

No. 25-332

IN THE
Supreme Court of the United States

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

v.

REBECCA KELLY SLAUGHTER, *ET AL.*, *Respondents*.

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

**Brief *Amicus Curiae* of America's Future, Gun
Owners of America, Gun Owners Foundation,
Gun Owners of California, Citizens United,
U.S. Constitutional Rights Legal Defense Fund,
and Conservative Legal Defense and
Education Fund in Support of Petitioners**

PATRICK M. MCSWEENEY
Powhatan, VA 23139
JEFFREY C. TUOMALA
Winchester, VA 22602
MICHAEL BOOS
Washington, DC 20003
RICK BOYER
Lynchburg, VA 24506

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
**Counsel of Record*

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Attorneys for *Amici Curiae*

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INTEREST OF THE *AMICI CURIAE*¹

Amici America’s Future, Gun Owners of America, Gun Owners Foundation, Gun Owners of California, Citizens United, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Each of the organizations participates in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law. These *amici* filed an *amicus* brief in support of the Government’s Application for Stay in this case on September 15, 2025.

STATEMENT OF THE CASE

The Federal Trade Commission Act, as enacted in 1914, purported to limit the ability of the President to remove Federal Trade Commission (“FTC”) Commissioners only for “inefficiency, neglect of duty, or malfeasance in office.” 15 U.S.C. § 41. This provision was upheld by this Court in 1935 in *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935). During the 90 years since, this Court has clarified the scope of the President’s Article II powers

¹ It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

over the Executive Branch, and Congress has enhanced the powers and responsibilities of the FTC.

On March 18, 2025, President Trump, exercising the Article II powers of his office, notified Respondent Rebecca Slaughter that he was removing her from her position as an FTC Commissioner. President Trump did not claim the removal was for any of the for-cause reasons specified in the FTC Act. Instead, his letter to her specifically referred to his “authority under Article II of the Constitution.” Slaughter filed suit, claiming her removal violated the for-cause limitation on removal of Commissioners found in the FTC Act. The Government argues, *inter alia*, that Congress cannot constrain the President’s inherent Article II powers to remove heads of agencies operating under the Executive Branch.

The district court granted Respondent’s motion for summary judgment. *See Slaughter v. Trump*, 2025 U.S. Dist. LEXIS 136631 (D.D.C. 2025) (“*Slaughter I*”). In denying a stay of its decision, the district court mentioned this Court’s recent orders in *Trump v. Wilcox*, 145 S. Ct. 1415 (May 22, 2025), and *Trump v. Boyle*, 145 S. Ct. 2653 (July 23, 2025), but did not believe they had any application to the current challenge because it involved the FTC. *See Slaughter v. Trump*, 2025 U.S. Dist. LEXIS 145313, *7 n.3 (D.D.C. 2025) (“*Slaughter II*”). It asserted that it was bound by *Humphrey’s Executor*, while simultaneously acknowledging “that the majority [of this Court in *Wilcox* recently had] contravened *Humphrey’s Executor*.” *Id.* at *7 (quoting *Wilcox* at 1419 (Kagan, J., dissenting)).

The district court order did not purport to restrict the actions of President Trump directly, but sought to restrict those actions indirectly by fashioning two types of injunctive relief. First, it enjoined the other Commissioners from removing Slaughter from office (a statutory power the Commissioners did not have), and ordered her reinstatement (an equitable power the court did not have). *See Slaughter I* at *59-60.

A divided panel of the D.C. Circuit declined to stay the district court's order. *See Slaughter v. Trump*, 2025 U.S. App. LEXIS 22628 (D.C. Cir. 2025) ("*Slaughter III*"). In dissent, Judge Rao asserted, *inter alia*, that this Court's decisions in *Boyle* and *Wilcox* instructed that "the Commission unquestionably exercises significant executive power, and the other equities favor the government," and accordingly, a stay should have been granted. *Id.* at *22.

The Government filed an Application for Stay on September 4, 2025, and these *amici* filed an *amicus* brief in support of that Application. Both the Government and these *amici* asked this Court to construe the Application as a Petition for Writ of Certiorari before Judgment and grant it, which it did on September 22, 2025.

SUMMARY OF ARGUMENT

Respondents will be asking this Court to leave in place the district court's injunction which attempted to reinstate a FTC Commissioner who had been removed from her position by the President. Additionally, no doubt, it will be asking this Court to re-affirm

Humphrey's Executor. However, the district court provided little Constitutional analysis to justify either proposition. Much like two other recent lower court decisions seeking to prevent Presidential exercises of the removal power, in *Trump v. Wilcox* and *Trump v. Boyle*, most of the decision below focused on venting of political and policy objections to this President's exercise of that power, not the broader Constitutional issue presented.

When the ultimate issue is reached, it becomes clear that *Humphrey's Executor* is an outlier which was based on a misapprehension of the executive powers of the FTC, and is even less valid over time as the statutory authority of the FTC has changed. But, more importantly, it is at direct odds with this Court's carefully supported decision in *Myers v. United States*.

The President's power to remove subordinate Executive Branch officials is essential to his duty to "take care" that the laws be faithfully executed. The power of removal may not be expressly stated in the Constitution, but it is an implicit power grounded in the role that the Constitution requires the President to play to preserve our Republic. *Humphrey's Executor* does not just deprive the President of a legitimate constitutional power, it deprives the People of the ability to change the policies implemented by unelected and unremovable bureaucrats. In this way, *Humphrey's Executor* has both eroded the Separation of Powers and led to the explosion of a dangerous and politically insulated technocratic state, and should be overruled.

As to the second issue presented, the district court's peculiar method of reinstating Ms. Slaughter indirectly, by enjoining the other members of the FTC who had no power to remove her, was an effort to circumvent its lack of ability to either enjoin the President or directly reinstate her. What the district court could not do directly, it certainly had no power to do indirectly.

ARGUMENT

I. THE DECISIONS OF THE LOWER COURTS IN *SLAUGHTER*, *WILCOX*, AND *BOYLE* DO LITTLE TO EXPLAIN WHY *HUMPHREY'S EXECUTOR* SHOULD BE FOLLOWED AND UPHELD.

These *amici* filed an *amicus* brief² in this Court in support of the Government's Application for a Stay of the injunction of the U.S. District Court for the District of Columbia on September 15, 2025, that urged the Court to treat the Application as a Petition for Certiorari before judgment, both of which this Court did on September 22, 2025. In its grant, this Court directed the parties to address two issues. The first issue addresses the specific facts applicable to the removal of members of the Federal Trade Commission in light of the separation of powers, as well as whether *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), should be overruled. The second issue relates to a federal court's authority to prevent a federal

² Brief *Amicus Curiae* of America's Future, *et al.* (Sept. 15, 2025).

official's removal from public office, either through relief at equity or at law. These *amici* addressed both issues at the Application stage and expound on those arguments here. However, this grant of certiorari in *Slaughter* arises after similar applications for stay of injunctions were granted in two earlier cases. The lower court decisions in these three cases fail to demonstrate the validity of *Humphrey's Executor*.

A. *Trump v. Wilcox*, stay issued 145 S. Ct. 1415 (May 22, 2025).

The *Wilcox* case addressed President Trump's removal of persons from the National Labor Relations Board and the Merit Systems Protection Board. Some of these *amici* filed *amicus* briefs in *Wilcox* when that case was in the D.C. Circuit,³ and again in this Court in support of an Application for Stay.⁴

The district court was presented with an important issue of constitutional law with important legal arguments on both sides. Yet, the district court's opinion is not particularly helpful to this Court in evaluating the merits of *Humphrey's Executor*. The district court addressed the legal question of the presidential removal power as if it applied only to President Trump, not all presidents. The district court devoted itself to denigrating President Trump's position by characterizing the President's removal as

³ Brief *Amicus Curiae* of America's Future, et al. (Mar. 29, 2025).

⁴ Brief *Amicus Curiae* of America's Future, et al. (Apr. 15, 2025).

an arbitrary act of a megalomaniacal “Man Who Would Be King.”

[T]he Framers made clear that no one in our system of government was meant to be king — the President included — and not just in name only. *See* U.S. Const. art. I, § 9, cl. 8 (“No Title of Nobility shall be granted by the United States.”). [*Wilcox v. Trump*, 775 F. Supp. 3d 215, 218 (D.D.C. 2025) (emphasis added).]

The district judge claimed the President’s constitutional argument would lead to “absolutist” presidential power and a federal government with “widespread corruption” and “inefficiency.” *Id.* at 233, n.17. It continued:

The President seems intent on pushing the bounds of his office and exercising his power in a manner violative of clear statutory law to test how much the courts will accept the notion of a presidency that is supreme.... An American President is not a king—not even an “elected” one.... [*Id.* at 239-40 (citations omitted).]

Comparatively little attention was given by the district court to the constitutional arguments at the core of *Wilcox*.

B. *Trump v. Boyle*, stay issued 145 S. Ct. 2653 (July 23, 2025).

Boyle involved an injunction issued by the U.S. District Court for the District of Maryland stopping President Trump’s removal of a member of the Consumer Product Safety Commission, where the Fourth Circuit refused to stay her reinstatement pending appeal. This Court stayed the district court’s reinstatement of Boyle. In its order of June 13, 2025, the district court in *Boyle*, curiously, **relied on** the district court’s order in *Wilcox* while simultaneously **distinguishing** this Court’s stay. In ordering reinstatement, the district court in *Boyle* quoted Judge Howell’s decision that “being ‘deprived of the ability to carry out [one’s] congressional mandate ... cannot be retroactively cured by monetary damages.’” *Boyle v. Trump*, 2025 U.S. Dist. LEXIS 112552, *37 (D. Md. 2025). It distinguished this Court’s decision in *Wilcox* because it was entering a permanent order, not temporary injunctive relief. *Id.* at *39 n.11.

The district court’s “application” of *Humphrey’s Executor* in *Boyle* demonstrates how malleable of a standard it is. *Humphrey’s* determination of the FTC and its “quasi-legislative and quasi-judicial”⁵ authority was easily manipulated by the district court to find

⁵ Prior to *Humphrey’s Executor*, this Court hinted at the concept of a “quasi-legislative” power by describing the rate setting process of a state agency as “legislative in their nature.” *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908). The term “quasi-judicial” was again used in *Morgan v. United States*, 298 U.S. 468, 480 (1936).

that “the CPSC closely resembles the 1935 FTC in both structure and function, and therefore qualifies for the *Humphrey’s Executor* exception.” *Boyle* at *32. In truth, the terms “quasi-legislative” and “quasi-judicial” serve more to confuse the issue, as those “half-way” terms have served to justify Congress’ vesting of all three types of power — legislative, executive, and judicial — in one regulatory agency, which is exactly what the Separation of Powers was designed to avoid. Without the “quasi” prefix, the offense against the Separation of Powers would be much more clear.

C. *Trump v. Slaughter*, stay issued 2025 U.S. LEXIS 2794 (September 22, 2025).

The decision of the district court in *Slaughter* followed the pattern in *Wilcox* by spending more time warning about President Trump than discussing the merits of the issues. There, the district court warned that “a president cannot faithfully execute the laws or ‘preserve, protect[,] and defend the Constitution’ ... by running roughshod over congressionally enacted legislation. The delicate balance between our three branches of government ... cannot be cast aside in the name of one administration’s **political** whims.” *Slaughter I* at *54 (emphasis added). The district court accused the President of “dislik[ing] the laws” and “seek[ing] to invalidate” them. *Id.* at *56.

Finally, reaching slightly closer to the substance of the constitutional challenge, the district court declared that President Trump should not be “allowed to enforce his preferred **policy** agenda through **unfettered removal power**.” *Slaughter II* at *10

(emphasis added). However, the district court’s statement itself was a policy argument masquerading as a constitutional conclusion.

In granting summary judgment to Slaughter, the district court claimed it was bound by this Court’s 90-year-old ruling in *Humphrey’s Executor*. Despite that decision being based on the FTC having powers “neither political nor executive, but predominantly quasi-judicial and quasi-legislative” (*Humphrey’s Executor* at 624), the court held that, since the FTC was not exercising primarily executive power, Congress could limit the President’s power to remove FTC commissioners. The court below acknowledged that the FTC Act had changed significantly during the last nine decades, but believed that this Court’s 1935 decision still governed despite those changes.

In its opening brief, the Government has detailed the growth of the FTC’s executive powers. Opening Brief at 21-28. It explained that the 2025 FTC has been vested with substantial executive authority and significant rulemaking authority. *Id.* at 24-26. The modern FTC also has greater adjudicatory authority (*id.* at 27) and investigatory and enforcement powers (*id.*) than in 1935. The changing facts of this case present the need to apply the legal principle, *Cessante ratione legis cessat ipsa lex*.

II. THE NATURE OF THE PRESIDENT'S POWER TO REMOVE IS BEST UNDERSTOOD AND SUPPORTED BY *MYERS V. UNITED STATES*.

A. *Myers v. United States*.

President Trump relied on his Article II powers to remove at-will any principal officer of the United States exercising executive power. That action of the President may violate the terms of the FTC Act, but it is well supported, particularly by *Myers v. United States*, 272 U.S. 52 (1926). There, this Court ruled that Congress could not condition the removal of a principal officer exercising executive power on the advice and consent of the Senate.

In reaching the conclusion that Congress could not place restrictions on the President's power to remove principal officers who exercise executive powers, the *Myers* Court provided a detailed historical survey of the drafting and early congressional interpretation of the President's powers of appointment and removal. From this survey, the Court identified two rationales for reaching its conclusion.

The first rationale is that the President would be unable to fulfill his constitutional duty to ensure that the laws are faithfully executed unless he has the power to remove officers who have lost his confidence. *Id.* at 117. The Court in *Myers*, and others since then, have convincingly supported this rationale. The second rationale offered by the *Myers* Court is that the power to remove is "incident to the power of

appointment.” *Id.* at 122. This *amicus* brief principally focuses on this second rationale.

Thereafter, this Court lost sight of the basic principles set out in *Myers* when deciding two cases separated by a half-century that should be considered outliers — *Humphrey’s Executor* and *Morrison v. Olson*, 487 U.S. 654 (1988). Those two cases attempted to justify limits placed on Presidents’ removal power, although the rationales provided in the two cases are at odds not only with *Myers*, but also with each other. These departures from *Myers* reflect two major deviations from the fundamental design of the U.S. Constitution, the hallmarks of which are the separation of powers among the three branches of government and the limited number of enumerated powers of the federal government.

The district court asserts that “*Humphrey’s Executor remains good law today*. Over the span of ninety years, the Supreme Court has declined to revisit or overrule it.” *Slaughter I* at *23-24. However, in the past 15 years, this Court has taken small but important steps to return to the principles undergirding *Myers*, with several Justices openly criticizing the *Humphrey’s Executor* ruling.

B. *Free Enterprise Fund v. Public Company Accounting Oversight Board*.

In *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010), the Court ruled that Congress could not impose two layers of for-cause removal restrictions. Writing for the

majority, Chief Justice Roberts held that “[t]he President cannot ‘take Care that the Laws be faithfully executed’ if he cannot oversee the faithfulness of the officers who execute them.” *Id.* at 484.

C. *Seila Law LLC v. Consumer Financial Protection Bureau.*

In *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020), this Court ruled that Congress could not create an independent agency headed by one person removable only for cause. The Chief Justice, writing again for the majority, distinguished *Humphrey’s Executor* and narrowly confined it to its facts. *Id.* at 204-05, 214-17. Justice Thomas, in a thorough concurrence joined by Justice Gorsuch, described *Humphrey’s Executor* as “a direct threat to our constitutional structure and, as a result, the liberty of the American people.” *Id.* at 239 (Thomas, J., concurring). He noted that “[c]ontinued reliance on *Humphrey’s Executor* to justify the existence of independent agencies,” as the district court below did, “creates a serious, ongoing threat to our Government’s design,” and while he acknowledged that the Court undercut *Humphrey’s Executor* “enough to resolve” the case before it, he urged that “in the future, we should reconsider *Humphrey’s Executor in toto.*” *Id.* at 251.

Neither *Free Enterprise Fund* nor *Seila Law LLC* formally overruled *Humphrey’s Executor* or *Morrison*, but they certainly did not reaffirm *Humphrey’s Executor*, as incorrectly asserted by the district court.

See Slaughter I at *19-21. Rather, these two cases should, at minimum, be viewed as harbingers of a return to first principles of constitutional interpretation, calling into question the continuing validity of *Humphrey's Executor* and *Morrison*.

Although the FTC has been with us for 90 years, longevity does not equate to legitimacy. *Dred Scott v. Sandford*, 60 U.S. 393 (1857), was considered good law, and so also was *Korematsu v. United States*, 323 U.S. 214 (1944), and more recently *Roe v. Wade*, 410 U.S. 113 (1973), for about 50 years. None was good law, even while in effect.

III. THE PRESIDENT'S POWER OF REMOVAL MAY NOT BE EXPRESSLY STATED IN THE CONSTITUTION, BUT IT IS NEVERTHELESS SOLIDLY GROUNDED.

A. The Constitutional Role of a President.

The President of the United States is the only official in America who is elected by the participation of all the People.⁶ Thus, whether or not pundits characterize the decisiveness of his election as sufficient to be termed a “mandate,” the President has the authority and obligation to advance the platform on which he ran. Article II provides: “The executive Power shall be vested in a President of the United States of America.” Art. II, Sec. 1. One of the duties

⁶ In the November 5, 2024 election, President Trump won both the Electoral College (312 to 226) and the popular vote, with over 77 million votes, and won all seven battleground states.

of his office is to “take Care that the Laws be faithfully executed.” Art. II, Sec. 3. The President takes an oath swearing: “I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.” Art. II, Sec. 1. Presidential races are hotly contested because of the office’s vast powers. Given these vast responsibilities, including his role often being described as “leader of the free world,” one would assume that he would have all of the powers reasonably necessary to succeed.

The basic power a President would need to possess is the ability to recruit and place persons in his Administration who share his vision and who could assist him in carrying out his responsibilities. This personnel power would necessarily include both appointing and removing subordinate officials. Without that power, no President would be able to perform his constitutional duties to exercise “executive power,” to “take Care that the Laws be faithfully executed,” and to “preserve, protect and defend the Constitution.” Although those serving in the bureaucracy may have cooperated with the agenda of prior Presidents, few, if any, Presidents were hampered by the level of internal resistance faced by President Trump. The refusal of thousands of federal officials to help implement the agenda that 77 million voters supported has made it necessary for the President to take on this battle and seek to return to the original constitutional plan.

The district court describes limits on the power to remove federal officials as “*to serve the public interest*”

and a way to guard against “one administration’s political whims.” *Slaughter I* at *54-55. Actually, it is the limits on removal that the district court so admires which have a very different and dangerous effect. Those limits render the President unable to implement the platform on which he was elected. Without the ability to clear the decks of those who disagree with him and replace them with those who would help him carry out his agenda, there is conflict and paralysis.

One of the principal reasons that Presidents can be stymied in making reforms is that there exists an establishment with the power to erect many impediments to efforts to reduce their power. All courts, but particularly this Court, need to ensure that those in the federal judiciary who believe that the wrong candidate was elected do not wield their power in a partisan manner.

B. The Necessity of Implicit Powers.

Based on the clear, complete, and unequivocal vesting of executive power, most discussions of Presidential power are focused on his “executing” specific constitutional or statutory powers. However, the authority for the President to perform many of his powers cannot be sourced to any specific constitutional provision or particular section of the U.S. Code. Utilization of these implicit powers is essential to the operation of the Executive Branch of government and to carry out his constitutional duties. The President acts through subordinate officials. Appointing and removing officers are necessary means to ensure that the laws are faithfully executed.

1. Constitutional Restrictions on the Appointment Power.

It is true that the Constitution grants Congress a before-the-fact check on the President's appointment powers through the "advise and consent" requirement for principal offices. And it is true that the Constitution grants Congress an after-the-fact check on the President's appointments through the impeachment power. However, there is no other constitutional power given to Congress to limit the removal of officials exercising executive branch powers.

The People have placed certain conditions on the President's inherent power of appointment. *See* Art. II, Sec. 2. Otherwise, the President has the inherent power to appoint officers of his own choosing. Similarly, he has the power to remove officers subject to limitations that the people, through the Constitution, have placed on him. The only check to his power of removal is that Congress may remove an officer through the impeachment process, even when the President would rather retain the official in office. Art. I, Sec. 2, cl. 6; Art. I, Sec. 3, cl. 6-7; Art. II, Sec. 4.

2. Implied Powers Are Routinely Recognized by this Court.

It is curious that the same "legal scholars" who would bar the President from removing those who are exercising power in multi-member agencies have no problem with the Congress exercising powers to regulate Americans by finding penumbras and

emanations in the Constitution, including giving virtually unlimited application to the Commerce Clause,⁷ the Spending Power and General Welfare Clause,⁸ the Taxing Power,⁹ and the Necessary and Proper Clause.

⁷ See, e.g., *Wickard v. Filburn*, 317 U.S. 111 (1942), which has never been overruled, but which on one occasion was described by this Court as “perhaps the most far reaching example of Commerce Clause authority over intrastate activity” which operated to “greatly expand[] the previously defined authority of Congress under that Clause....” *United States v. Lopez*, 514 U.S. 549, 560, 556 (1995). Justice Thomas asserted that *Wickard*’s “substantial effect on interstate commerce” test was “far removed from both the Constitution and from [this Court’s] early case law.” *Id.* at 601 (Thomas, J., concurring).

⁸ See, e.g., *Helvering v. Davis*, 301 U.S. 619, 640-42 (1937), where the Court defaulted on its obligation to rule whether a particular spending measure was for the “general welfare” by deferring to Congress’s discretion — a rule still followed. See also Federalist No. 41, *The Federalist* at 213-14, G. Carey & J. McClellan, eds. (Liberty Fund: 2001) (“It has been urged and echoed, that the power ‘to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,’ amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare.... For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power?”).

⁹ See *NFIB v. Sebelius*, 567 U.S. 519 (2012), where even five Justices (Roberts, Scalia, Kennedy, Thomas, and Alito) found the individual mandate in the Patient Protection and Affordable Care Act (known as “Obamacare”) not authorized by the Commerce Clause or the Necessary and Proper Clause, while five Justices (Roberts, Ginsburg, Breyer, Sotomayor, and Kagan) found it to be a lawful exercise of the Taxing Power.

3. The President Has Implicit Powers.

Both the powers of appointment and removal are essential to the functioning of every organization that depends upon individuals to carry out its mission. The executive power assigned to the President cannot be exercised effectively without the ability to assure accountability within the Executive Branch. See *Myers* at 117. The power to remove subordinate executive officers is incidental to the power to appoint. *Id.* at 119. In *Humphrey's Executor*, the Court nevertheless upheld a legislative provision imposing limitations on the President's removal power, while affirming the proposition that "congressional participation in the removal of executive officers is unconstitutional." *Bowsher v. Synar*, 478 U.S. 714, 725 (1986).

Many examples can be drawn from Article II of powers that the People have delegated to the President that are not executive by nature in the sense of enforcing the law. The power to make treaties is a foreign affairs power and is neither executive nor legislative by nature. Until a treaty is made, there is no law to enforce; a treaty cannot be made by legislation. Similarly, the power to recommend legislation to Congress, like the veto power, is generally considered to be legislative in nature. Another inherent power that each branch of government possesses is the power to make rules and regulations for their internal operation.¹⁰

¹⁰ In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice Marshall noted that in deciding cases, the Court is bound not only

The Supreme Court has recognized the power of organizations formed by contract, and those that preexist the state, to appoint and remove officers of their own choosing to ensure proper functioning of those organizations in pursuance of their respective missions. In *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819), the Supreme Court recognized the preexisting right or general principle of law to form a voluntary organization by contract and to appoint its officers to execute the terms of its agreement. Similarly, in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 184, 191 (2012), the Supreme Court recognized the preexisting right of churches to appoint and remove officers according to the tenets of their faith.

4. Necessary and Proper Clause.

The only possible source of a congressional power to limit the President's removal power is the Necessary and Proper Clause. *See, e.g., Myers* at 180-81 (McReynolds, J., dissenting); *Seila Law* at 267, 295-96 (Kagan, J., dissenting). That Clause states:

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the

by the Constitution and acts of Congress, but also by general principles of law. *Id.* at 170. The Declaration of Independence identifies the source of authority for these general principles of law, also known as “the Laws of Nature and of Nature’s God,” as the “Creator” and “Supreme Judge of the world.”

United States, or in any Department or Officer thereof. [Art. I, Sec. 8, cl. 18.]

It is generally recognized that this Clause gives Congress the power to establish the great departments of government and offices necessary to operate them. In *Marbury*, the Court recognized the power of Congress to establish the State Department and office of Secretary of State. Congress had the power to channel the Secretary of State's discretion in the operation of that office, as evidenced by the particular laws giving Marbury a right to his commission as justice of the peace for the District of Columbia. *Marbury* at 170. The *Marbury* Court recognized a general principle of law that the Constitution is supreme and paramount law because it was adopted by the People, who exercised their original will in pursuance to their original right to adopt it.¹¹ See *Marbury* at 176.

The general principle of law that the head of an organization has an inherent power of appointment and removal is operative. Although Congress may believe that independent agencies are “necessary” (*i.e.*, useful or convenient), they are, rather, not “proper.” The district court asserted that restrictions on the removal power provide essential checks and balances, but that is only a pretext to justify allowing Congress — as well as the judiciary — to usurp an inherent power of the Presidency, required for real separation of powers and federalism.

¹¹ J. Tuomala, “*Marbury v. Madison* and the Foundation of Law,” 4 LIBERTY UNIVERSITY LAW REVIEW 297, 303-25 (2015).

IV. THE DISTRICT COURT DID NOT HAVE AUTHORITY TO REINSTATE SLAUGHTER.

A. The District Court Had No Authority to Reinstate Slaughter Indirectly.

To its credit, unlike some other district courts,¹² the district court below did not believe that it had authority to enjoin the President of the United States.¹³ However, it attempted to achieve the same effect when it ordered the reinstatement of Slaughter and issued an injunction against the other members of the FTC. The court asserted that “a court may ‘enjoin “subordinate executive officials” to reinstate a wrongly terminated official “*de facto*,” even without a formal presidential reappointment.” *Id.* at *49 (quoting *Severino v. Biden*, 71 F.4th 1038, 1042-43 (D.C. Cir. 2023)). However, even if that D.C. Circuit decision could be read to stand for the proposition cited, it violates this Court’s venerable ruling establishing a limitation on judicial authority, stating that “a court of equity [may] not, by injunction, restrain an

¹² In the three Birthright Citizenship cases considered by this Court earlier this year, all Plaintiffs-Respondents named President Trump as a defendant in his official capacity. The Maryland and Western District of Washington district courts actually purported to enjoin the President. *See CASA v. Trump*, 763 F. Supp. 3d 723, 746-47 (D. Md. 2025); *Washington v. Trump*, 765 F. Supp. 3d 1142, 1149 n.4, 1154 (W.D. Wash. 2025). Only the Massachusetts District Court understood it had no authority to enjoin the President, but it left the issue unresolved. *See Doe v. Trump*, 766 F. Supp. 3d 266, 288-89 (D. Mass. 2025).

¹³ *Slaughter I* at *47.

executive officer from making a wrongful removal of a subordinate appointee, nor restrain the appointment of another.” *White v. Berry*, 171 U.S. 366, 377 (1898) (quoting *Morgan v. Nunn*, 84 F. 551 (M.D. Tenn. 1898)).

Knowing that it could not enjoin the President, and casting about for ways to reinstate Slaughter when it knew or should have known it had no authority to do so, the court landed upon a bizarre approach: to enjoin the other FTC Commissioners from removing Slaughter, even though they had no such power under the statute. The district court:

ORDERED that Defendants Andrew Ferguson, Melissa Holyoak, David Robbins, and their subordinates and agents are ENJOINED from removing Ms. Slaughter from her lawful position as an FTC Commissioner.... [*Slaughter I* at *60.]

There is no justification for this type of convoluted series of injunctions to do indirectly what the court knew it could not do directly.

B. The District Court Had No Authority to Reinstate Slaughter Directly.

The ruling of the district court that Ms. Slaughter be restored to the office that she held before the President removed her was not only contrary to longstanding precedents of this Court, but also at odds with sound policy and common sense.

Pursuant to Art. II, Sec. 1, cl.1, “*all of the executive power*” is vested in the President. *Morrison v. Olson* at 705 (Scalia, J., dissenting); *see also Seila Law* at 203 (2020). In the performance of his responsibilities, the President necessarily acts. The Appointments Clause (Art. II, Sec. 2, cl. 2) gives the President the power to nominate all executive officers. The Constitution also assigns the President the power to “*Commission all the Officers of the United States.*” Art. II, Sec. 3.

As the only officer of the United States (other than the Vice President) who is elected by the voters of the Republic, the President is accountable directly to the people for the execution of the laws, the performance of other executive officers, and the exercise of his discretion in matters of national security and foreign affairs. His control of actions or failure to act by subordinate executive officers is essential to his ability to carry out his constitutional duties. *See Free Enterprise Fund* at 496-97 (The President is “responsible for the actions of the Executive Branch.” (quoting *Clinton v. Jones*, 520 U.S. 681 (1997))).

The President is also responsible for making recommendations to Congress (Art. II, Sec. 3) and for proposing and implementing policies and programs in the Nation’s best interest. In our political tradition, he is expected to present Congress and the People with an agenda for action upon his election. He fulfills that responsibility by submitting recommended legislation to Congress and by initiating policies and programs that would implement his agenda. His objectives can be frustrated by subordinates who oppose his agenda

or who violate criminal laws or ethical requirements. In short, the President cannot function effectively unless he has the authority to control his subordinates. His ability to remove executive officers is indispensable to his ability to carry out his constitutional duties to implement the agenda that he presented to the voters to secure his election.

In ordering the restoration of Ms. Slaughter to office as a member of the FTC pending the final resolution of the litigation, the district court was exercising judicial power that it did not possess. This Court has repeatedly ruled that a court may not enjoin the removal of an executive officer. *White v. Berry*; *In re Sawyer*, 124 U.S. 200 (1888). The Court has affirmed that rule in several decisions. *See, e.g., Baker v. Carr*, 369 U.S. 186, 231 (1962); *Walton v. House of Representatives*, 265 U.S. 487, 490 (1924); *Harkrader v. Wadley*, 172 U.S. 148, 165 (1898).

The decision in *White* is instructive here. Berry had been appointed to his office by the Secretary of the Treasury. That office was a classified position under the civil service statutes at the time. He challenged his removal on the ground that it was not made upon just cause, but rather based on partisan political reasons. He also contended that he had a vested interest in his office. Berry was removed and another individual was assigned to his position immediately before his challenge was filed.

The district court ruled that it had jurisdiction to prohibit Berry's removal and that Berry could not be removed except for cause. White argued that the

removal was justified because of Berry's careless performance. Berry challenged the district court's jurisdiction on appeal. Relying on the decision in *In re Sawyer*, the Court reversed the decree of the lower court, concluding that "the Circuit Court, sitting in equity, was without jurisdiction to grant the relief asked." *White* at 378.

Justice Harlan reasoned in his opinion for the Court that ordering reinstatement of an executive officer during the pendency of litigation over a removal could cause "the utmost confusion in the management of executive affairs." *White* at 378. That proposition plainly applies in the current context. During the 2024 presidential campaign, the 2024 election, the transition to President Trump's second term, and the period following his inauguration, the subject of the accountability of the Administrative State has been widely discussed. *See, e.g.*, "When a president takes on the administrative state," *Harvard Law Today* (Mar. 12, 2025); P. Shane, "Reconstruct the Administrative State," *Washington Monthly* (Jan. 5, 2025); A. Grossman, "Trump 2.0: Taming the administrative state," *Washington Examiner* (Jan. 5, 2025) (President Trump should "direct officials at every level to prioritize the achievement of programmatic objectives, efficiency, and U.S. competitiveness."). The federal bureaucracy has the capacity to frustrate and delay the achievement of the President's objectives.

When a court orders the reinstatement of an officer who has been removed, the effect on the functioning of the executive branch is unavoidably adverse. The tension between the President and the reinstated

officer is certain to disrupt the agency, limit the achievement of the President's objectives, and hamper the efficiency of the agency's operations.

Any countervailing interest in protecting the individual who is removed will not justify reinstatement. That individual has no vested or legally cognizable interest in continuing to serve in the position. *See Raines v. Byrd*, 521 U.S. 811, 821 (1997). His remedy is to recover back pay if his challenge is successful pursuant to the Civil Service Reform Act of 1978. 5 U.S.C. §§ 1101, *et seq.* Certainly, in the absence of a statutory provision authorizing reinstatement, a court has no authority to order it either on a preliminary or on a permanent basis.

V. HUMPHREY'S EXECUTOR TRANSFERRED POLITICAL POWER FROM THE PEOPLE TO A TECHNOCRATIC ADMINISTRATIVE STATE.

A. The Diminished Power of Both the President and the People.

Humphrey's Executor was decided in the context of a political battle between President Roosevelt and this Court, just two years before the court-packing crisis of 1937. The degree to which that looming conflict led the *Humphrey's* Court to look hard to find some justification for not applying the *Myers* rule is a matter of speculation. What is not speculative is that *Humphrey's Executor* has rendered it difficult, and sometimes impossible, for presidents to fulfill their duty to "take care that the laws be faithfully

executed.” And, since presidents cannot remove certain personnel, it has weakened the ability of the People to change the policies of unelected technocrats by changing presidents. Thus, that one case has done much to lead to the creation of a permanent technocratic state, unresponsive both to the president and to the People.

B. The Progressive Desire to Empower Experts.

Humphrey’s Executor “paved the way for the modern administrative state by holding that Congress could constitutionally limit the President’s power to remove the heads of administrative agencies for political reasons,” and “served to legitimize the modern regulatory state.”¹⁴ Fifty years after *Humphrey’s Executor*, this Court identified what likely was its rationale, noting that “our jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives.” *Mistretta v. United States*, 488 U.S. 361, 372 (1989). The *Humphrey’s Executor* Court commented with approval on the congressional purpose of the FTC to put government decisions in the hands of “experts” as opposed to elected representatives of the people:

¹⁴ D. Crane, “Debunking Humphrey’s Executor,” 83 GEO. WASH. L. REV. 1835, 1836 (2014-2015).

The work of this commission will be of a most exacting and difficult character demanding persons who have experience in the problems to be met.... [T]he terms of the commissioners shall be long enough to give them an opportunity to acquire the expertness in dealing with these special questions ... that comes from experience. [*Humphrey's Executor* at 624.]

The Court added, “its members are called upon to exercise the trained judgment of a body of experts appointed by law and informed by experience.” *Id.* (internal quotation omitted).

As then-Judge Kavanaugh pointed out, “[a]s part of the Progressive Movement and an emerging belief in expert, apolitical, and scientific answers to certain public policy questions, Congress began creating new agencies that were independent of the President but that exercised combined powers: the executive power of enforcement, the legislative power of issuing binding legal rules, and the judicial power of deciding adjudications and appeals.” *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 169 (D.C. Cir. 2018) (Kavanaugh, J., dissenting) (overruled in part by *Seila Law*). “The expertise claim came straight from the Progressive-technocratic playbook, which called for the separation of politics from economic and social administration and the entrustment of decisionmaking to neutral experts.... As Woodrow Wilson famously put it, regulators would be experts in the ‘science of

administration’ that operated ‘**outside the proper sphere of *politics*.**’”¹⁵

In other words, and entirely by design, this decision put the decisions controlling the lives of the American people out of the control of the President, and thereby out of the ability of the People to overrule them. “Like expertise and independence, the idea of administrative agencies blurring the traditionally Montesquieuan demarcations between the three branches of government and commingling executive, legislative, and judicial functions in order to achieve more efficient decisionmaking was central to Progressivism.” *Id.*

C. Policies that Cannot Be Changed by Elections.

Not surprisingly, what *Humphrey’s Executor* created instead has been a vast administrative state “not subject to the people,” free from “control” by the people. In 2018, Miles Taylor, a chief of staff in the Department of Homeland Security, published an op-ed — anonymously at the time — in the *New York Times* entitled, “I Am Part of the Resistance Inside the Trump Administration.” Taylor explained the overt efforts within the bureaucracy to derail the President’s agenda. “I work for the president but like-minded colleagues and I have vowed to thwart parts of his agenda and his worst inclinations,” Taylor wrote:

¹⁵ D. Crane at 1844 (bolding added).

[M]any of the senior officials in his own administration are working diligently from within to frustrate parts of his agenda and his worst inclinations. I would know. I am one of them.... [M]any Trump appointees have vowed to do what we can to preserve our democratic institutions while thwarting Mr. Trump's more misguided impulses until he is out of office.... [W]e will do what we can to steer the administration in the right direction until — one way or another — it's over.¹⁶

D. Nonresponsive Government Leads to a Loss of Liberty.

The first edition of the Code of Federal Regulations (“CFR”) was published in 1938, three years after this Court’s decision in *Humphrey’s Executor*. It then contained 18,000 pages of regulations, including those promulgated by agencies like the FTC. Today, the Code of Federal Regulations is 190,000 pages long.¹⁷ These regulations reach into and often control virtually every aspect of our lives. As then-Judge Kavanaugh wrote in 2018:

The independent agencies collectively constitute, in effect, a headless fourth branch of the U.S. Government. They hold enormous

¹⁶ M. Taylor, “I Am Part of the Resistance Inside the Trump Administration,” *New York Times* (Sept. 5, 2018).

¹⁷ M. Scacchi, “The CFR: A 190,000-page monument to executive overreach,” *Pacific Legal Foundation* (Dec. 20, 2024).

power over the economic and social life of the United States. Because of their massive power and the absence of Presidential supervision and direction, independent agencies pose a **significant threat to individual liberty and to the constitutional system of separation of powers** and checks and balances. [*PHH Corp.* at 165 (Kavanaugh, J., dissenting) (emphasis added).]

There is almost no area of American life too trivial, too local, or too personal for federal agency regulations to restrict. In 2023, the Department of Energy effectively banned incandescent lightbulbs via regulation.¹⁸ In 2024, the EPA required that over 50 percent of all new vehicles manufactured by 2032 must be electric or hybrid.¹⁹ The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) promulgated a rule declaring that attaching a stabilizing brace to a pistol converted the firearm to a rifle. The Food and Drug Administration states exact size definitions for “(b) Macaroni is ... tube-shaped and more than 0.11 inch but not more than 0.27 inch in diameter.... Spaghetti is ... tube-shaped or cord-shaped (not tubular) and more than 0.06 inch but not more than 0.11 inch in diameter.... Vermicelli is ... cord-shaped

¹⁸ R. Frazin, “4 things to know as full enforcement of incandescent bulb ban begins,” *The Hill* (Aug. 2, 2023).

¹⁹ Z. Folk, “New EPA Rule Could Make Most New Cars Hybrid Or Electric By 2032—Backing Off Stricter Timeline,” *Forbes* (Mar. 20, 2024).

(not tubular) and not more than 0.06 inch in diameter.” 21 C.F.R. § 139.110(b)-(d).

In none of these cases did Congress pass a law restricting Americans’ free choices. In each case, a federal agency promulgated a regulation. There are more than 1 million prohibitions in the CFR, and its “breadth and complexity makes it nearly impossible for any normal citizen to know what the law requires....”²⁰ In Federalist No. 62, James Madison warned against “laws be[ing] so voluminous that they cannot be read, or so incoherent that they cannot be understood” so that “no man, who knows what the law is to-day, can guess what it will be to-morrow.”²¹ In no small part due to *Humphrey’s Executor*, we have created a state which Madison hoped would never exist. That decision was wrong when decided, and has grown worse with age. It should be reversed now.

CONCLUSION

For the foregoing reasons, *Humphrey’s Executor* should be overruled, and the judgment of the district court should be vacated and the case remanded for the complaint to be dismissed.

²⁰ M. Scacchi, *supra*.

²¹ The Federalist at 323-24.

Respectfully submitted,

PATRICK M. MCSWEENEY 3358 John Tree Hill Rd. Powhatan, VA 23139	WILLIAM J. OLSON* JEREMIAH L. MORGAN WILLIAM J. OLSON, P.C. 370 Maple Ave. W, Ste 4 Vienna, VA 22180 (703) 356-5070 wjo@mindspring.com <i>*Counsel of Record</i>
JEFFREY C. TUOMALA 114 Creekside Ln. Winchester, VA 22602	Attorneys for <i>Amici Curiae</i>
MICHAEL BOOS CITIZENS UNITED 1006 Penn. Ave. SE Washington, DC 20003	
RICK BOYER INTEGRITY LAW FIRM P.O. Box 10953 Lynchburg, VA 24506	October 17, 2025