember agencies are insulated from presidential control is "commonly understood." *Free Enter. Fund v. PCAOB*, 537 F.3d 667, 695 (D.C. Cir. 2008) (Kavanaugh, J., dissenting). Presidents have long accepted those limitations and used available means—including their appointments power—to influence such agencies' agendas. And Presidents of both parties have authorized and supported independent multimember agencies. No confusion exists that would require the Court to jettison its longstanding approach.

2. *Overturning Humphrey's Executor would short-circuit the democratic process.*

Petitioners' workability concerns are particularly misdirected here, where Congress could address any legitimate issue with the FTC's operation. "The bar" for overruling precedent "is even higher in fields in which Congress 'exercises primary authority' and can, if it wishes, override this Court's decision with contrary legislation." *South Dakota v. Wayfair*, 585 U.S. 162, 192 (2018) (Roberts, C.J., dissenting).

That principle applies with full force here. In other contexts, "the Court has previously overruled decisions that wrongly removed an issue from the people and the democratic process." *Dobbs*, 597 U.S. at 269. But in this context, the effect of overturning *Humphrey's Executor* and its progeny would be to prevent the American people, through their representatives, from structuring the government in a manner consistent with our Nation's history and designed to protect the President's prerogatives and individual liberty alike.

After all, if petitioners are right that independent multimember agencies threaten rather than safeguard liberty, they have an easy solution: asking Congress to restructure those bodies. "*Humphrey's Executor* holds only that independent agencies are constitutionally *permissible*, not that such agencies are constitutionally *required*." *Aiken Cnty.*, 645 F.3d at 447 (Kavanaugh, J., concurring). Thus, the political branches "are able as a policy matter to ensure that agencies are accountable to the people and run efficiently and effectively." *Id.*

There is every reason to think that Congress could and would respond to any problem that independent

agencies currently pose. For instance, Congress has reorganized the FTC and other agencies to enhance presidential authority in the past. *See supra* at 6-7. And there is pending legislation to further curtail the FTC's powers by transferring its antitrust authority to the Justice Department. *See supra* at 8. This Court should not cut short that continuing democratic debate.

3. *Reliance interests powerfully support adhering to the line drawn by history and affirmed in Humphrey's Executor.*

Stare decisis has "added force" when the people, acting through their elected representatives, have long relied on judicial precedent. In those instances, overruling such precedent threatens to dislodge settled expectations and could require "an extensive legislative response." *Hilton v. S.C. Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991). Here, Congress structured dozens of administrative agencies in reliance on the rule of *Humphrey's Executor*, assigning the Executive Branch power that it otherwise might never have conveyed. And the regulated public has come to rely on those agency structures in organizing private conduct.

As already explained, Congress has empowered numerous agencies subject to the requirement that they be structured as "bod[ies] of experts appointed by law, "informed by experience," and protected by for-cause removal restrictions. *Humphrey's Executor*, 295 U.S. at 623-25. In making that judgment, Congress has sought to avoid arbitrary decision-making, promote deliberation and dissent, and thus secure individual liberty. *PHH Corp.*, 881 F.3d at 183-85 (Kavanaugh, J., dissenting). If Congress had been unable to

structure those agencies in such a manner, it might not have authorized them to wield regulatory and enforcement power in the first place. And Congress's reliance interests do not stop there: In expanding agency authority in subsequent laws, Congress acted on the understanding that those agencies would be insulated from political pressures and would not be under the control of one individual.

Take, for just one example, the Merit Systems Protection Board (MSPB). To safeguard the civil service from political interference, Congress created the MSPB as a "strong and independent" agency, S. Rep. No. 95-969, at 6-7 (1978), whose members may be removed "only for inefficiency, neglect of duty, or malfeasance in office," 5 U.S.C. § 1202(d); *see id.* § 1201. And Congress empowered the MSPB to adjudicate civil-service complaints brought by individuals against the Executive Branch—indeed, it generally made that adjudication a prerequisite for civil servants to get into federal court. *See id.* §§ 1204, 7703. It is obvious that Congress would never have entrusted the MSPB's powers to the President's "alter ego." *Myers*, 272 U.S. at 133. After all, it would be passing strange to seek to *strengthen* an independent civil service by allowing officers subject to unfettered presidential control to adjudicate (or decline to adjudicate) the propriety of the Executive Branch's personnel actions.

Or consider the choices Congress made in structuring and empowering the FTC. To achieve the goal that the FTC's structure "should not be open to the suspicion of partisan direction," S. Rep. No. 63-597, at 11, Congress required that the Commission be bipartisan and that its members would serve staggered seven-

year terms, so that the agency always had a reservoir of expertise, 15 U.S.C. § 41. Those choices make no sense if each Commissioner must march in lockstep with “the President’s will.” U.S. Br. 2. Indeed, if Congress had been comfortable with that sort of agency, it would simply have entrusted the FTC’s functions to a Cabinet agency like the Justice Department—an option it rejected, having expressly found that regulation solely through an executive department was too inconsistent across administrations. *See* S. Rep. No. 63-597, at 6, 11.

In suggesting (at 36) that “severability clauses” will save multimember agencies’ operations, petitioners confirm how disruptive their request really is. Petitioners’ severability argument is a tacit concession that it would wreak havoc throughout the law to unsettle Congress’s many decisions to assign particular powers to agencies with particular structures. And while severability was an option in *Seila Law* because “there is nothing in the text or history of the Dodd-Frank Act that demonstrates Congress would have preferred *no* CFPB to a CFPB supervised by the President,” 591 U.S. at 235 (plurality opinion), petitioners should not be confident that this argument will prevail for every statute empowering every agency that they would have this Court remake. After all, for the reasons just described, litigants will in many cases muster persuasive evidence that Congress granted authority to multimember agencies like the FTC only in reliance on *Humphrey’s Executor’s* holding that those agencies would enjoy some independence from presidential control. This Court should not take on that agency-by-agency, statute-by-statute, function-by-function reconsideration of the Executive Branch.

And the disruption caused by overturning *Humphrey's Executor* will not solely be felt within the government. Throughout America, the public relies on predictability in the operation of the Executive Branch. And regulated industries have structured their affairs on the understanding that their regulators function in a particular way—for example, that they will exhibit the stability and continuity ensured by tenure-protected and staggered terms. Overturning nine decades of precedent would cause “unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 410-11 (2024).

4. *The Court should not overturn such a longstanding precedent.*

Finally, “the antiquity of the precedent” strongly favors retaining *Humphrey's Executor*. *Montejo v. Louisiana*, 556 U.S. 778, 792 (2009). For 90 years, this Court has blessed independent multimember agencies. Petitioners do not show any “special justification” for overruling such an established precedent at such a late date. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

II. Courts Have Authority To Remedy Unlawful Removals.

Petitioners contend (at 38) that courts have no power to grant “any remedy, legal or equitable,” even if Commissioner Slaughter’s removal violated the law. Centuries of legal history refute that remarkable argument. Common-law courts have long adjudicated improper removals of officers and provided remedies to ensure they continued in office. And courts sitting in equity have long preserved the status quo through injunctions. Petitioners offer no sound basis to break from that tradition and insulate lawless removals from remediation.⁵

A. For centuries, courts of law and equity have granted permanent and preliminary relief to improperly removed officers.

The history of Anglo-American litigation “settles the question of judicial authority.” *Trump v. CASA, Inc.*, 606 U.S. 831, 845 (2025). Since before the Founding, common-law courts have entered relief, through mandamus, “for wrongful removal, when a person is legally possessed” of an office. 3 William Blackstone, *Commentaries on the Laws of England* 264 (1768). To that common-law remedy, Congress has added another, related one: the declaratory judgment, a statutory remedy fully capable of declaring disputed rights in an office. And while courts of equity took a back seat to the law courts, they played their own role by

⁵ If the Court rules against Commissioner Slaughter on the merits, it need not address the remedial issue, which would then be academic. *Contra* U.S. Br. 37.

preserving the status quo to protect incumbent officers.

1. *Mandamus*

a. The writ of mandamus has long provided relief for officers improperly removed from office. As Lord Mansfield observed in 1760, “[a] mandamus to restore is the true specific remedy, where a person is wrongfully dispossessed of any office or function which draws after it temporal rights.” *Rex v. Blooer*, 97 Eng. Rep. 697, 698 (K.B. 1760) (emphasis removed). Seeking relief through trespass or ejectment, the Lord Chief Justice continued, would be insufficient: “In the one, he might recover damages; in the other, he might recover the land” that his office possessed. *Id.* “[B]ut by neither would he be ... quieted in the exercise of his function and office.” *Id.*

Thus, at the Founding, the preeminent legal authorities stated that “in general it be laid down as a Rule” that when an officer is “wrongfully turned out of any Office or Franchise that concerns the Public or the Administration of Justice, he may be ... restored by Mandamus.” 3 Matthew Bacon, *New Abridgment of the Law* 529 (6th ed. 1793); see 3 Blackstone, *supra* at 265 (similar). And that common-law history carried directly into American practice. As a leading treatise explained, “mandamus is recognized as a peculiarly appropriate remedy to correct an improper amotion [i.e., removal] from a public office, and to restore to the full enjoyment of his franchise a person who has been improperly deprived thereof.” James L. High, *Treatise on Extraordinary Legal Remedies, Embracing Mandamus, Quo Warranto, and Prohibition*, § 67, at 78 (3d ed. 1896) (*Extraordinary Legal Remedies*). Early

American courts issued the writ to restore all manner of executive officials improperly removed. *See, e.g., In re Strong*, 37 Mass. (20 Pick.) 484 (1838) (county commissioner); *Geter v. Comm’rs for Tobacco Inspection*, 1 S.C.L. (1 Bay) 354 (S.C. Common Pleas 1794) (inspector of tobacco).

Similarly, *Marbury* held that there was a “plain case for mandamus” to redress the injuries of a *federal* official—there, a justice of the peace—ousted from his office. 5 U.S. (1 Cranch) at 173. Chief Justice Marshall explained that “if the officer is by law not removable at the will of the President; the rights he has acquired are protected by the law.” *Id.* at 167. That result was just an application of the “general and indisputable rule, that, where there is a legal right, there is also a legal remedy by suit or action at law.” *Id.* at 163 (quoting 3 Blackstone, *supra*, at 23). And in later years, courts issued mandamus to reinstate Executive Branch officers whose removals were “illegal and void.” *Kalbfus v. Siddons*, 42 App. D.C. 310, 321 (D.C. Cir. 1914).⁶

b. Petitioners have little to say about this ancient form of relief. Seeking to reconcile their argument with *Marbury*, petitioners contend (at 43) that

⁶ Quo warranto—meaning, “by what warrant”—complemented mandamus. The principal difference between the remedies was that quo warranto operated only when another official purported to hold the role. “When a plaintiff sues for an office occupied by another, quo warranto is the proper remedy ... but when the office is vacant by reason of amotion, the remedy is mandamus.” *Lyon v. Comm’rs of Granville Cnty.*, 26 S.E. 929, 930 (N.C. 1897) (collecting authorities). Either way, courts declared the proper officeholder and ensured the officeholder could exercise the functions and duties of his office.

mandamus is “a proper mechanism for trying the title to *judicial* offices” but that courts “may not use it to restore *executive* officers.” But petitioners cite no authority supporting that gerrymandered rule, which cannot be squared with *Marbury*’s language or the longstanding practice of common-law courts issuing mandamus to prevent the ouster of executive officers. And courts have long found clear error and thus granted mandamus to reinstate officials with for-cause protection where, as here, the stated cause was nonexistent or insufficient. *See Extraordinary Legal Remedies, supra*, § 69, at 80 (collecting cases). In short, courts have for centuries granted legal relief in cases indistinguishable from this one.

2. Declaratory judgment

a. Congress has established another remedy, the declaratory judgment, that builds on these time-worn legal principles and provides improperly removed officers with an additional, statutory route to relief. *See* 28 U.S.C. § 2201(a). A declaratory judgment “is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court.” *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.).

Because the district court ruled that Commissioner Slaughter prevailed on the merits, it properly entered “a declaratory judgment that [her] removal” was “invalid.” *Peters v. Hobby*, 349 U.S. 331, 348 (1955). Indeed, as a leading remedies scholar has noted, the declaratory judgment is well-suited to “allow the federal courts to vindicate the rights and duties” of an

improperly removed officer “without unduly controlling the executive branch.” Samuel L. Bray, *Remedies in the Officer Removal Cases*, 17 J. Legal Analysis (forthcoming 2025), at 40 (Oct. 20, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5515261. A declaratory judgment is designed to permit any party with claims or defenses to cut “through the jungle of the equitable and legal procedural forms” and “get right to the nub of the dispute.” *Id.* at 27. And because a declaratory judgment lacks coercive effect, it “avoids a direct order to the executive branch.” *Id.* at 28. The remedy is thus precisely targeted to redressing the wrong.

b. Petitioners’ arguments (at 42-43) misunderstand the nature of the declaratory judgment. Contrary to petitioners’ central claim, a declaratory judgment is not subject to all the restrictions on equitable remedies laid down by the chancery courts. *See, e.g., Aetna Life Ins. Co. v. Hayworth*, 300 U.S. 227, 241 (1937) (“[A]llegations that irreparable injury is threatened are not required.”). Thus, while Congress in the Declaratory Judgment Act did not “deprive courts of their equity powers or of their freedom to withhold relief upon established equitable principles,” it also did not forbid them from granting declaratory judgments in areas that were traditionally the domain of the common-law courts. *Great Lakes Dredge & Dock Co. v. Huffman*, 318 U.S. 293, 300 (1943).

The text of the statute confirms the point. By allowing a court to issue a declaratory judgment “whether or not further relief is or could be sought,” 28 U.S.C. § 2201(a), Congress expressly declined to incorporate the bedrock equitable requirement that a party

lack an “adequate remedy at law,” *Watson v. Sutherland*, 72 U.S. 74, 79 (1866). As shown below, that reluctance to interfere with the functions of the law courts explains why courts of equity generally declined to adjudicate title to offices. But a court adjudicating a declaratory-judgment request is not bound by that pre-merger division of roles and may “declare the rights” of the parties in any Article III controversy, 28 U.S.C. § 2201(a), regardless of where such rights were typically adjudicated “[i]n the days of the divided bench,” *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212 (2002).

3. *Injunctive relief*

a. In addition, the “long history of equity jurisprudence” supports granting injunctive relief to improperly removed officers. *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 327 (1999) (citation omitted). Because (as already explained) reinstating removed officials was “exercised either by ... *mandamus*, prohibition, [or] *quo warranto*,” *In re Sawyer*, 124 U.S. 200, 212 (1888), courts of equity would not “invade the domain of the courts of common law” by granting the same sort of relief, *White v. Barry*, 171 U.S. 366, 376 (1898). They therefore would not conclusively adjudicate “the title to a public office.” *Id.* at 377.

But that does not mean that the courts of equity never intervened in officer-removal disputes. To the contrary, ample authority recognizes that the equity courts had power to “protect the possession of a de facto officer against the interference of an adverse claimant,” pending determination of “the disputed title by legal proceedings.” John Norton Pomeroy, A

Treatise on Equity Jurisprudence, § 1345, at 821-22 n.5 (John Norton Pomeroy Jr. student ed. 1907). Thus, courts of equity “frequently recogniz[ed] and protect[ed] the possession of officers de facto.” 2 James L. High, *Treatise on the Law of Injunctions* § 1315, at 866 (2d ed. 1880) (*Law of Injunctions*). Under that doctrine, “the actual incumbents of an office may be protected, pending a contest as to their title, from interference with their possession, and with the exercise of their functions.” *Id.*; see Bray, *supra*, at 4 & n.8 (collecting “extensive precedent”).

The logic for equity courts granting this immediate relief is straightforward. Because mandamus and declaratory relief are available after final judgment, there is no need for final equitable relief or for a court sitting in equity to “determine[] the questions of title involved.” *Law of Injunctions*, *supra*, § 1315, at 867. But because temporary remedies were generally unavailable at law, mandamus does not foreclose “courts’ traditional equitable authority to preserve the status quo pending resolution on the merits,” *Miller v. French*, 530 U.S. 327, 336 (2000), through the exercise of authority “auxiliary” to that of the common-law courts, 1 Joseph Story, *Commentaries on Equity Jurisprudence, as Administered in England and America*, § 33, at 33 (1836).

b. Following the merger of law and equity, federal courts—including this Court—began to issue permanent as well as preliminary injunctions to reinstate removed federal officials. See, e.g., *Vitarelli v. Seaton*, 359 U.S. 535, 539, 546 (1959); *Service v. Dulles*, 354 U.S. 363, 370, 389 (1957). So pronounced was that development that in 1974, this Court explained that

“[m]uch water has flowed over the dam since” *White*, and that “cases such as *Service v. Dulles* establish that federal courts do have authority to review the claim of a discharged governmental employee that the agency effectuating the discharge” did so unlawfully. *Sampson v. Murray*, 415 U.S. 61, 71 (1974) (citation omitted).

The reason for that change is that, following the merger, injunctions came to serve the functions that mandamus occupied since before the Founding. As then-Judge Scalia explained, “[t]he principles that governed” the writ of mandamus “now govern attempts to secure similar relief,” such as a mandatory injunction. *Sanchez-Espinoza*, 770 F.2d at 207 n.7; see Fed. R. Civ. P. 81(b) (abolishing “[t]he writs of scire facias and mandamus” but providing that “[r]elief previously available through them may be obtained by appropriate action”). Consequently, many courts—including the district court below—now prefer to provide mandatory relief through an injunction rather than mandamus. See J.A. 87 n.12. But whatever the choice of label, the history is clear: Courts have the power to remedy unlawful attempts to remove federal officials, both immediately and following final judgment.

c. Again, petitioners’ contrary arguments (at 41-42) misstate the relevant history and precedents. Petitioners correctly note that pre-merger courts of equity did not exercise jurisdiction to finally enjoin “the appointment and removal of public officers.” U.S. Br. 41 (quoting *Sawyer*, 124 U.S. at 212). But “[i]t does no good to incant ‘no equitable jurisdiction over removal of public officers’ from *In re Sawyer* without understanding *why*.” Bray, *supra*, at 21. The reason why is

explained in petitioners' cited cases: common-law courts were empowered to enter final judgments through mandamus (and quo warranto), so "to sustain a bill in equity ... would invade the domain of the courts of common law." *White*, 171 U.S. at 376; *see Sawyer*, 124 U.S. at 212 (similar). Critically, none of petitioners' cases cast doubt on courts' longstanding authority to preserve the status quo.

B. Petitioners' ahistorical arguments lack merit.

Because granting legal and equitable relief to improperly removed officers has such a lengthy "historical pedigree," petitioners must advance exceedingly persuasive justifications to deviate from that history. *CASA*, 606 U.S. at 846. But petitioners have no such justifications for their sweeping position that courts cannot grant "any remedy" to prevent unlawful removals. U.S. Br. 38.

1. Petitioners' Article II arguments (at 38-40) just double-count their merits points. There is no Article II problem with requiring the President to "entrust executive power to someone he has removed" if he has no Article II authority to remove that person in the first place. U.S. Br. 38. And petitioners' snippets of the First Congress's debates, *id.* at 39, do not concern the propriety of judicial remedies for unlawful removals. Rather, they state the view that the President should have sole authority to remove executive officers. If there are exceptions to that general rule—as the First Congress itself recognized, *see supra* at 14-16—then remedies are available to officers falling within those exceptions.

Indeed, it is essential to our constitutional order that such remedies exist. “The government of the United States has been emphatically termed a government of laws, and not of men,” wrote Chief Justice Marshall in *Marbury*, but “[i]t will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.” 5 U.S. (1 Cranch) at 163.

Chief Justice Marshall was correct: If courts cannot check lawless executive removals, then intolerable consequences follow. On petitioners’ understanding, for example, courts would be powerless to stop the removal of every member of the Federal Reserve Board even if “an exception to the removal power exists for the Federal Reserve Board.” U.S. Br. 29. This Court should not weaken the Constitution by closing the courthouse doors to improperly removed officials.

Petitioners’ appeal to Article II as a justification for disabling judicial relief in this context fails for another reason: It does violence to Article I. The remedial question in this case becomes relevant only if this Court determines that Congress has validly protected Commissioner Slaughter from at-will removal. And this Court has repeatedly recognized that the President is not empowered to ignore those statutes he dislikes. “Review of the legality of Presidential action” follows from the basic principle that the President, too, must follow the law. *Franklin v. Massachusetts*, 505 U.S. 788, 828 (1992) (Scalia, J., concurring in part and

concurring in the judgment); see *Youngstown*, 343 U.S. at 589.⁷

2. Petitioners' appeal (at 39) to "[h]istory" is similarly unavailing. The Constitution was ratified against the backdrop of courts granting legal and equitable relief to improperly removed officials, as set out above. That is the history that informs the meaning of "[t]he judicial Power of the United States," U.S. Const. art. III, § 1, and circumscribes the common-law and equitable powers of the federal courts, see *CASA*, 606 U.S. at 841-42.

The happenstance that a handful of removed officers have chosen not to sue for reinstatement does not undermine that history. See U.S. Br. 39-40. For one thing, petitioners' list is incomplete: Myron Wiener sought reinstatement by "quo warranto," only to have his request become "moot" when his agency was abolished. *Wiener*, 357 U.S. at 351 n.*. And the fact that five other officials opted not to take that same approach says nothing about whether reinstatement would have been available to them had their claims been meritorious.

Petitioners' suggestion (at 40) that removed executive officers may seek only "back pay" is also contrary to the relevant history. As Lord Mansfield explained, mandamus was preferable to a damages-only remedy because the latter would not redress the unlawful

⁷ Although that review is ordinarily obtained "in a suit seeking to enjoin the officers who attempt to enforce the President's directive," *Franklin*, 505 U.S. at 828 (Scalia, J., concurring in part and concurring in the judgment), the Court has also affirmed the issuance of declaratory relief against the President himself, see *Clinton v. City of New York*, 524 U.S. 417, 425 n.9 (1998).

removal inasmuch as it would not “quiet[] ... the exercise of [the officer’s] function and office.” *Blooper*, 97 Eng. Rep. at 698. And as an American treatise noted, the notion that a removed officer “may maintain an action at law for damages” rather than seeking mandamus is “opposed to the current of authority” on the question. *Extraordinary Legal Remedies*, *supra*, § 67, at 78 n.2. For good reason: A backpay-only remedy would not deter unlawful removals.

3. Finally, petitioners are wrong to assert (at 45) that Congress has impliedly “barred” Commissioner Slaughter from obtaining legal or equitable relief. “[S]tatutes will not be interpreted as changing the common law unless they effect the change with clarity.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 318 (2012); *see, e.g., Brown v. Barry*, 3 U.S. (3 Dall.) 365, 367 (1797). Neither of the two statutes petitioners identify comes close to clearly effecting such a change.

First, it is of no relevance that one lapsed federal statute authorized reinstatement of independent counsels. *See* U.S. Br. 44-45. Congress often employs a “belt and suspenders” approach to accomplish its aims. *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 14 n.5 (2020). And the statutory provision that petitioners cite did not just provide for reinstatement: it also channeled all cases to a single court and so did work beyond codifying the common-law rule. Independent Counsel Reauthorization Act of 1987, Pub. L. No. 100-191, § 596(a)(3), 101 Stat. 1293, 1305.

Second, the Civil Service Reform Act (CSRA) does not clearly displace the common-law and equitable remedies available to principal officers. *See* U.S. Br.

45-47. The CSRA “govern[s] personnel action taken against members of the civil service.” *United States v. Fausto*, 484 U.S. 439, 445 (1988). But the statute explicitly excludes officials “whose appointment is made by and with the advice and consent of the Senate.” 5 U.S.C. § 7511(b)(1). That makes sense: those officials are not civil servants, and so they fall outside of the statutory function of “comprehensively overhaul[ing] the civil service system.” *Fausto*, 484 U.S. at 443 (citation omitted).

Petitioners provide no reasoned basis to conclude that the CSRA’s protections for civil servants preclude all remedies for principal officers of the United States. The CSRA’s text itself does not bar those officers from seeking any relief. And *Fausto*’s implied-preclusion holding for certain civil servants has no application here. That case determined that “nonpreference members of the excepted service” could not seek relief outside of the CSRA scheme because Congress had “specifically provided” for the “inclusion” of “*certain* nonpreference excepted service employees,” granting them “limited, and in some cases conditional, rights” throughout the statute. 484 U.S. at 445, 448. But principal officers “go beyond the category to which the negative implication pertains.” Scalia & Garner, *supra*, at 108. Their rights and remedies are not addressed in the CSRA at all, and so the CSRA does not displace the preexisting legal and equitable remedies available to them.⁸ This Court should reaffirm that

⁸ That leaves petitioners’ reliance on a single district court decision, *Bloch v. Executive Office of the President*, 164 F. Supp. 3d 841 (E.D. Va. 2016). But in *Bloch*, the removed official’s “term ha[d] expired,” so he could not seek the traditional remedies of

those remedies remain available today, just as they have been since the Founding.

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reinstatement or a declaration that he still held the office. *Id.* at 849.

CONCLUSION

The Court should affirm the judgment of the district court.

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