

No. 25A312

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IN THE

**Supreme Court of the United States**

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DONALD J. TRUMP,

*Applicant,*

v.

LISA D. COOK ET AL.,

*Respondents.*

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**ON APPLICATION FOR A STAY OF THE INJUNCTION  
ISSUED BY THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**SUPPLEMENTAL BRIEF FOR RESPONDENT  
LISA D. COOK**

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**ON APPLICATION FOR A STAY OF THE INJUNCTION  
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---

**SUPPLEMENTAL BRIEF FOR RESPONDENT  
LISA D. COOK**

---

**INTRODUCTION**

The President asks this Court to endorse his unprecedented attempt to remove a Federal Reserve Board governor based on untested allegations that he declares justify removal “for cause.” Governor Lisa D. Cook vigorously contests the asserted basis for that removal as a matter of fact and law, and looks forward to debunking allegations that stem from an investigation launched by a presidential subordinate that has not led to any finding of wrongdoing. The President nevertheless insists that the status quo should be

altered and Governor Cook should be removed from her office before any facts are found.

The district court's temporary injunction blocking Governor Cook's purported removal was proper, and this Court should reject the President's emergency-stay request. As explained in Governor Cook's stay opposition, the Federal Reserve Board's historic independence and statutory for-cause protection—whose constitutionality the President accepts—prohibits Governor Cook's precipitous removal twice over. Substantively, the President's purported removal is deficient: Untested allegations of pre-office wrongdoing are not the sort of cause that Congress required or that the common law would permit. And procedurally, the President's purported removal failed to provide the notice and opportunity to be heard that Governor Cook is due under the governing statute and the Constitution. For either or both of those reasons, the President is unlikely to succeed on the merits of his appeal. And with the traditional and economically essential independence of the Federal Reserve Board hanging in the balance, the equities dramatically disfavor permitting the President to fundamentally alter the status quo by ousting Governor Cook while this litigation proceeds.

The amicus submissions support each of Governor Cook's arguments. Former Federal Reserve Board governors underscore the deep historical roots of the Board's independence and demonstrate that Congress intended robust protections for Federal Reserve Board governors comparable to the inefficiency, neglect, or malfeasance in office standard. Leading academics confirm that the President's purported removal is judicially reviewable; that his substantive and

procedural understanding of “for cause” contradicts the common law; that the original understanding of the Fifth Amendment protects Governor Cook; and that injunctions are available to preserve the status quo when an official is unlawfully removed. And a panoply of amici with deep knowledge of the American economy—including former Treasury Secretaries and Federal Reserve chairs, leading economists, and the Chamber of Commerce—explain the potentially disastrous effects of any ruling that would weaken the Federal Reserve’s unique history of independence.

The amicus briefs on the other side, by contrast, fail to advance the President’s case. On most of the issues, the amicus filings do not contain any legal analysis supporting the President’s contentions. Their arguments about the meaning of “for cause” conflict with the President’s own interpretation, confirming the implausibility of his reading of that phrase. And their due-process and remedial contentions fail to engage with the relevant history supporting Governor Cook. In short, even the President’s amici underscore that the application for a stay should be denied.

## ARGUMENT

### **I. The President’s Purported Removal Is Reviewable.**

The amicus briefs overwhelmingly support Governor Cook’s showing (Opp. 14-19) that purported for-cause removals are subject to judicial review.

To start, “[p]rior to the enactment of Section 242, the prevailing common-law rule” permitting judicial review of for-cause removals “was well settled.” *Manners* Br. 17. Under that rule, judges could “inquire

into the charges made” and “see if they constitute legal cause for removal.” *Id.* (quoting Alonzo H. Tuttle, *Removal of Public Officers from Office for Cause*, I, 3 Mich. L. Rev. 290, 300 (1905)). Professor Manners’s amicus filing collects “numerous” cases reviewing purported for-cause removals. *Id.* at 17-20. One such case described the “immemorial practice . . . in the common law courts” that “[t]he removal can not be made, unless the alleged cause in fact exists, and such existence should be ascertained and declared, as the legal basis for the sentence of removal.” *Id.* at 18 (quoting *Andrews v. King*, 77 Me. 224, 234-35 (1885)); *see also, e.g., Minnesota ex rel. Hart v. Common Council of Duluth*, 55 N.W. 118, 120 (Minn. 1893) (“The sufficiency and reasonableness of the cause of removal are questions for the courts. This has been the settled law ever since *Bagg’s Case*, . . . and we are not aware of any respectable authority to the contrary.”).

Federal jurisprudence matches the common law. “Chief Justice Marshall established early on for the Court that one’s ‘legal right’ to an office is a matter ‘examinable in a court.’” Chamber of Commerce Br. 20 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 167 (1803)). And in the ensuing two centuries, this Court has “consistently reviewed—and sometimes invalidated—presidential decisions to fire officers who were removable only for cause.” *Id.* at 21 (citing *Wiener v. United States*, 357 U.S. 349, 356 (1958), and *Humphrey’s Executor v. United States*, 295 U.S. 602, 632 (1935)). Indeed, Congress enacted the Federal Reserve Board’s removal protection “just months after this Court enforced a for-cause provision” in *Humphrey’s Executor*. *Id.*

The President's insistence that his removals are not subject to judicial scrutiny would eviscerate Congress's choice to safeguard the Board's independence and protect Board governors from arbitrary removals. As the Chamber aptly observes, foreclosing judicial review would "subordinate the substance of the Board of Governors' for-cause removal protections to the use of magic words by the President," allowing him to remove any governor so long as he incants the phrase "for cause." Chamber of Commerce Br. 23. "That is not what Congress intended when designing the Federal Reserve and entrusting it with the Nation's monetary policy." *Id.*; see also, e.g., Former Governors Br. 5 (explaining that the President's reviewability arguments would mean there was "no functional difference between 'for cause' and 'at will'").

The amicus briefs also confirm that the President misunderstands this Court's decision in *Reagan v. United States*, 182 U.S. 419 (1901). See Reply 10-11. As already explained (Opp. 15-16), *Reagan* concerned an unusual situation where Congress made an officer removable "for causes prescribed by law" and then failed to prescribe any such causes. 182 U.S. at 424-25. That omission, coupled with the lack of a fixed term for the officer, led this Court to interpret the statute to allow "the appointing power" to "remove at pleasure" because a contrary approach would "be to hold the commissioners in office for life." *Id.* at 425-26. And because the Court found the statute to authorize at-will removal, the removal was "not reviewable." *Id.* As the Chamber explains, "[t]here is no reason to believe that the same kind of unreviewable discretion" applies to the purported removal of a Federal Reserve Board governor, given Congress's choices to

establish “fixed” terms for the governors and to permit their removal only “for cause” rather than for never-specified causes “prescribed by law.” Chamber of Commerce Br. 22.

Finally, amici underscore that the President has failed to identify any common-law tradition of unreviewability. *Contra* Appl. 21, 23, Reply 7-8. None of the cases that the President cites support the assertion that courts did not review the validity of removals “for cause”:

- In *United States ex rel. Garland v. Oliver*, 17 D.C. (6 Mackey) 47 (D.C. 1887), the question of reviewability was “not argued.” *Id.* at 56; *see* Manners Br. 19-20; Opp. 17.
- *New York ex rel. Platt v. Stout*, 19 How. Pr. 171 (N.Y. Sup. Ct. Gen. Term 1860), did not concern an executive removal but rather an impeachment-type proceeding involving a vote of the “majority of the Board of Aldermen.” *Id.* at 173; *see* Manners Br. 20; Opp. 17. As Professor Manners’s amicus brief explains, the New York high court later made clear that executive removals were “subject to review by writ of certiorari.” Manners Br. 19 (quoting *New York ex rel. Mayor of City of New York v. Nichols*, 79 N.Y. (34 Sickels) 582, 588-89 (1880)).
- *City of Hoboken v. Gear*, 27 N.J.L. 265 (N.J. 1859), “did not raise ‘a question . . . whether the assigned cause is sufficient,’ and instead involved the legislature’s decision to disband the municipal police force altogether—rather than to remove a particular officer for ‘cause.’” Manners Br. 19 (quoting *id.* at 287); *see* Opp. 16-17.

- *Trimble v. Colorado*, 34 P. 981 (Colo. 1893), involved a statute that required the governor to state his cause “in writing,” a requirement that the court interpreted to be the “only check” on his authority. *Id.* at 985; *see* Manners Br. 15, 20; *see also* Opp. 17 (noting additional distinction).

At bottom, the President and his amici cannot overcome the consistent rule of judicial reviewability found throughout the common-law precedents.

## **II. The President Did Not Identify a Legally Sufficient “Cause.”**

The amicus filings bolster Governor Cook’s three primary arguments on the substantive meaning of the statutory phrase “for cause.” 12 U.S.C. § 242. *First*, they confirm that Congress intended “for cause” to incorporate the then-recognized causes for presidential removal of executive officials in the U.S. Code. *See* Opp. 20-23. *Second*, they show that the President’s removal was not “for cause” under the prevailing common-law standards. *See id.* at 25 n.7. And *third*, they underscore that the President’s boundless interpretation of “for cause” would destroy the Federal Reserve’s historic independence. *See id.* at 25-30.

### **A. Congress enacted the for-cause-removal protection to track existing federal law governing for-cause removals.**

1. Congress enacted the for-cause protection “against the backdrop of existing law.” *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019); *see* Opp. 20. Here, the most relevant sources of pre-existing law are the federal statutes governing presidential removals of other executive officers—statutes

that limited removals to instances of inefficiency, neglect, or malfeasance in office (INM), and one statute allowing removal for ineligibility. Opp. 21. Those are the grounds that Congress would have readily understood as establishing “cause” when it enacted this provision—and so those are the grounds that constitute the original public meaning of “for cause” in this context.

The amicus brief by former Federal Reserve Board governors reinforces this understanding. Following *Myers v. United States*, 272 U.S. 52 (1926), “Congress for a time stopped including express removal protections when it created commissions,” including by removing the Federal Reserve Board’s “for cause” protections in 1933. Former Governors Br. 17. But after *Humphrey’s Executor*, Congress changed course. The Federal Reserve Board is a high-profile example of that shift in practice: Congress restored the “for cause” language in August 1935, less than three months after *Humphrey’s Executor* and just two years after removing an identical for-cause provision. *See id.* at 18.

In those debates, key congressional figures used “for cause” interchangeably with the INM standard that the Court had just upheld. Senator Carter Glass wrote that the Federal Reserve Board would be protected by “the exact language” that the Supreme Court had recently approved. Former Governors Br. 21-22 (quoting legislative correspondence). Senator Nelson Aldrich similarly noted that *Humphrey’s Executor* concerned “the same question [that] is involved in connection with the Federal Reserve Board.” *Id.* at 21 (quoting Senate hearing). And a founding member of the Board explained to Congress that he meant “for cause”

to be equivalent to “malfeasance.” *Id.* at 22-23 (quoting Senate hearing).

2. This history answers the President’s theory (Reply 12), echoed by several amici, that Congress would have used different words if it had intended an INM-like standard. *See* Separation of Powers Clinic Br. 5; America First Legal Foundation Br. 8-9; Nielson Br. 18-19. As the former governors explain, “[t]hat Congress was restoring ‘for cause’ language that had governed from 1913 until the 1933 interruption, rather than drafting new language out of whole cloth, explains why it did not directly transplant the INM language at issue in *Humphrey’s Executor*.” Former Governors Br. 23. That history is more than sufficient to defeat the “ordinar[y]” presumption that a difference in language conveys a difference in meaning, Reply 12—particularly where, as here, there *is* a difference in meaning relating to ineligibility, an additional cause that Congress first added in 1934, *see* Nielson Br. 19.

The statutory history also counters one amicus’s counterintuitive argument that Congress intended the Federal Reserve’s governors to enjoy less protection than leaders of other multimember agencies. *See* Nielson Br. 19. As already explained, the Court in *Humphrey’s Executor* expressly described the Federal Trade Commission’s INM provision it upheld there as “precluding a removal except *for cause*.” 295 U.S. at 631 (emphasis added). When Congress three months later enacted the same “for cause” language that this Court had treated interchangeably with INM, it brought “the old soil with it.” *George v. McDonough*, 596 U.S. 740, 746 (2022) (citation omitted). That history reveals

that Congress meant the Federal Reserve's protections to be of the same kind as the FTC's. *See* Former Governors Br. 19, 24.

**B. The President's purported removal would also fail at common law.**

1. Even if this Court were to look beyond the extant statutory standard for "cause" to the common law, the President would fare no better. That is because "[u]nder the prevailing common-law standard," mere allegations of private, pre-office misconduct would not constitute "cause" for removal. *Manners* Br. 20-21.

As Professor *Manners* carefully recounts, the common-law understanding was that "misconduct justifying the removal of an officer cannot, as a general rule, be found in acts or conduct *previous* to his election or appointment." *Manners* Br. 22 (quoting John F. Dillon, 2 *Commentaries on the Law of Municipal Corporations*, § 477, at 799-800 (5th ed. 1911)). That rule followed from the general principle that "'cause' had to bear a sufficient connection to the particular office and duties involved" and should therefore "relate" to acts "occurring during th[e] term" of the officeholder. *Id.* at 21-22 (quoting *Bd. of St. Comm'rs of Hagerstown v. Williams*, 53 A. 923, 925 (Md. 1903); and *Wisconsin ex rel. Gill v. Common Council of Watertown*, 9 Wis. 254, 261 (1859)). Under that rule, the President's purported removal is unlawful because the alleged conduct underlying his unsubstantiated charges of mortgage fraud long predates Governor Cook's term in office.

The common law acknowledged an exception to the general rule barring removal for conduct with "no immediate relation to [a person's] office," but that narrow

exception undermines the President's purported removal in two respects. Manners Br. 24. *First*, the exception was for "infamous crimes," not trivialities or minor offenses. *Id.* (quoting *Rex v. Richardson*, 1 Burr. 517, 538-39, 97 Eng. Rep. 426, 438-39 (K.B. 1758)). Even if (contrary to fact) Governor Cook committed mortgage fraud, that would not satisfy the common-law standard, which required an offense "so infamous . . . as to render the offender unfit to execute any public franchise." *Richardson*, 97 Eng. Rep. at 438-39. The President himself does not think that standard is satisfied, as he has retained multiple Cabinet members accused of the same wrongdoing. Opp. 29 & n.8.

*Second*, and more fundamentally, the common-law rule required a finding—not merely an accusation—of wrongdoing. The foundational English case requires that the offense have been "established by previous conviction by a jury." *Richardson*, 97 Eng. Rep. at 439. And cases in this country likewise hold that charges of wrongdoing must be "proven to be true." *Nichols*, 79 N.Y. at 588; see Manners Br. 23-24 (collecting additional authorities). So wholly apart from the seriousness of the accusations, accusations alone did not suffice under the common-law standard.

2. No amicus supporting the President provides any serious analysis of the common law. But several insist that allegations of pre-office misconduct must suffice because federal officers must "be like Caesar's wife, above suspicion." America First Legal Foundation Br. 9; see Azoria Capital Br. 5-8 (similar). That assertion is at war with the for-cause—not at-will—protection for Board governors that the President himself accepts. It also runs counter to the received

wisdom of the common law. Just as the common law allowed a police commissioner—an officer with life-or-death power in his community—to remain in office unless and until the allegations against him were “proven to be true,” *Manners Br. 23* (quoting *Nichols*, 79 N.Y. at 588), the same process is also due for Federal Reserve Board governors.

**C. The President’s arguments would eviscerate the Federal Reserve’s independence.**

1. Finally, the proper interpretation of Section 242 is informed by “common sense.” *West Virginia v. EPA*, 597 U.S. 697, 722-23 (2022) (citation omitted). The amicus filings here resoundingly demonstrate that the President’s interpretation of “for cause” defies common sense and the basic objective Congress sought to achieve by effectively eliminating the independence of the Federal Reserve.

To start with what should be common ground, “for cause does not mean the same thing as at will.” *Chamber of Commerce Br. 19* (quoting *Collins v. Yellen*, 594 U.S. 220, 256 (2021)) (internal quotation marks omitted and alteration adopted). Any faithful interpretation of the statutory for-cause language must heed Congress’s deliberate choice to deviate from the default rule of at-will removal when creating the Federal Reserve. An interpretation that renders “for cause” removal indistinguishable from “at will” removal is not a plausible reading of the statute.

As amici note, however, the President’s view that he can remove any governor based on any unproven allegation of any pre-office wrongdoing suffers from precisely that fatal defect. “With the law books filled with a great assortment of crimes, a prosecutor stands

a fair chance of finding at least a technical violation of some act on the part of almost anyone.” *Morrison v. Olson*, 487 U.S. 654, 728 (1988) (Scalia, J., dissenting) (quoting Robert H. Jackson, *The Federal Prosecutor* (Apr. 1, 1940)); see Former Governors Br. 7. Harnessing the “vast resources of the Executive Branch,” presidents will readily be able to allege (even if they cannot prove) minor “potential improprieties committed prior to service” by any governor whose policy decisions they dislike. Former Governors Br. 7; see Colorado et al. Br. 4-5 (similar). Congress did not mean for the Nation’s monetary policy to turn on that game of find-an-alleged-crime.

For that very reason, as amici also observe, the President’s reading of “for cause” is practically incompatible with his repeated concession that “mere policy disagreement” is not a valid cause. Reply 1; see *id.* at 10, 11 n.2, 13, 18; see also Colorado et al. Br. 5; Former Governors Br. 5 (“[M]ere innuendo or pretext would suffice for removal.”). Indeed, if mere disagreement with the President’s policy agenda, which suffices for Cabinet officers, does not suffice for Board governors, it makes little sense for mere allegations to do the trick. If—as the parties agree—Congress forbade policy-based removals, it equally forbade removals based on paper-thin, unproven allegations of wrongdoing.

It is no answer to invoke the “presumption of regularity.” Reply 14 (citation omitted). While that presumption may guide review of certain individual *applications* of the statutory standard, it does not dictate the proper *interpretation* of that standard. This Court does not interpret statutes in a manner that would render “evasion of the law . . . almost certain.” *The*

*Emily*, 22 U.S. 381, 390 (1824); see Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012). And the Court often rejects interpretations that would provide a “roadmap” for the government “to evade a statutory prohibition.” *United States v. Arthrex, Inc.*, 594 U.S. 1, 16 (2021); cf. *McDonnell v. United States*, 579 U.S. 550, 579 (2016) (refusing to construe a statute “on the assumption that the Government will use it responsibly”). That principle requires rejecting the President’s interpretation here.

2. Recognizing the inherent tension in the President’s position, two amicus briefs authored by the same counsel argue that a removal “for cause” can be based on “policy disagreements.” Separation of Powers Clinic Br. 7; America First Legal Foundation Br. 11. To its credit, that argument would at least allow the President to candidly state his true basis for removal, without needing to gin up investigations of pre-office wrongdoing. But to its discredit, that same argument was squarely rejected by this Court just four years ago. See *Collins*, 594 U.S. at 256 (invalidating a for-cause provision because “[t]he President must be able to remove . . . those who have ‘different views of policy’” (quoting *Myers*, 272 U.S. at 131)). Amici’s argument is also flatly incompatible with the history of the Banking Act of 1935, Pub. L. No. 74-305, 49 Stat. 684, which makes clear that Congress enacted the for-cause provision to protect governors from “political pressure.” Former Governors Br. 13; see Chamber of Commerce Br. 2 (“Congress chose to protect the

modern Federal Reserve System from political interference.”).<sup>1</sup>

Those same amici have no sound basis to contend that Governor Cook’s position leads to “absurd results.” Reply 13; *see* Separation of Powers Clinic Br. 5-6; America First Legal Foundation Br. 9-10. Amici speculate about pre-office criminal acts for which an official could not be removed. But for decades, the prevailing removal standard has been INM, which unambiguously excludes pre-office conduct, *see* Opp. 25—and yet amici cite no example of their concerns ever manifesting. Even if such an instance were to arise, the President and Congress would have ample tools to address it. For instance, if a governor “were alleged to have bribed her way to Senate confirmation,” Separation of Powers Clinic Br. 5, Congress itself could respond by impeaching and removing the governor. And if a governor were actually convicted of an offense, then the President could seek to remove her either because the resulting sentence would prevent her from carrying out her duties, *see id.*, or perhaps because the crime was “infamous” and so satisfied the common-law standard, *see supra* at 11. Regardless, because this case arises from mere unproven allegations of mortgage fraud, it does not require the Court to declare the outer limits of the removal authority for convictions for serious crimes. Under any plausible theory, the President’s power to remove Federal Reserve Board

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<sup>1</sup> An additional amicus goes further still, urging the Court to invalidate the for-cause restriction protecting Federal Reserve governors. New Civil Liberties Alliance Br. 3-6. That argument is neither presented here, *see* Appl. 2 n.1, nor correct, *see Trump v. Wilcox*, 145 S. Ct. 1415 (2025).

governors “for cause” does not permit removal based on unproven allegations of pre-office misconduct.

### **III. Governor Cook Did Not Receive the Necessary Process.**

As Governor Cook has explained (Opp. 30-36), her purported removal was unlawful for the independent reason that the President failed to afford her the necessary process. The amicus filings further support Governor Cook’s arguments that (1) the for-cause-removal statute itself entitles her to notice and an opportunity to be heard; (2) the Fifth Amendment’s Due Process Clause gives her the same procedural protections; and (3) she did not receive adequate process here.

#### **A. Governor Cook has a statutory right to process.**

“[T]he established understanding of American courts in the nineteenth and early twentieth centuries” was “that statutes combining term-of-years tenure and for-cause removal guaranteed officers a right to pre-removal notice and an opportunity to be heard.” Manners Br. 5. That understanding can trace its roots to *Marbury* and “was also expressed in every leading treatise of the era”; “[c]ourts around the country recognized that rule”; and “*this* Court also endorsed the same principle” in *Reagan* and *Shurtleff v. United States*, 189 U.S. 311 (1903). Manners Br. 5, 10-11; see Shugerman Br. 10-17.

Begin with the common-law cases and treatises. Professor Manners’s brief collects ample precedent that “no one appointed for a definite term can be removed for cause without having an opportunity to be

heard in his defense.” *Townsend v. Kurtz*, 34 A. 1123, 1124 (Md. 1896); see Manners Br. 10. Such was “the great burden of authority in both this country and in England.” Tuttle, *supra*, at 297; see Manners Br. 7; Shugerman Br. 10. And treatises from the era consistently stated the same rule. Manners Br. 8-9. The conclusions in those sources “were independent of the Due Process Clause” of the Fourteenth Amendment, which had not been enacted when this common-law rule first developed. Shugerman Br. 15.

This Court’s early removal jurisprudence adopted that common-law understanding as a matter of federal law. *Reagan* and *Shurtleff* describe the “rule” that “notice and hearing are essential” when an officer is protected by a for-cause provision and enjoys a fixed term. *Shurtleff*, 189 U.S. at 314 (quoting *Reagan*, 182 U.S. at 425); see Manners Br. 11 (quoting the government’s concession in its *Reagan* brief that “where causes for removal of an officer are specified in a constitution or by statute, or the term of office is for a fixed period, the officer can not be removed unless notice be given him and he be afforded a hearing”). Congress enacted the Federal Reserve Board’s for-cause protection against that backdrop, incorporating that understanding into the statute at issue here. See Manners Br. 11-12; Shugerman Br. 15-17.

Professor Manners’s amicus brief also refutes the President’s counterarguments.

*First*, as she observes, the President’s insistence that a statute must explicitly incorporate notice-and-hearing requirements is backwards. “[S]tatutes will not be interpreted as changing the common law unless they effect the change with clarity,” not the other way

around. Scalia & Garner, *supra*, at 318; *see* Manners Br. 12-13. Statutes providing substantive protections (e.g., for cause) generally take the established procedures for such standards as a given. That some statutes addressed both or prescribed particular procedures is of no moment. *See supra* at 8-9 (explaining why Congress used different language in restoring the Federal Reserve’s “for cause” protection than it did when creating other agencies in the first instance, such as the National Labor Relations Board).

*Second*, the amicus brief confirms that contemporaneous authorities saw no procedural difference between “removal for cause” and removal “for cause specified” (like the INM standard)—both “require[] notice, charges and a hearing.” Tuttle, *supra*, at 297; *see* Manners Br. 14-15. That was also the understanding of the congressional drafters themselves: In 1926, the Senate Office of Legislative Counsel explained to this Court that “those statutes which provide for removal ‘for cause’” would require “notice and opportunity to defend before the removal.” Amicus Br. of George Wharton Pepper, Appx. A, at 267, *Myers v. United States*, 272 U.S. 52 (1926). Those points foreclose the President’s attempt to distinguish between “statutes that specify causes for removal . . . and statutes that authorize removal for cause *without* naming specific causes.” Reply 6-7; *see* America First Legal Foundation Br. 4 (same).

*Third*, Professor Manners’s amicus brief explains that the President’s common-law arguments (Reply 7-8 & n.1) misread the relevant cases. *See* Manners Br. 15. As already noted, *see supra* at 7, *Trimble* concerned a statute with an explicit requirement that a

removal be explained in writing, such that the court found that no further procedures were necessary. 34 P. at 985; *see Gear*, 27 N.J.L. at 287 (same). The other cases are even further afield: The statute analyzed in *In re Carter*, 74 P. 997 (Cal. 1903), contained an explicit requirement that “notice” be given *after* a removal, such that the court found it “absurd” to infer that “previous notice was necessary, and a hearing of the charges was required, before a removal could be made.” *Id.* at 998. And in *New York ex rel. Gere v. Whitlock*, 92 N.Y. (47 Sickels) 191 (N.Y. 1883), the statutory language was “for any cause deemed sufficient to himself.” *Id.* at 197. None of the President’s cases concern a simple for-cause provision that did not specify alternative procedures. *See Opp.* 32 & n.10. The President thus cannot resist the common-law “consensus.” *Contra Reply* 8.

**B. Governor Cook has a constitutional right to process.**

1. The amicus filings also confirm that, as a matter of “original public meaning,” Governor Cook is entitled to the “procedural guarantees” of the Due Process Clause of the Fifth Amendment. Shugerman Br. 2-3; *see Opp.* 33-35. That is the unmistakable lesson of *Marbury*, in which Chief Justice Marshall explained that Marbury’s for-cause tenure meant he had a “vested legal right” in his office. 5 U.S. (1 Cranch) at 155, 172-73; *see Shugerman Br.* 7. Professor Shugerman’s amicus brief collects numerous additional sources discussing this aspect of *Marbury*, including a prominent commentary edited by Justice Holmes. 1 James Kent, *Commentaries on American Law*, § 311, at 405 n.1 (O.W. Holmes Jr. & John M.

Gould eds., 14th ed. 1896); *see* Shugerman Br. 8 (collecting additional authorities).

2. No amicus filing seeks to refute this direct holding of *Marbury*. For his part, the President claims that Marbury had a “vested legal right” to his “commission” but not to his “office.” Reply 5. That makes no sense. The “commission” is exactly what “conferred on [Marbury] a legal right to the office.” 5 U.S. (1 Cranch) at 168. The two are inseparable.

The President’s amici rely instead on post-Founding, Fourteenth Amendment cases that decline to recognize property interests in state offices. *See* America First Legal Foundation Br. 3-4; Florida et al. Br. 15. But as Governor Cook has already explained, neither *Taylor v. Beckman*, 178 U.S. 548 (1900), nor *Crenshaw v. United States*, 134 U.S. 99 (1890), concerns an executive removal of an official with for-cause protection. *See* Opp. 34. And those cases interpret the Fourteenth Amendment, whose original meaning was not fixed in 1791. *Id.* at 34 n.12; *see* *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 83 (2022) (Barrett, J., concurring) (“[T]oday’s decision should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights.”). Because this case arises under the Fifth Amendment, any post-Founding-era legal developments reflected in dicta are irrelevant.

### **C. Governor Cook did not receive adequate process.**

1. Professor Manners’s amicus brief rebuts the President’s argument that he “provided enough process by publicizing the criminal referral against Cook,

then waiting five days before removing her.” Reply 9. As she explains, the common-law default rule requires “evidence produced” and “testimony.” Manners Br. 16 (citing cases). Evidence and testimony were not requested here. Thus, “[t]he President plainly did not provide such an opportunity to be heard, and he has failed to identify any historical support for his contrary position.” *Id.*<sup>2</sup>

2. Two amicus briefs assert that Governor Cook “was undoubtedly on notice of the proposed basis for her removal.” Separation of Powers Clinic Br. 9; America First Legal Foundation Br. 5. But as Governor Cook explained, the President never invited any response to his erroneous allegations of mortgage fraud—rather, he immediately demanded on social media that Governor Cook “resign” or be “fire[d],” and purported to remove her from her post just five days after he launched his charge. Opp. 36. Amici cite nothing to suggest that this rush to judgment could satisfy any process requirement.

Another amicus brief (again mirroring the President, *see* Reply 9) wrongly asserts that Governor Cook should not receive process because (it says) she has not denied the charges against her. *See* Azoria Capital Br. 6-7. In fact, Governor Cook vigorously contests that she committed mortgage fraud and has responded to the criminal referrals by explaining to the Justice Department that she did not commit any wrongful act. *See, e.g.,* Zoe Tillman & Erik Larson, *Fed’s Cook*

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<sup>2</sup> Neither the amicus filings nor the President respond to Governor Cook’s point that the President forfeited this argument by failing to raise it in the court of appeals. Opp. 35; *see* App. 7a (Garcia, J., concurring).

*Contests ‘Baseless’ Mortgage Fraud Claims to DOJ*, Bloomberg (Nov. 17, 2025), <https://perma.cc/G4QQ-XA89>. The President and his amici are accordingly mistaken to claim that Governor Cook “never says that the allegations are *false*.” Reply 9. She unequivocally does, and she is prepared to refute the allegations in an appropriate forum. But altering the status quo and removing her before she has had that statutorily and constitutionally guaranteed opportunity has nothing to recommend it.

#### **IV. The District Court’s Preliminary Injunction Is Consistent with the History of Equity.**

1. The amicus briefs buttress Governor Cook’s argument (Opp. 37-38) that the district court properly issued a preliminary injunction keeping her in office while this suit proceeds. “[F]rom 1789 to today, courts have consistently held that executive officers threatened with or subject to unlawful removal may properly be retained in office.” Borchers et al. Br. 2. As particularly relevant here, “[i]t has been held that equity may protect the occupant of an office from dispossession pending the determination at law of the dispute as to his right.” *Id.* at 13 (quoting Henry L. McClintock, *Handbook of the Principles of Equity*, § 167, at 435 (2d ed. 1948)); see 2 James L. High, *Treatise on the Law of Injunctions* § 1315, at 866 (2d ed. 1880) (explaining that courts of equity “frequently recogniz[ed] and protect[ed] the possession of officers *de facto*”). That equitable principle controls this case. See Opp. 37-38.

The amicus briefs invoke “recent scholarship” that “affirms that principal officers are entitled to equitable remedies” protecting them from improper removals.

Borchers et al. Br. 13 n.5. In that scholarship, Professor Bray, a notable expert on remedies, writes that “the Court was right not to grant the Solicitor General’s request for a stay of the injunction protecting Federal Reserve Governor Lisa Cook.” Samuel L. Bray, *Remedies in the Officer Removal Cases*, 17 J. Legal Analysis (forthcoming 2025), at 6 (Oct. 20, 2025), <https://bit.ly/4i7fejx>; cf. *Trump v. CASA, Inc.*, 606 U.S. 831, 832-33, 840-45, 847-48, 850, 854 (2025) (relying on Professor Bray’s work). His article collects “extensive precedent,” dating back more than a century, “establishing that equity will protect a de facto officer during the course of the legal proceedings to determine title to the office.” Bray, *supra*, at 4. And he further notes that Governor Cook is a clear-cut example of a “de facto officer” given that she has continuously exercised the functions and duties of her role since the President’s purported removal. *Id.* at 6. The President thus lacks any historical basis to claim that “courts lack the power to issue preliminary injunctions preventing presidential removals of principal officers” like Governor Cook. Reply 15.

Finally, the amicus briefs’ points about reviewability apply with equal force to the remedial question. As the Chamber explains, Congress’s choice to “ensure that the Federal Reserve would operate independently from political pressure . . . lacks meaningful effect without judicial review.” Chamber of Commerce Br. 24. The same is true if courts can review removals but cannot enter meaningful relief; in that circumstance as well, there would also be no effective check on the President’s ability to alter the Federal Reserve Board’s composition to suit his personal preferences. Accepting either the President’s reviewability or remedial

arguments would thus upend “what Congress intended when designing the Federal Reserve and entrusting it with the Nation’s monetary policy.” *Id.* at 23.

2. Again, the amicus briefs on the President’s side fail to muster any persuasive argument supporting his view. None of their three principal contentions—that this Court’s precedents forbid an injunction, that Governor Cook was required to proceed by quo warranto, and that a statute impliedly precludes equitable relief—correctly states the applicable remedial principles.

a. Two sets of amici are wrong to assert (echoing the President, *see* Reply 14-15) that this Court’s decisions in *White v. Berry*, 171 U.S. 366, 377 (1898), and *In re Sawyer*, 124 U.S. 200, 223 (1888), preclude granting temporary relief to Governor Cook. *See* Florida et al. Br. 7-9; America First Policy Institute Br. 6. Those cases, like their state-court predecessors, do not foreclose preliminary relief to preserve the status quo, but rather reflect the rule that equity courts would not finally determine “the appointment and removal of public officers.” *Sawyer*, 124 U.S. at 212; *see White*, 171 U.S. at 377; *Hagner v. Heyberger*, 7 Watts & Serg. 104, 106 (Pa. 1844).

Those cases also state the reason for that rule: Such final determinations were available in “the courts of common law.” *White*, 171 U.S. at 376; *see Sawyer*, 124 U.S. at 212 (“The jurisdiction to determine the title to a public office belongs exclusively to the courts of law . . .”). Common-law courts would regularly adjudicate unlawful removals through mandamus. *See, e.g., Rex v. Bloer*, 2 Burr. 1043, 1045, 97

Eng. Rep. 697, 698 (K.B. 1760) (Lord Mansfield, C.J.); see James L. High, *Treatise on Extraordinary Legal Remedies, Embracing Mandamus, Quo Warranto, and Prohibition*, § 67, at 78 (3d ed. 1896) (*Extraordinary Legal Remedies*) (“[M]andamus 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.”). In declining to duplicate those proceedings, courts of equity exercised their traditional reluctance to intervene if an adequate remedy was available at law.

Temporary relief is different. Common-law courts generally lacked the ability to enter relief prior to final judgment. See Bray, *supra*, at 18-19. So courts of equity filled that role by temporarily protecting de facto officers from ouster until there was final resolution of “the disputed title by legal proceedings.” John Norton Pomeroy, *A Treatise on Equity Jurisprudence*, § 1345, at 821-22 n.5 (student ed. 1907). In those cases, a court of equity is not “determin[ing] the title to a public office,” *Sawyer*, 124 U.S. at 212, and so nothing in *White* or *Sawyer* casts doubt on that separate line of cases. To the contrary, this Court held just three years after *Sawyer* that temporary relief “could be used to protect and enforce recognition of a de facto officer without deciding who was the de jure officer.” Bray, *supra*, at 18 (discussing *Delgado v. Chavez*, 140 U.S. 586 (1891)); see Borchers et al. Br. 12-14 (similar). That is what the district court did when it granted Governor Cook a preliminary injunction.

b. Florida (now going further than the President’s arguments) is wrong to suggest that, as a historical

matter, “the writ of quo warranto was the exclusive process for clearing one’s title to office.” Florida et al Br. 3. Quo warranto is an ancient remedy to oust an improperly appointed official from an office: “When a plaintiff sues for an office occupied by another, quo warranto is the proper remedy.” *Lyon v. Comm’rs of Granville Cnty.*, 26 S.E. 929, 930 (N.C. 1897). “[B]ut when the office is vacant by reason of a motion”—that is, by reason of removal—quo warranto played no role, and an ousted official could instead seek relief through “mandamus.” *Id.*; see *Extraordinary Legal Remedies*, *supra*, at §§ 67, 749, at 78, 695 (same). Indeed, “there is ample authority that a person in possession of an office cannot sue in quo warranto to determine title.” Bray, *supra*, at 23; see Colorado et al. Br. 12 n.4.

This is not a quo warranto case. No one else holds Governor Cook’s office; she continues to serve and occupy her office at the Board. There is thus no one (in Florida’s words) to “oust” as an “intruder.” Florida et al. Br. 4. Florida points to no precedent or other authority suggesting that Governor Cook must wait for another person to be nominated and confirmed to her seat, nor would common sense support that highly disruptive rule. Instead, the lesson of Anglo-American legal history is that Governor Cook may obtain final relief through mandamus or a declaratory judgment and may obtain interim relief through an injunction. See Bray, *supra*, at 3-5; Borchers et al. Br. 20-23.

3. Finally, two amicus filings err in suggesting—again, without support from the President—that the Civil Service Reform Act of 1978 (CSRA), Pub. L. No. 95-454, 92 Stat. 1111, implicitly bars the federal courts from granting Governor Cook relief. See

America First Legal Foundation Br. 6-8; America First Policy Institute Br. 6-8.

Applying CSRA preemption to principal officers is mistaken as a general matter, *see* Brief for Respondent, *Trump v. Slaughter*, No. 25-332 (Nov. 7, 2025), at 51-53, but it is particularly inappropriate here. As another hallmark of Board independence, the Federal Reserve Act of 1913, Pub. L. No. 63-43, 38 Stat. 251, provides that the “employment, compensation, leave, and expenses” of the Federal Reserve’s “members and employees” “shall be governed solely by the provisions of this [Act].” 12 U.S.C. § 244. Thus, as the Comptroller General has concluded, “Congress provided that the Board’s personnel policies and actions are to be governed solely by the provisions of the Federal Reserve Act” and not by the CSRA. *In re Federal Reserve Board*, 58 Comp. Gen. 687, 691 (1979). The amicus filings fail to discuss this statutory language, which is fatal to their theory: The CSRA cannot preempt Governor Cook from obtaining relief if the CSRA does not supply a “comprehensive” and exclusive scheme applicable to the Federal Reserve. America First Policy Institute Br. 6.

## **V. The Equities Strongly Disfavor a Stay.**

Finally, the amicus filings reinforce Governor Cook’s arguments (Opp. 38-40) that the equitable factors here cut sharply against a stay—and, in particular, that the public interest would be greatly disserved by removing Governor Cook from the Federal Reserve Board before her suit reaches final judgment.

1. A broad array of amici with deep expertise on the American economy urge the Court to deny the President’s stay application to protect the independence of

the Federal Reserve, on which the American economy depends.

That argument is made forcefully in a brief filed by a bipartisan array of three former Federal Reserve chairs, four former Treasury secretaries, nine former chairs of the Council of Economic Advisors, and other prominent economic leaders. As their brief explains, the “health and stability of the national economy” depend on an independent Federal Reserve. Former Economic Officials Br. 6. That is because “effective monetary policy requires a commitment to long-term goals over ephemeral short-term gains.” *Id.* at 10. Elected officials, however, “have an incentive to respond to their constituents’ immediate interests by prioritizing short-term economic growth and employment over long-term stability.” *Id.* at 11. And “[a]lthough that approach may satisfy voters temporarily,” it can “lead to persistently higher inflation in the long-term and thus ultimately harm the national economy.” *Id.*; see Chamber of Commerce Br. 7-10 (similar). That is why virtually every economy in the world ensures central-bank independence. *See Opp.* 5.

The “public’s perception” of the Federal Reserve’s independence is just as critical as its actual independence. Former Economic Officials Br. 6. “[I]f the public and financial markets believe that the Federal Reserve is sufficiently insulated, they will act in accordance with that expectation, resulting in lower and more stable inflation.” *Id.* (emphasis removed). By contrast, “[w]hen confidence in Fed independence weakens, those independent actors will react to monetary policy in a way that undermines the long-term

goals of the Federal Reserve,” risking inflation and “painful recession.” *Id.* at 16-17.

Many other amici echo the importance of the Federal Reserve’s credibility as an independent actor. The Chamber of Commerce urges that “[i]n addition to heightened inflation and price variability, credibility issues weaken the tools that central banks have to combat recessions and depressions.” Chamber of Commerce Br. 8-9. Experts in law, finance, and economics observe that “[t]here is a robust body of evidence showing that lower levels of central-bank independence are correlated with higher levels of inflation.” Law, Finance & Economics Experts Br. 14. And distinguished economic professors add that Federal Reserve independence “assure[s] foreign governments holding and using dollars that such security would not be tampered with by politicians.” Economics Professors Br. 7; *see* Former Government Officials Br. 10-11 (similar).

Contrary to the President’s bare assertion, the attempt to remove Governor Cook greatly “threaten[s] that independence” and credibility. Reply 17-18. “Sectors that pay close attention to the Federal Reserve—including the financial markets, the public, employers, and lenders—are watching the current dispute over the President’s removal of Governor Cook to judge how credible the Fed will be going forward.” Former Economic Officials Br. 24. “Those audiences will be more skeptical of the Fed’s independence and commitment to long-term low-inflation policies if it appears that a member of the Board of Governors is being removed based on allegations that are actively under challenge

in litigation.” *Id.*; see Former Governors Br. 3 (similar); Colorado et al. Br. 1, 12 (similar).

“On the flip side,” denying the President’s stay request—which would simply allow this litigation to proceed in the lower courts—would “maintain the status quo of independent policymaking, shore up the public’s perception of the Fed’s commitment to the long-term health of the economy, and allow Governor Cook’s challenge to her removal to play out at the ordinary pace of litigation.” Former Economic Officials Br. 25. And even if the courts ultimately reject Governor Cook’s arguments on the merits, affording her the process that is due and removing her if and only if the case against her is substantiated itself would reassure critical economic actors that politics have not infected the Federal Reserve Board.<sup>3</sup>

2. Most of the President’s amici steer clear of discussing the equities. The sole exception agrees that “[c]redibility is the currency through which monetary policy works.” Azoria Capital Br. 4. But that brief—mirroring the President (Reply 16-18)—insists that Governor Cook’s immediate removal would advance the Federal Reserve’s credibility because she “has

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<sup>3</sup> For reasons similar to the public-interest analysis, the President cannot claim that he is irreparably harmed by a district court order temporarily enjoining him from altering the composition of the Federal Reserve Board. See Opp. 39-40. The President’s response—that he is injured “from any order allowing a removed officer to continue exercising the executive power,” Reply 17 (quoting *Wilcox*, 145 S. Ct. at 1415)—ignores Congress’ considered decision to insulate monetary policymaking from the President’s control.

been criminally referred” to the Justice Department. Azoria Capital Br. 10.

Amici’s use of the passive voice reveals the error of their position. Governor Cook was “criminally referred” by a presidential subordinate who has used his office to initiate investigations of the President’s perceived opponents, including Chair Powell and Governor Cook. Opp. 6. And by all appearances, the investigation into Governor Cook did not arise organically—rather, the subordinate initiated it (and the investigation into Chair Powell) after the President began to criticize the Federal Reserve’s monetary-policy decisions as contrary to his economic preferences. *See id.* Amici advance no argument for why it would enhance rather than reduce the Federal Reserve’s credibility to permit an immediate removal of a Federal Reserve Board governor based on the bare fact of an unsubstantiated criminal referral by a presidential subordinate.

3. If anything, developments since the President’s stay application only accentuate the public interest in maintaining the status quo. Throughout this litigation, Governor Cook “has been performing her duties as a member of the Federal Reserve Board.” Law, Finance & Economic Experts Br. 22. Since the President first sought an emergency stay from the D.C. Circuit, Governor Cook has participated in two meetings of the Federal Open Market Committee. She will participate in one more before this Court holds argument, and likely in further meetings before a decision issues. No amicus suggests that the economy or the markets have reacted poorly to Governor Cook’s continued participation in Federal Reserve policymaking activities. That

the status quo has been maintained for months without any apparent problem only confirms that the public interest favors allowing Governor Cook to retain her office while this suit proceeds.

\* \* \*

In the end, after hundreds of pages of amicus filings, a few points remain undisputed and indisputable. The Federal Reserve Board is a unique institution with a unique history such that even the President does not challenge the constitutionality of the for-cause protection in the Board's organic statute. Governor Cook continues to serve as a full member of the Board, and so granting the President's emergency stay request would radically alter the status quo. And the Nation has benefitted from the Board's statutorily enshrined independence, which removing Governor Cook would undermine. Under these circumstances, the equities are not close, and the President's application should be denied.

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# CONCLUSION

The Court should deny the application.

Respectfully submitted,

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