Trump v. Slaughter (2026)

Chief Justice Roberts delivered the opinion of the Court.

Nearly 250 years ago, the Framers decided to vest "[t]he executive Power" in one person—"a President of the United States of America." Art. II, § 1, cl. 1. The choice was not made lightly. Within living memory were the "long train of abuses and usurpations" of a King who reigned as "a Tyrant." Declaration of Independence ¶¶2, 30. Indeed, several delegates to the Constitutional Convention pushed for a multimember council instead of "unity in the Executive magistracy," which they feared would serve as "the foetus of monarchy." 1 Records of the Federal Convention of 1787 (E. Randolph). But unity won out. Our Constitution's drafters knew from experience that a "plurality in the executive"—the model in use by most States at the time—not only "diminishe[s]" the "activity, secrecy, and dispatch" necessary to ensure "good government" but "tends to conceal faults and destroy responsibility." The Federalist No. 70 (A. Hamilton). With just one President in charge, they reasoned, there would be no doubt "on whom the blame or the punishment of a pernicious measure ... ought really to fall."

One hundred years ago, this Court honored the Convention's choice in the seminal case of *Myers* v. *United States* (1926). There, we held that the Constitution "grants to the President" the "general administrative control of those executing the laws, including the power of appointment and removal of executive officers." Because no one could "execute the laws" "alone and unaided," Chief Justice Taft explained for the Court, the President must be permitted to "select those who ... act for him" and "remov[e] those for whom he can not continue to be responsible." "[T]o hold otherwise would make it impossible for the President" to fulfill his constitutional obligation "to take care that the laws be faithfully executed."

Today we confront one of several regulatory agencies that deviate from this model of Presidential supervision—the Federal Trade Commission (FTC). Since its creation in 1914, the FTC has accumulated vast rulemaking, enforcement, and adjudicatory powers under more than 80 statutes. Not only does it promulgate rules that carry the force of law, but it also enforces those rules against private parties, collecting civil penalties in the billions of dollars. Its powers, however, do not belong to the President or his appointees alone; they instead belong to five Commissioners, each of whom serves for seven years and may be removed by the President only "for inefficiency, neglect of duty, or malfeasance in office."

We hold that such protection from removal is contrary to the separation of powers enshrined in the Constitution.

I

When President Trump began his second term in January 2025, the FTC was led by two Republicans and three Democrats. On his first day in office, he designated a new Chair, replacing President Biden's pick. As is customary, the former Chair, Lina Khan, resigned her seat a few weeks later, permitting President Trump to appoint a replacement (contingent, of course, on the Senate's advice and consent). In the meantime, however, the FTC would be split down the middle.

That split came to an abrupt end in March, when President Trump fired the two remaining Democratic Commissioners, Rebecca Slaughter and Alvaro Bedoya. He did not assert that they were "inefficien[t]," "neglect[ed]" their "dut[ies]," or committed "malfeasance in office," as the statute required. He instead told them that their "continued service on the FTC [was] inconsistent with [his] Administration's priorities" and that they were removed from office "pursuant to [his] authority under Article II of the Constitution."

Slaughter promptly filed suit against the President and other executive officials, seeking declaratory and injunctive relief to restore her to office. . . .

II

A

The Constitution vests "[t]he executive Power" in a "President of the United States of America" and instructs that he "take Care that the Laws be faithfully executed." Art. II, §§ 1, 3. To vest "the whole executive power" in just one person was not to suggest that he could execute the laws alone and unaided. The Federalist No. 47 (J. Madison). But it was to establish a hierarchy—a "Chief Magistrate" with whom the buck stops, and below him various "assistants or deputies" who "derive their offices from his appointment" and remain "subject to his superintendence." The Federalist No. 72 (A. Hamilton). To remain accountable to the President, those officers must be removable by the President.

1

. . . That the Constitution forged a new path was not hidden from those who ratified it. Hamilton frankly conceded that only two States thus far "have intrusted the executive authority wholly to single men," The Federalist No. 70 anticipating Roger Sherman's critique of the Constitution that every other government has "a Council of advice, without which the first magistrate could not act." To Hamilton, however, that was the point. Unlike most States, the Federal Government would have "a vigorous executive" who could act with "secrecy ... and dispatch"—and would not be able to "conceal [his] faults" behind a council. The Federalist No. 70. "[A] plurality in the executive," Hamilton argued, "tends to conceal faults and destroy responsibility." "It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall." If the executive power were not placed in a "single hand," then "the people" would be "deprive[d] ... of the two greatest securities they can have for the faithful exercise of any delegated power"—"the restraints of public opinion" and the "opportunity of discovering with facility and clearness the misconduct of the persons they trust."

In opting for one President, however, the Framers did not opt for the President to work alone. They knew (as our first President would write) that it would be "impossib[le]" for just "one man ... to perform all the great business of the State." So they anticipated that Congress would "institut[e] the great Departments" and allow the President to "appoint[ ] officers therein, to assist [him] in discharging the duties of his trust." As James Wilson explained at the Convention, "there can be no good Executive without a responsible appointment of officers to execute."

These officers were to serve as envoys of the President, not his equals. Their very purpose, after all, was to assist him "to discharge *his* arduous employment," not *theirs*. As such, the Government's "ministers" were required to "exercise their functions in subordination to the Executive," whether their tasks were big or small. Hamilton made the same point. "The persons ... to whose immediate management" the President's powers "are committed, ought to be considered as the assistants or deputies of the Chief Magistrate, and on this account, they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendence." The Federalist No. 72. In so structuring the Government, the Convention "rejected a committee-style Executive Branch in favor of a unitary and accountable President, standing under law, yet over" his department heads. A. Amar, Some Opinions on the Opinion Clause, 82 Va. L. Rev. 647 (1996). It helped in reaching that conclusion, of course, that everyone at the Convention knew who that President would be—the Convention's presiding officer, George Washington.

Because these officers were subject to the President's superintendence, they had to be removable by him at will. For one, that was just part of what it meant to wield "the executive power," as it was understood at the time of ratification. Jefferson wrote as early as 1780 that "[t]he power of appointing and removing executive officers [is] inherent in [the] Executive," as "[h]e who appoints may remove." And as to this power, the Constitution's words were chosen carefully—it was the President who would "appoint" the principal "Officers of the United States," with the Senate providing "Advice and Consent." Art. II, § 2, cl. 2. If the Framers intended to depart from this convention, one might have expected them to say so.

For another, the power to remove at will was a necessary corollary of the Constitution's design. The "unity" of the Executive Branch would be "destroyed," Hamilton wrote, if it were vested "ostensibly in one man, subject in whole or in part to the control and co-operation of others, in the capacity of counselors to him." But that is precisely what would occur if the President's so-called assistants could exercise *his* power against *his* wishes. Only if the President's deputies were removable at will would they truly be "subordinate" to "the sole executive magistrate." And only then could the Constitution live up to James Iredell's boast that "the President" would "be *personally responsible* for everything." Text and structure thus both taught that the President had to be able to remove those who fail to live up to their duties, lest he fail to live up to his.

2

This aspect of the President's role was confirmed in the Constitution's first year—and in the years that followed. The result was a "regular course of practice" that "liquidate[d] & settle[d]" the President's power of removal, a construction followed by every branch of "the Genl. Govt, ... thro all the vicissitudes of Party."

That practice began in the First Congress. When it first met in 1789, one of its first and most pressing tasks was to establish the first executive departments—and with them the first "Heads of Departments." Art. II, § 2, cl. 2. In doing so, it debated how those officers should be removed. Some felt that the Senate had to consent to all removals, as one of the two entities that "appoint[ed]" the official in the first place. Others argued that the Constitution was silent on the question, giving Congress the "right" to select whether an officer may be removed, and if so by whom—"the President, the President and Senate, or the Legislature, or any other person whom they might introduce into office, merely for that particular

purpose." And a third group contended that removal was part of "the Executive power" vested in the President, which "the Legislature has no right to diminish or modify."

By this point, the arguments made by the third group will sound familiar. Madison led the charge. "I conceive that if any power whatsoever is in its nature Executive," and thus vested in the President, "it is the power of appointing, overseeing, and controlling those who execute the laws." And if that is so, he explained, then the "power of removal from office" must follow. For it is only with that power that "the chain of dependence [can] be preserved"—"the lowest officers, the middle grade, and the highest" made to "depend, as they ought, on the President, and the President on the community." Others agreed. Some focused on text. "[T]he power of removal [is] an Executive power," Representative George Clymer said, "and as such belong[s] to the President alone, by the express words of the Constitution." Others focused on structure. "The Constitution places all Executive power in the hands of the President," Representative Fisher Ames explained, "and could he personally execute all the laws, there would be no occasion for establishing auxiliaries." "But in order that he may be responsible to his country," he continued, "he must have a choice in selecting his assistants, a control over them, with power to remove them when he finds the qualifications which induced their appointment cease to exist."

The third group emerged victorious. They successfully convinced the House of Representatives to delete a clause in the draft bill that said that the Secretary of Foreign Affairs was "to be removable by the President," for such language would "ha[ve] the appearance of conferring the power upon him" when in fact it was his all along. What they favored instead—and what they got—was a new clause that assumed "the power of removal to be in the President," so as to "establish a legislative construction of the Constitution." The bill as amended passed the House, and then the Senate, a feat that was repeated first with laws establishing the Department of War and then again with the Treasury. These statutes thus "implicitly endorsed the view that the President had a constitutional power to remove executive officers." A. Bamzai & S. Prakash, The Executive Power of Removal, 136 Harv. L. Rev. 1756, 1793 (2023) (Bamzai & Prakash).

Congress's confirmation of the President's power quickly took hold—and even gained fame as "the Decision of 1789." . . . Even those who opposed Congress's decision recognized that the decision had been made. . . . And even those far removed from the debates saw the issue as settled, including Chief Justice Marshall, Chancellor Kent and Justice Story.

Early Presidents of all persuasions, too, hewed to the Decision of 1789. Washington saw it as his "indispensable duty" to remove officers who failed to live up to his expectations. His Cabinet agreed, taking the stance that the ability to "remove from office" was "an essential attribute of Executive Power." 20 Papers of George Washington: Presidential Series 355, 357, n. 2 (D. The first President Adams said the same. So did Jefferson. So did Madison. So did Monroe, along with the second President Adams.

And so did Jackson—much to Congress's dismay. Unlike his predecessors, who (except for Jefferson) utilized their removal power sparingly, Jackson fired hundreds "of subordinates for personal and partisan reasons." But even Jackson's most vehement critics acknowledged that he had the power to do as he pleased. . . .

B

What text, history, and structure settle, our precedent confirms—the President may remove his subordinates at will.

1

Twice in the 19th century, we reaffirmed what the First Congress had held. The text of the Constitution "is silent with respect to the power of removal from office," we noted in our first case on the subject. *Ex parte Hennen* (1839). But "it was very early adopted, as the practical construction of the Constitution," that the power "to remove, where the tenure of the office was not fixed by the Constitution," was "vested in the President alone." "And such would appear to have been the legislative construction of the Constitution" too, given "the organization of the three great departments" "in the year 1789." Our second case was of a piece. "[T]he decision of Congress in 1789, and the universal practice of the Government under it," we explained, "ha[s] settled the question beyond any power of alteration." *Parsons* v. *United States* (1897).

Our landmark decision, however, came 100 years ago in *Myers* v. *United States*. That case arose from an unlikely source—a dispute over management of the post office in Portland, Oregon. Under an 1876 statute, the President had to receive the "advice and consent of the Senate" not only to *appoint* postmasters but also to *remove* them. For reasons that are now lost to history, President Wilson fired Portland's postmaster, Frank Myers, and did so without the Senate's consent. Myers sued for backpay.

In a scholarly opinion, Chief Justice Taft rejected Myers's suit and reaffirmed the President's power to fire his subordinates at will. That power arose, he wrote for the Court, from the Constitution's text, history, and structure, just as the First Congress had held in 1789. "The vesting of the executive power in the President was essentially a grant of the power to execute the laws," Chief Justice Taft explained. "As he is charged specifically to take care that [the laws] be faithfully executed, the reasonable implication," he continued, "was that as part of his executive power" he must be able to "remov[e] those for whom he can not continue to be responsible." "Mr. Madison and his associates" made this same point, the Chief Justice noted, and they "dwelt at length upon the necessity there was for construing Article II to give the President the sole power of removal in his responsibility for the conduct of the executive branch."

But Chief Justice Taft emphasized that it was not just the First Congress that had come to this conclusion. The First Congress supplied "a precedent upon which many future laws ... would be based"—and if it had erred, the next Congresses would have "dissent[ed] and depart[ed]" from its view. Quite the opposite occurred, the Chief Justice explained. The Decision of 1789 "was soon accepted as a final decision of the question by all branches of the Government." For "74 years, there was no act of Congress, no executive act, and no decision of this Court at variance with the declaration of the First Congress."

In the wake of the Civil War, Chief Justice Taft noted, Congress sought to "reverse this constitutional construction"—but in the end only confirmed it. "This reversal grew out of the serious political differences" between President Johnson—a Jacksonian Democrat—and congressional Republicans, who boasted "a two-thirds majority" in both Houses of Congress. Over Johnson's veto, Congress sought to "curtail the then acknowledged powers of the President" with the Tenure of Office Act, which required him to receive the Senate's consent before firing most officers.

"[T]he injury and invalidity" of the law was "immediately recognized by the Executive and objected to"—and not just by Johnson. "General Grant, succeeding Mr. Johnson in the Presidency"—and no fan of Johnson or his program—"earnestly recommended in his first message the total repeal" of the law. "What faith can an Executive put in officials forced upon him?" Grant asked. "How will such officials be likely to serve an Administration which they know does not trust them?" Despite Grant's efforts, "[t]he feeling growing out of the controversy with President Johnson retained the act on the statute book"—and led to one other such law, the one for postmasters at issue in that very case—"until 1887," when the Tenure in Office Act was repealed.

What these events revealed, Chief Justice Taft wrote, was not Presidential "acquiescence" but resistance, a consistent rejection of "the validity of such legislation" as incompatible with "the legislative action of 1789." At issue in *Myers*, then, as the Chief Justice saw it, was whether "to set aside" the First Congress's "construction, thus buttressed, and adopt an adverse view," contrary to the Constitution's text, history, and structure. The Court refused to do so. It hewed instead to the "constitutional construction ... reached by the First Congress of the United States ... and acquiesced in by the whole Government for three-quarters of a century." Any law to the contrary, the Court concluded, was "in violation of the Constitution, and invalid."

2
While *Myers* was perhaps our best word on the subject, it was not our last.

a
Just nine years after *Myers*, we handed down *Humphrey's Executor*. The case arose out of President Roosevelt's decision to fire one of President Hoover's appointees to the Federal Trade Commission, William Humphrey, two years into Humphrey's seven-year term. On the Commission, Humphrey sought to do the same. . . . Roosevelt . . . requested Humphrey's resignation. Humphrey refused, so Roosevelt fired him in a one-line letter that did not specify a cause for his removal—seemingly contrary to a statute permitting removal of Commissioners only for "inefficiency, neglect of duty, or malfeasance in office." Humphrey died soon thereafter, and the executor of his estate sued for backpay.

On a day that New Dealers would dub "Black Monday," the Court ruled unanimously against the President—as it did in two other cases decided that same day, *A. L. A. Schechter Poultry Corp.* v. *United States* (1935), and *Louisville Joint Stock Land Bank* v. *Radford* (1935). *Schechter* and *Radford* were quite a blow to the President, invalidating aspects of his signature legislation. *Schechter* found an unconstitutional delegation of legislative power in a statute that gave the President free rein to prescribe "standards of fair competition" business was obliged to follow. And *Radford* found a violation of the Takings Clause in a statute that allowed farmers who defaulted on their mortgages to retain possession of their property for years on end.

Having to contend with *Myers*, *Humphrey's* said far less. Justice Sutherland, writing for the Court, started by reaffirming that the President possesses "the exclusive and illimitable power" to remove "all purely executive officers," just as *Myers* held. He then pivoted. There are some presidentially appointed officials,

he explained, who may perform "executive function[s]" but exercise "no part of the executive power." And for those officials, "the decision in the *Myers* case cannot be accepted as controlling."

The Court held that William Humphrey was one such official. That was because the FTC's duties were very limited—they were "neither political nor executive, but predominantly quasi-judicial and quasi-legislative." When courts requested the FTC's help as a "master in chancery" to recommend appropriate remedies in antitrust litigation, for instance, it acted solely as a judicial aid. When Congress requested the FTC's help to "mak[e] investigations and reports" on certain topics, it acted solely as a legislative aid. And when it brought (and adjudicated) charges against corporations it suspected of using "unfair methods of competition" in commerce, it acted "in part quasi-legislatively and in part quasi-judicially." *Ibid.* Because these quasi functions did not require the use of "executive power," Justice Sutherland reasoned, Humphrey needed to answer only to Congress and the courts. Although the President may be the "master in his own house," he warned, he may not "impos[e] his control in the house of another."

b

From the start, *Humphrey's* was tethered to a highly circumscribed and almost fictional view of the FTC's role. *Humphrey's* by its terms applied only to agencies that occupy "no place in the executive department," are "independent of executive authority," and exercise "no part of the executive power." Indeed, Justice Sutherland took pains to emphasize that "the character of the office"—executive or nonexecutive—would determine the result of future cases, and to reiterate that the Court's decision was limited "to officers of the kind here under consideration."

In later cases, although *Humphrey's* announced dividing line remained intact, more and more functions, we concluded, in fact fell on the executive side of that line—and thus within the President's exclusive control. Where *Humphrey's* suggested that the power to enforce the law against particular parties could be merely "quasi-judicial," or "in aid" of federal courts, we held the opposite. "A lawsuit is the ultimate remedy for a breach of the law," we explained in 1976, "and it is to the President, and not to the Congress, that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.' " *Buckley* v. *Valeo* (*per curiam*) (quoting Art. II, § 3). And where *Humphrey's* suggested that the power to "fill[ ] in" "the details" of a "general standard" could be merely "quasi-legislative," or "in aid" of Congress, we again held the opposite. Although "some administrative agency action ... may resemble 'lawmaking,'" we explained in 1983, when an agency exercises "legislatively delegated authority" to regulate private conduct, it exercises "[e]xecutive" power. *INS* v. *Chadha*; see also *Bowsher* v. *Synar* (1986).

Soon enough, we recognized that *Humphrey's* flunked even its own test. "[I]t is hard to dispute that the powers of the FTC," even "at the time of *Humphrey's Executor*," we explained in 1988, "would at the present time be considered 'executive,' at least to some degree." *Morrison* v. *Olson*. Not one for understatement, Justice Scalia observed in dissent that the Court had "swept" *Humphrey's* "into the dustbin of repudiated constitutional principles." The Court put the matter more delicately, but no less definitively. "We undoubtedly did rely on the terms 'quasi-legislative' and 'quasi-judicial' " in *Humphrey's*, the Court noted, "but our present considered view is that" the constitutional question "cannot be made to turn on" such "rigid categories," at least for inferior officers. Contra, *post* (Sotomayor, J., dissenting) (asserting that *Morrison* v. *Olson* in fact "applied and expanded *Humphrey's*").

Fast forward another few decades, and *Humphrey's* premises had been further undermined. In two cases, *Free Enterprise Fund* v. *Public Company Accounting Oversight Board* (2010), and *Seila Law LLC* v. *Consumer Financial Protection Bureau* (2020), we again considered the permissibility of restrictions on the President's power of removal. In both cases, we reiterated *Myers*'s rule that the President exercises "general administrative control of those executing the laws" and thus must be able to "remov[e] those for whom he can not continue to be responsible." In both cases, we emphasized that *Humphrey's* had to be read "on its own terms," and thus applies only to agencies that perform "'specified duties as a legislative or as a judicial aid.'" And in both cases, we refused to extend *Humphrey's* to a "new situation"—in *Free Enterprise Fund*, two layers of for-cause removal within an agency and in *Seila Law*, for-cause removal protection for the sole head of an agency. As we put it in *Seila Law*, *Humphrey's* is not a "freestanding invitation for Congress" to limit the President's constitutional power.

Humphrey's framework, in short, has not withstood the test of time. While *Humphrey's* was surely right to focus on "the character of the office" at issue and surely right to say that "purely executive" powers must be controlled by the President, we long ago abandoned the notion that there are some powers that are only *partly* executive. Forty years have now passed, in fact, since we recognized that the FTC exercises executive power—and did so even in 1935, when *Humphrey's* was decided. And more than 200 years have passed since we recognized that the Constitution "vests the whole executive power in the President" alone. *Osborn* v. *Bank of United States* (1824) (Marshall, C. J., for the Court).

At this point, all that is left of *Humphrey's* is its observation that an agency that "exercises no part of the executive power" need not fall within the rule of Presidential removal. If Congress wishes to establish independent agencies to assist it with its functions, it may do soBut it may not foist those agencies upon the President, and thus deprive him of "the executive power vested [in him] by the Constitution"—something *Humphrey's* itself never purported to permit.

c
If anything more *is* left of *Humphrey's*, we overrule it. *Humphrey's* has for decades been a result in search of a rationale. As we have often said, *stare decisis* is not an "inexorable command," *Payne* v. *Tennessee* (1991), and is at its weakest in constitutional cases, where only we may readily fix our own mistakes, *Agostini* v. *Felton* (1997). Our precedents about precedent teach that a number of factors are relevant. Here, every factor—the "quality" of the decision's reasoning, its "consistency" with our other cases, the "workability" of its rule, and the interests of those who have "reli[ed]" on it, *Knick* v. *Township of Scott* (2019)—counsels in favor of letting *Humphrey's* go.

Humphrey's has been difficult to make sense of from the start. . . .). When an agency "executes" a congressional mandate against private parties, it exercises executive power—no ifs, ands, or quasis about it.

For that reason, *Humphrey's* is now far out of step with our cases, which have all but limited it to its facts. We long ago retreated from *Humphrey's*. We applied it only once, in 1958, to a solely adjudicatory body that dealt with a limited category of claims for compensation from those imprisoned or interned in the Second World War. *Wiener* v. *United States*, And even then, our constitutional analysis spanned only one

brisk paragraph, as the case focused on the question whether the statute limited the President's power at all. Since then, we have undermined *Humphrey's* premises at every turn. To persist in *Humphrey's* would require us to depart from almost every case on the subject we have decided since.

Little surprise, then, that no one knows how to apply *Humphrey's* in practice. . . . With its indeterminacy and unpredictability, *Humphrey's* "has undermined the very 'rule of law' values that *stare decisis* exists to secure."

All that is left is reliance, upon which Slaughter (and the dissent) rely. Slaughter argues that Congress has relied upon *Humphrey's* to create agencies that are "insulated from presidential control." That is precisely the problem. Despite what *Humphrey's* may say, independent agencies are not "independent" in the sense that they are free of the President and thus responsive "only to the people of the United States." Independent agencies are insulated "from the President," "not from politics." *FCC* v. *Fox Television Stations, Inc.* (2009. "As a practical matter, successful insulation of administration from the President—even if accomplished in the name of 'independence'—will tend to enhance Congress's own authority over the insulated activities." E. Kagan, Presidential Administration, 114 Harv. L. Rev. 2245, 2271, n. 93 (2001). . . . Congress may well have relied on *Humphrey's* in taking more power for itself, but that is hardly one of the "legitimate" reliance interests that our precedents contemplate. *South Dakota* v. *Wayfair, Inc.* (2018); cf. *NLRB* v. *Noel Canning* (2014) (Scalia, J., concurring in judgment). No branch may rely on adverse possession to claim power that the Constitution vests elsewhere.[1]

The dissent contends that we ignore the reliance interests of "[o]rdinary Americans and regulated firms alike." Quite the contrary. "In its valiant search for reliance interests," it is "the dissent [that] somehow misses maybe the most important one: the reliance interests of the American people ... in the preservation of our constitutionally promised liberties." *Ramos* v. *Louisiana* (2020). "The diffusion of power carries with it a diffusion of accountability." *Free Enterprise Fund*, 561 U. S., at 497. When power is exercised well, the people know whom to thank; when power is exercised poorly, they know whom to blame—and whom to fire. That is the very premise of our system of government. We adhere to that system today not in spite of the reliance interests of all Americans but because of them.

III
A
With these principles in mind, this is not a close case. The FTC's for-cause removal provision violates the separation of powers. In its present form, the FTC enforces and administers some 80 statutes, which cover almost every facet of our Nation's economy. The tasks it undertakes are "the very essence of 'execution' of the law"—precisely the President's constitutional role.

[1] FN3: The dissent nevertheless insists that "[i]ndependence was centrally important to Congress in creating these agencies" and indeed that "[a]t no point was it proposed that a commission ought to be set up unless it be independent." To the extent that consideration is relevant, it is relevant only in the context of severability. In our prior cases, "when confronting a constitutional flaw in a statute" like the one before us, we have sought to limit "the solution to the problem," severing the invalid removal provision "while leaving the remainder intact." If the dissent now disagrees with that approach, and believes that Congress generally "would have preferred no [agency] at all to [an agency] whose members are removable at will," it is free to urge as much in a case in which the severability question is before us. In any event, the solution to "an Executive Branch that Congress never dreamed of establishing," is not a headless fourth branch that the Framers never dreamed of establishing.

First, the FTC has the power to promulgate substantive rules that carry the force of law. . . . The power to flesh out such statutory regimes—and to do so through discretionary actions, largely outside the remit of courts—is executive through and through.

Second, the FTC not only investigates businesses to ensure they comply with its statutes and rules, but enforces those statutes and rules through in-house adjudications. Indeed, it may even place the onus on a private party to comply with its orders—on pain of monetary penalties—before the case reaches the courts. This power, too, is executive.

And third, the FTC files civil suits on behalf of the United States in federal court. . . . That "quintessentially executive" power may not be cleaved off from the Executive Branch. *Seila Law*, 591 U. S., at 219.

The FTC unquestionably exercises executive power, and must therefore be controlled by the Chief Executive, in whom such power is vested. It follows, then, that Slaughter served as the President's subordinate at the FTC—and that the President was entitled to cut her tenure short.

B[2]

Because the FTC's activities fall well within the heartland of executive power, we have no occasion today to define the bounds of what such power entails. As our precedents recognize, not all offices created by Congress necessarily come with executive or even sovereign power attached. To suggest otherwise would come as a surprise to, among other congressionally chartered entities, the Boy Scouts of America, the Society of American Florists and Ornamental Horticulturalists, and Georgetown University.

Relatedly, we have left open the possibility that some functions traditionally handled outside the Executive Branch may not be encompassed by *Myers*'s general rule. Indeed, *Myers* itself placed "the greatest weight" on the early Congresses' (and early Presidents') "contemporaneous legislative exposition" of the Executive's constitutional role. And one example we have given of an entity that may have such a unique role is the Federal Reserve, to the extent that it follows in the distinct historical tradition of the First and Second Banks of the United States—both of which influenced monetary policy and neither of which were subject to plenary Presidential control. Our prior cases do not necessarily implicate the constitutionality of such arrangements. Our opinion today should not be read to do so either.

Nor do we determine the fate of officials not before us. In particular, as the Solicitor General recognized at argument, the permissibility of tenure protections for the judges of "non-Article III courts," such as the Tax Court and the Court of Federal Claims, is not "presented" or "briefed" in this case and poses a "different set of questions." We leave those questions for another day. All we do today is recognize what has been clear for a century—that those who fall within the President's "general administrative control" must be removable by the President at will.

IV

[2] *Note: [Justice Thomas did not join Part III-B of the majority opinion.]

The dissent . . . sweeps the chess pieces off the board, rejecting not only *Free Enterprise Fund* and *Seila Law* but *Myers* and the Decision of 1789 as well. On its view, "there is no evidence that those who shaped or ratified the Constitution adopted the ... general rule of at-will removal"—no matter the view expressed by Washington, Jefferson, Madison, and Hamilton in the first years of the Republic; no matter the practice of the First Congress and all our early Presidents; and no matter the Convention's insistence upon "[u]nity in the Executive."

To support its own position, the dissent relies on two passing comments in The Federalist. Neither one helps. In Federalist No. 39, Madison noted that the "tenure" of "ministerial offices ... will be a subject of legal regulation," but it beggars belief to suggest that he intended so obliquely to permit Congress to hem in the President—it is far more likely that he intended only to endorse "regulation" of "tenure" in the sense of a limited term for executive officers, subject to Presidential removal in the interim.[3]And in Federalist No. 77, Hamilton said that the Senate's consent "would be necessary to displace as well as to appoint," but it remains a subject of scholarly debate whether Hamilton meant "displace" in the sense of "remove" or "replace." Certainly the idea that the Senate could force a new President to keep his predecessor's Cabinet Secretaries is at odds with Hamilton's claim that the Senate "cannot themselves *choose*" who will fill an office, even "if they withheld their assent" to the President's pick,; at odds with Hamilton's claim that the executive power is vested in "one man" and is not subject "to the control and co-operation of others"; and at odds with Hamilton's claim that executive officers are "the assistants or deputies of the Chief Magistrate" and thus must "derive their offices from his ... nomination" and remain "subject to his superintendence." Whatever Hamilton meant at first, by 1793 he had expressly recognized that "[t]he power of removal from office" forms part of "the Executive Power of the Nation ... vested in the President." Pacificus No. 1. We see little reason why one line (really one word) from Federalist No. 77 should take precedence over the logic of The Federalist as a whole.

We certainly see no reason why it should take precedence over the Decision of 1789. When it comes to those debates, the dissent has little to offer, beyond its efforts to limit the decision's scope. Says the dissent: "The House in 1789 did not address whether Congress could place any limits on the President's power to remove," for it debated only whether the President had such a power "*at all*." The two, however, are one and the same. In holding that the President has the power to remove his subordinates "without an express grant from Congress," Congress held that "the power of removal" forms part of "the Executive power." And to the extent that the power of removal is part of the executive power, it is as much outside Congress's control as the President's power to grant pardons, veto bills, and recognize foreign sovereigns. See *Schick* v. *Reed* (1974) (a Presidential power that "flows from the Constitution ... cannot be modified, abridged, or diminished by the Congress"); *Zivotofsky* v. *Kerry* (2015).

That is why no one at the time saw the First Congress as having endorsed merely a "default" "Presidential removal power" (if such a thing is not a contradiction in terms). Madison, in fact, said just the opposite. Because "the Executive power" vested in the President includes the power "to remov[e] ... from office," he explained, "the Legislature has no right to diminish or modify" that powerChief Justice Marshall agreed, explaining that the Decision of 1789 viewed the President's "power of removal" as "fixed in the

[3] FN5: Indeed, that is precisely what Madison would propose a year later for the Comptroller of the Treasury. The dissent (quoting *Humphrey's*) thus errs in asserting that Madison ever "suggested" that Congress may "forbid Presidential removal" of the Comptroller. . . .

constitution" and thus free from "legislative instability." The same was true for Justice Story, who said that the decision "expressed the sense of the legislature, that the power of removal by the executive [of principal officers] could not be abridged by the legislature."[4][6]

With no support in the First Congress's actual debate on the subject, the dissent (this time joined by Slaughter) turns to three early agencies that it contends were "at least semi-independent." But the members of these agencies, too, were removable by the President at will. Indeed, the first of the three, the Revolutionary War Debt Commission, was composed solely of Presidential appointees, with a statute that did not purport to limit the President's power of removal.[5] And the latter two, the Mint Board and the Sinking Fund Commission, were both composed mostly of Cabinet Secretaries, who (all agree) could be fired at any time. The only question arises as to one member of the Mint Board (the Chief Justice) and two members of the Sinking Fund Commission (the Chief Justice and the Vice President). Of course the President could not fire either one from his underlying position, but that did not mean that he was unable to oust them from service within the Executive Branch itself. It is true that the President could not "add a new Vice President or Chief Justice" to replace them, but that poses no constitutional problem. Either way, the President remains responsible—if he chooses to keep them in office, he is responsible for their conduct; if he chooses to remove them, he is responsible for the conduct of those who are left. Certainly these examples do not show that the founding-era Congress thought that it could take away the President's power and give it to someone else, much less the Chief Justice or the Vice President.

With no support in the founding era as a whole, the dissent opts to skip ahead a century or two. "Today," the dissent notes, "dozens of agencies are headed by commissioners or board members removable only for cause," and "this longstanding practice" (it contends) "should be entitled to significant weight." We have never endorsed such a practice-makes-perfect theory of congressional power, and in fact rejected it in *INS* v. *Chadha* (1983). At issue in *Chadha* were the nearly 300 legislative vetoes adopted by the political branches over the course of 50 years—with more and more enacted each year. As we saw matters, however, the popularity of the congressional veto only "sharpened" our review. Such " 'political inventions' " must remain subject to "the demands of the Constitution," we said, lest the political branches amend by agreement "integral parts of the constitutional design." We say the same today.

To bolster its reliance on modern practice, the dissent focuses on a modern case, *Humphrey's*.[6]But it defends a version of *Humphrey's* that does not exist. On the dissent's telling, *Humphrey's* makes this a "profoundly easy case," as *Humphrey's* squarely holds that Congress may "forbid Presidential 'removal'

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[4] FN6: Despite having led with Story, the dissent eventually tries to call it a draw. . . . There is no shame in disagreeing with Story's appraisal of the Decision of 1789, but that is the reality of the dissent's position.

[5] FN7: Hamilton . . . said only that the Commissioners were "distinct and Independant" from "*[t]he Treasury*"—not the President.

[6] FN9: The dissent also invokes *Marbury* v. *Madison* (1803), but that case has nothing to do with this one. It is true that Chief Justice Marshall held (as the dissent puts it) that "an office[r] with a 5-year fixed-term tenure was 'not removable at the will of the executive,' " but the dissent ignores the fact that the "officer" in question was a justice of the peace in the District of Columbia. Such justices do not exercise executive power. They instead exercise the judicial power of the District, just as territorial judges exercise the judicial power of their respective territories. The fact that Congress may prohibit the President from firing the District's judges (who do not exercise his power) says nothing about whether Congress may prohibit the President from firing his subordinates (who do). Indeed, Chief Justice Marshall must have thought as much, for he felt free to write just four years after *Marbury* that "the power of removal by the president ... was by fair construction, fixed in the constitution," as determined by the Decision of 1789.

" "[f]or an agency of this 'character.' " Only halfway through a footnote does the dissent acknowledge that "*Humphrey's* described the FTC [in 1935] as sharing 'no part of the executive power,'which presumably forms part of an agency's "character." Nowhere does the dissent argue, however, that the FTC today exercises "no part of the executive power" or (to quote further from *Humphrey's*) that the FTC occupies "no place in the executive department" and ought to be "independent of executive authority." The dissent may not keep the parts of *Humphrey's* it likes and discard the rest.[7]

Indeed, the dissent's ode to *stare decisis* is hard to reconcile with its reinvention of *Humphrey's* and shabby treatment of *Myers*. At least we have accorded *Humphrey's* a respectful burial; the dissent would cast *Myers* aside without a second thought. It is entitled to propose as much, of course, but it can hardly claim the mantle of *stare decisis* in doing so.

When it comes to its own proposal for how precisely *Humphrey's* should work in practice, the dissent says very little. Slaughter, for her part, is left with the vague argument that we should police Congress's decisions for "reasonableness." . . . .

That supposed limiting principle is neither limiting nor much of a principle. On Slaughter's view (and presumably the dissent's), Congress could commandeer the Environmental Protection Agency, the Department of Commerce, the Department of Education, the Department of Health and Human Services, most (if not at all) of the Department of Justice, and a number of other agencies besides. Indeed, it is not clear to us why Congress would need to allow the President any say in firings. If it is so "critical" for an agency "to have independence and to act with impartiality free from the suspicion of partisan direction," then why should the President have a role at all? Certainly those legislators who disagreed with the Decision of 1789 were happy to leave him out.

The answer, then as now, is that these officers exercise the *President's* power, not their own, and thus must be *responsible* to him. We do not allow intrusions on Article I nor on Article III. We see no reason to allow intrusions on Article II either.

* * *

Our Constitution creates three branches, but only one President. That President is not all powerful—not by any means. See, *e.g.*, *Ex parte Milligan*, (1866); *Youngstown Sheet & Tube Co.* v. *Sawyer* (1952); *United States* v. *Nixon* (1974). But he is not impotent either. He and he alone is vested with "[t]he executive Power" of the United States. Art. II, § 1, cl. 1.

To "discharg[e] the duties of his trust," the President must have the assistance of officers he can trust. Although it is up to the Senate to decide whether to confirm those with whom the President would *prefer* to work, neither Congress nor the courts may saddle him with those with whom he *cannot* work. Subordinates who exercise the President's power are subject to removal by him. Then, and only then, can they remain accountable to the President, and the President to the people.

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[7] *Note [This sentence brings to mind a famous sentence from Justice Scalia's dissent from *Planned Parenthood v. Casey*, 505 U.S. 833 (1992): "It seems to me that stare decisis ought to be applied even to the doctrine of stare decisis, and I confess never to have heard of this new, keep-what-you-want-and-throwaway-the-rest version."—Eds.]

Justice Gorsuch, concurring.
To fulfill his constitutional duty to ensure the laws are faithfully executed, the Court holds, the President must have the ability to remove principal officers who exercise executive power in his name. That includes those who run independent agencies like the Federal Trade Commission (FTC). With all this, I agree.

But neither can I ignore the implications that follow. Today, independent agencies do not just exercise executive law-enforcement powers. Congress has also delegated to them vast legislative and judicial powers, effectively allowing these agencies to make laws and decide disputes under them. And, after today's decision, the President can effectively exercise all those powers too.

It's a development that raises important questions, not least these: Would Congress have delegated so much power, including legislative and judicial power, to independent agencies had it known that the President would come to control them? How will Congress respond now—if realistically it can? And what, if anything, will this Court do about it?

I
A
Begin with how we got here. One strand of the story runs this way, and it starts in the academy. In the early 20th century, a group of scholars including Woodrow Wilson and James Landis came to the view that our "simple tripartite form of government" was "inadequa[te] ... to deal with modern problems."

To meet modern challenges, Wilson and others argued, American government needed to reorient itself around the goal of operating with the "utmost possible efficiency." Impressed by the perceived competence of the Prussian [the German empire] bureaucracy, they called on the Nation to stop "dogmatiz[ing] about the constitution of government." In our changing world, they said, the project of "distinguish[ing] ... between" legislative, executive, and judicial powers had to "g[i]ve way ... to the exigencies of governance."

All told, Wilson and his followers argued for an entirely new model of "[p]ublic administration." To be sure, this model had its nuances, and its proponents their disagreements. But a few ideas were central to the project. First, new agencies needed to be created and staffed by scientific and technical "expert[s]" with the "technical skill" to translate "far-reaching ... legislation into reality."

Second, these experts had to be insulated from political control. As Wilson put it, the Nation's traditional commitment to "popular sovereignty" entrusted too much to a "selfish, ignorant, timid, stubborn, or foolish" people. And letting the public anywhere near the new bureaucracies would amount to letting "a rustic handl[e] delicate machinery."

Finally, to fulfill their new responsibilities, politically insulated agency experts needed power. Lots of it. Much more than just executive authority to enforce the laws Congress writes. They also required authority over "legislative and judicial acts." All told, they needed "legislative power," "executive power," and—while they were at it—"whatever power might be required to achieve the desired results."

B

Influential as these ideas were, they met with some hard realities as they progressed from the academy into the halls of government. For an illustration, look no further than the FTC itself and the case at the center of today's dispute, *Humphrey's Executor* v. *United States* (1935). Congress created the FTC in 1914 through legislation that by-then President Wilson signed into law. In establishing the agency, Congress endowed it with considerable power both to define and prosecute "unfair methods of competition." And in the same breath, Congress insulated the agency's leadership from democratic control, at least to a degree: Once leaders were appointed by the President and confirmed by the Senate, Congress provided, the President could remove them only "for inefficiency, neglect of duty, or malfeasance in office."

Even so, the notion that the FTC and agencies like it would be led by technical experts who would neutrally and scientifically chart the Nation's path soon began to look a bit "quaint." See E. Kagan, Presidential Administration, 114 Harv. L. Rev. 2245, 2261 (2001). Maybe that was because politicians remained in control of the appointment and confirmation processes. Maybe it was because they retained so many other ways to influence an agency's actions. Maybe it was because policymaking, even when performed by technical experts, almost always requires tradeoffs between competing values. Or maybe it was because of some combination of these and other factors. . . .

. . . After the Court's ruling, Congress rolled out one new "independent" agency after another. Of course, the term "independent" was always a bit of a misnomer. As we've seen, these agencies were never truly independent from politics or even the influence of the President's appointment powers. But the leadership of these new agencies at least enjoyed protection against at-will presidential removal. And Congress turned out so many new independent agencies that a committee President Roosevelt assembled a few years later complained of the rise of a new "headless 'fourth branch' of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers," one that did "violence to the basic theory of the American Constitution." In all, the Committee found, Congress had already created "a dozen" agencies "independent" of the President.

D

Congress's newfound ability to insulate agencies from direct presidential control may have encouraged it to lean into the last essential pillar of Wilson's design too. In *Humphrey's* wake, Congress increasingly assigned broad powers to the agencies it created, including legislative and judicial powers. Before *Humphrey's*, delegating those sorts of authorities to an agency risked "merely increasing" the President's own power—he might remove agency heads and seek new ones who would do his bidding. But *Humphrey's* changed the equation, making independent agencies more tempting repositories for delegated powers that the President could not access with quite such ease.

The result? Independent agencies today hold tremendous sway over the Nation's affairs. . . .

Often, these agencies do all this with hardly any statutory guidance, based on broad grants of legislative authority. The FTC, for example, enjoys what the Court calls the "startlin[g]" power to define, outlaw, and prosecute any "'acts or practices which are unfair or deceptive.'" . . . One could go on.

Nor have these agencies hesitated to employ the powers Congress has given them. . . .

Some independent agencies even have *de facto* authority to create new crimes. By the 1990s, one scholar estimated that "over 300,000 federal regulations," many of them adopted by independent agencies, "may be enforced criminally." More recent and exact totals are hard to come by—some say there may be simply too many regulatory crimes to count.

Over time, Congress has afforded agencies not just sweeping legislative powers but judicial ones as well, including the power to decide cases and controversies affecting Americans' private rights. We have recently begun addressing whether some of these schemes comply with Article III's assurance of an independent judge, the Seventh Amendment's promise of a jury trial, and the Due Process Clause's guarantee of a fair trial before a fair tribunal. *SEC* v. *Jarkesy* (2024). Even so, certain of those schemes persist.

Would Congress have gone so far down this road, delegating so much legislative and judicial power to agencies, without *Humphrey's* assurance that their leaders would enjoy protection against at-will presidential removal? Maybe. After all, Congress has also granted expansive authorities to various "executive" agencies whose heads have been subject to at-will presidential removal all along. But very possibly not. *Humphrey's* itself described removal protections as "essential" to the FTC's structure. . . . My dissenting colleagues share the same view too.

II
A
The Court's decision today may take aim at removal protections and, in that way, one part of Wilson's vision. But, as we have seen, other parts never fully materialized. It was never the case that neutral experts alone led the agencies Congress created. And it was never true that those agencies were entirely insulated from politics or even presidential influence. Nor can the demise of one more vestige of Wilson's ambitions come as a surprise. As the Court persuasively explains, *Myers* was right all along and so was President Roosevelt: *Humphrey's* did "violence to the basic theory of the American Constitution," which leaves no room for a "headless 'fourth branch.' " Instead, those who exercise executive power must be accountable through a "chain of dependence" running from the "lowest officers" to "the President," and from him to the sovereign American people. As even Wilson and Landis acknowledged, their plans for a new scheme of "public administration" always stood in more than a little tension with the Constitution's design.

But if today's decision represents an important step back toward the Constitution, it's also worth considering the implications it holds for the last remaining pillar of Wilson's plan. Apparently relying on the assumption that it can afford their leaders some protection against presidential removal, Congress has not just assigned executive law-enforcement power to independent agencies. It has delegated extensive lawmaking and adjudicative functions to them as well. Today's decision may not have occasion to address those delegations directly, but it carries weighty consequences for them. Open-ended delegations of legislative power have not gone away; now they will just be exercised by agency officials who answer to the President. The power to write new regulatory crimes still exists, but now the pen ultimately rests in the President's hand. The ability to judge disputes in-house remains, but now the house is white.

The whole of the President's authority also may be greater than the sum of its parts. It would be one thing if today's decision afforded the White House more control over the airwaves. Or financial markets. Or energy. But Presidents now will enjoy waxing authority over all those areas and more. A business out of favor with the party in control of the White House might be able to stave off an FCC investigation. But can it survive a subsequent FTC rule declaring unlawful one of its longstanding trade practices? What about an in-house adjudication by OSHA? Or a prosecution for a new crime the SEC announces? Not to mention what these now-coordinated powers could do to disfavored individuals who lack the resources needed to fend off such attacks. It may be true that after today there is no more "fourth branch" of government. But the fourth branch's powers still exist; they have just been reassigned to the President. . . .

So, yes, those who exercise executive power must be ultimately answerable to the President and, through him, to the American people. But while electoral accountability is a good thing, it cannot be the only thing. And allowing Presidents to control not only executive functions, but also vast new reservoirs of legislative and judicial powers, risks inviting exactly what those who framed our Constitution feared: the "accumulation of all powers ... in the same hands, whether of one, a few or many, and whether hereditary, self appointed, *or elective*." The Federalist No. 47. No nation, after all, can expect happy results when "the legislative and executive powers are united in the same person"—or, one might add, when judicial powers are added to that union.

B

If allowing so much legislative and judicial power to accumulate in the President's hands invites real risks, the question becomes: Who will address them?

At first blush, the most natural answer might seem Congress. Aware now that the premise on which it apparently proceeded was flawed—independent agencies are not so independent after all—Congress might wish to reconsider how much power should remain in the President's hands. But if that seems a straightforward solution, there's a straightforward problem with it. Of course, Congress still possesses tools—most notably its appropriations authority—to "influence how the President exercises" his legislative and judicial functions. *Learning Resources* v. *Trump* (2026) (Gorsuch, J., concurring). But "[a]ny President keen on his own authority ... will have a strong incentive to veto" any effort to reclaim those powers.The consequence is a ratchet effect: Authorities Congress once delegated by a simple majority may now require a veto-proof supermajority to retrieve.

Perhaps, then, if any real response is to come it will have to come from this Court. And that's hardly unfair. To be sure, Congress had a hand in creating the problem we now face. But this Court bears responsibility as well. It was this Court that decided *Humphrey's*. It was this Court that sat by while Congress delegated vast legislative and judicial powers to one independent agency after another. And it is this Court that today allows the President to remove those agencies' leaders and exercise effective control over all their powers. If the task of fixing a problem belongs to those who made it, this Court has some work to do.

Fortunately, the Constitution provides the blueprint for the job ahead. That charter provides a far surer and more democratically legitimate scheme of "public administration" than anything Wilson conjured up. With the assent of the governed, and subject to amendment by them alone, our Constitution created three branches of government—not four, and not just one led by the President either. Each branch bears the authority and responsibility to exercise distinct powers. Congress must make the laws that govern us, the executive branch must faithfully execute those laws, and independent judges and juries must decide disputes that arise under them.

Fortunately, too, this Court already has many doctrines designed to protect the Constitution's separation of powers. Just as today's decision holds that Article II requires those who exercise executive power to answer to an elected President, this Court's nondelegation doctrine recognizes that Article I vests "[a]ll" federal legislative power in Congress and no one else. Of course, Congress can enlist experts to advise it in its work and leave implementation details to others, but the doctrine holds that Congress alone can make laws regulating private conduct. See, *e.g.*, *Panama Refining Co.* v. *Ryan* (1935). By that doctrine's side stands the major questions doctrine, which teaches that, to sustain a claim that Congress has delegated to it some "[e]xtraordinary" regulatory power, an agency must identify "clear" statutory authority for that power. *West Virginia* v. *EPA* (2022). Vagueness doctrine can contribute too, with its lesson that "Congress, rather than the executive or judicial branch, [must] define what conduct is sanctionable and what is not." *Sessions* v. *Dimaya* (2018). And our doctrines addressing Article III, the Due Process Clause, and the Seventh Amendment can help ensure that adjudications of private rights take place where they belong, before independent judges and juries. *Jarkesy* (Gorsuch, J., concurring).

We have, then, no shortage of tools. The only real question is whether we will use them. Yes, we often recite, the Constitution contains "a bar on [the] delegation" of "[l]egislative power" to agencies. *FCC* v. *Consumers' Research* (2025). But we have sometimes shrunk from applying that rule, worried that "our increasingly complex society" cannot manage unless someone else assumes Congress's job of making the laws that govern us. *Mistretta* v. *United States* (1989). Yes, we say, when agencies claim "[e]xtraordinary" delegated power, they "must point to clear congressional authorization for" it. *West Virginia*. But some have also suggested the major questions doctrine might be tainted by an "anti-administrative-state stance," one that could prevent the "people ... found in agencies" "from doing important work." *Id* (Kagan, J., dissenting). And, yes, all agree that the Seventh Amendment guarantees a jury in suits at common law. But it can also seem to some that Congress occasionally has "good reaso[n]" to let agencies decide cases anyway given their "greater efficiency and expertise." *Jarkesy* (Sotomayor, J., dissenting).

Whatever merit these objections once might have held, they now speak to a bygone era. As my dissenting colleagues see it, removal protections were "centrally important," or perhaps even " 'essential,' " to Congress when it decided to create so many independent agencies and delegate so much legislative and judicial power to them. On their account, Congress gave all that power to "specialists" in independent agencies "precisely because [they were] not fully controlled by the White House." *Trump* v. *Wilcox* (2025) (Kagan, J., dissenting). But now removal protections are a thing of the past, and the President enjoys direct control over independent and executive agencies alike. So even if entrusting legislative and judicial powers to insulated, independent agencies once seemed a good idea to some, it's simply not an option anymore. Now, we face only two ways forward: Let Presidents exercise all those powers or begin subjecting them to the Constitution's constraints.

*

The Court today takes a notable step back toward the Constitution. By recognizing that the President is entitled to remove a principal officer who exercises executive power in his name, the Court does much to vindicate what Franklin D. Roosevelt and James Madison both understood: Under our Constitution, executive power does not belong to a "headless 'fourth branch,'" but must be exercised through a "chain of dependence" running from "the lowest officers" to "the President," and from him to the American people.

At the same time, it would be a grave mistake to think that step is enough on its own. The fact remains that Congress has endowed formerly independent agencies not just with executive authority, but with enormous legislative and judicial powers as well. And now the President enjoys control over all those powers too. From here, the only sure path is to finish the journey we start today and restore legislative and judicial powers to where they belong: in Congress and the courts. We have tolerated adventurous theories long enough. It is time to return, all the way, to the Constitution.

Justice Sotomayor, with whom Justice Kagan and Justice Jackson join, dissenting.

. . . . Today, this Court undoes centuries of political practice and concludes that all three branches of Government have been acting in open defiance of the Constitution all this time. Its conclusion is wrong. The text of the Constitution, along with its history, the longstanding practices of the political branches, and the precedents of this Court, make clear that Congress may limit the causes for which the heads of Commissions like the FTC can be removed by the President. In holding otherwise, the Court gives the President a power unknown even to the English Crown against which the Founders revolted, elevating him above his once-coequal branches by transforming a duty to take care that the laws be faithfully executed into a license to act in defiance of those very laws. If nothing else, the doctrine of *stare decisis*, which today's decision cursorily dismisses, should have made this a profoundly easy case under *Humphrey's*.

Perhaps worst of all, the Court today forgets its place. For most of our history, the Court has rightly left the removal question primarily to its coequal branches. Today's majority, however, decides that it knows better: better than members of the founding generation who created agencies, like the Sinking Fund Commission and the Bank of the United States, free from unfettered Presidential control; better than a century and a half of Congresses and Presidents, starting with Grover Cleveland and continuing into the 21st century, who created agencies in the FTC's mold; better than even Hamilton, Story, Webster, Holmes, Brandeis, Frankfurter, and Rehnquist. These great statesmen and Justices knew something that today's majority apparently does not: that fealty to the Constitution means respecting not just what it says, but what it does not say and by its silence leaves to others to decide. It also means respecting precedent—not as a wooden exercise, but out of a recognition that, whatever our confidence in the theories of the present moment, the wisdom of our founding document does not belong to today's Justices alone. Because the

Court ignores these foundational tenets, and in doing so upends rather than upholds the separation of powers, I respectfully dissent. . . .

II

Six years ago, this Court announced that the President generally must be able to fire executive officials "at will" (that is, for any reason or even no reason at all). *Seila Law LLC* v. *Consumer Financial Protection Bureau* (2020). In so holding, the Court recognized "two exceptions" to that "general rule" of "unrestricted removal power": one for inferior officers and one that allowed Congress to "create expert agencies led by a group of principal officers removable by the President only for good cause." Today, the Court doubles back on the second exception for agencies like the FTC, and doubles down on its "general rule" that the President's removal power cannot be cabined in any way. Its decision is grievously wrong.

A

1

This case should have begun and ended with this Court's unanimous decision from almost a century ago: *Humphrey's Executor* v. *United States*. *Humphrey's* addressed the very statute at issue here, which allows the President to remove FTC Commissioners only " 'for inefficiency, neglect of duty, or malfeasance in office,' " and upheld its constitutionality against the very same challenge levied in this case. . . .

As Congress constructed a variety of agencies to serve the public's needs over the decades that followed, this Court repeatedly applied and expanded the rule announced in *Humphrey's*. In *Youngstown Sheet & Tube Co.* v. *Sawyer* (1952), *Humphrey's* was the only example Justice Jackson provided of a case in which the President's "power [wa]s at its lowest ebb" and the President was thus prevented from "tak[ing] measures incompatible with the expressed or implied will of Congress." Later, in *Wiener* v. *United States* (1958), Justice Frankfurter's opinion for a unanimous Court relied on *Humphrey's* (describing it as a "*cause célèbre*") to approve removal protections for the War Claims Commission, which settled claims by American prisoners of war and civil internees who suffered harm during World War II. . . .

In later decades, the Court reaffirmed *Humphrey's* rule that certain executive officers may enjoy for-cause protections. In *Morrison* v. *Olson* (1988), Chief Justice Rehnquist, writing for a 7-to-1 Court, applied and expanded *Humphrey's* in a new context, approving removal protections for an independent counsel tasked with investigating allegations of crime by high executive officers. Rejecting the idea that the only officers who could permissibly be granted removal protections were those who exercised "'quasi-legislative' " or " 'quasi-judicial' powers," the Court held that the more fundamental question was whether removal protections unduly "interfere[d] with the President's exercise of the 'executive power.'" *Id*., at 688–690. Still, the Court explained, *Humphrey's* "analysis of the functions served by the officials at issue" remains "[r]elevant" to answering that question. Considering the "functions of the" independent counsel, alongside the President's remaining ability to exercise control over the office, the Court held that the for-cause removal statute at issue was constitutional.

Even in more recent cases in which the Court has declined to "extend *Humphrey's* to a 'new situation,'" the Court has underscored that *Humphrey's* remains good law in its core application to multimember

bodies like the FTC, see *Seila Law*; *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*(2010). . . .

Searching for a distinction, the Government (echoed by the majority) contends that *Humphrey's* should not control as to the present-day FTC because the FTC's powers have expanded over the years since *Humphrey's* was decided. The premise that the FTC has fundamentally changed, however, is untrue: Contrary to the Government's assertions, the FTC of 1935, like today's FTC, had the power to conduct investigations, make rules, and bring enforcement actions.[8] To the extent the FTC has gained power since 1914 . . . those changes at the margins do not so transform the "character of the office" as to bring the agency outside of *Humphrey's* rule. If, it was true that the political branches went too far in assigning certain powers to the FTC over the years, moreover, it is unclear why the appropriate remedy at this point would not be to sever these additional, objectionable powers. There then would be no need to adopt a sweeping new rule that will transform the balance of power across the Federal Government and deprive the public of Government impartiality in serving the public's needs.

Far from the minimal impact that the majority imagines *Humphrey's* to have had, *Humphrey's* has sat at the center of this Court's separation-of-powers jurisprudence for nearly a century. If precedent were any guide, this case would be open and shut: The FTC's removal protections, as the Court has long held and repeatedly recognized, are constitutional.

2
Humphrey's is not just a longstanding precedent of this Court. It also reflects a "deeply rooted tradition" embraced by all three branches of Government and the American people. *PHH Corp.* v. *Consumer Financial Protection Bureau* (CADC 2018) (Kavanaugh, J., dissenting).

Such "longstanding practice" is entitled to "'great weight'" in separation-of-powers cases like this one. *Trump* v. *Mazars USA, LLP*, 591 U. S. 848, 862 (2020). On "doubtful question[s]" regarding the meaning of the Constitution, historical practice, when "deliberately established" through "legislative acts," can "put at rest" the Constitution's meaning. *McCulloch* v. *Maryland* (1819). That is so even for practices that "began after the founding era." *NLRB* v. *Noel Canning*, 573 U. S. 513, 525 (2014).[9]As Justice Scalia explained, constitutional interpretation should reflect "the principles adhered to, over time, by the American people, rather than those favored by the personal (and necessarily shifting) philosophical dispositions of a majority of this Court." *Rutan* v. *Republican Party of Ill.* (1990) (dissenting opinion). Like a "more democratic" form of *stare decisis*, respecting historical practice "promotes ... stability,

[8] FN1: *Humphrey's* did not explicitly identify each power, but the idea that "a court including Charles Evans Hughes, Louis Brandeis, Benjamin Cardozo, and Harlan Stone somehow misunderstood [the FTC's] powers lacks all plausibility." *Seila Law LLC* v. *Consumer Financial Protection Bureau* (2020) (Kagan, J., concurring in judgment with respect to severability and dissenting in part). It is also true that, despite these powers existing at the time, *Humphrey's* described the FTC as sharing "no part of the executive power." For decades, however, this Court has recognized that even for agencies exercising powers that "would at the present time be considered 'executive,'" *Humphrey's* rule applies. *Morrison* v. *Olson* (1988). Congress, even before *Morrison*, extensively legislated, creating many agencies like the FTC, based on that understanding.

[9] FN3: See, *e.g.*, *Noel Canning* (relying on practices beginning after the Civil War); *Mistretta* v. *United States* (1989) (relying on "more than a century" of experience); *Ex parte Grossman* (1925) (relying on "long practice" since 1841); see also *United States* v. *Curtiss-Wright Export Corp.* (1936).

equality, and predictability." M. McConnell, Time, Institutions, and Interpretation, 95 B. U. L. Rev. 1745, 1776 (2015).

These principles apply with full force here. Today's decision addresses one of the oldest, most vigorously debated questions in constitutional law. . . .

Today, dozens of agencies are headed by commissioners or board members removable only for cause. Thus, unlike in other recent cases, in which the Court considered agencies that it deemed "historical anomal[ies]" with "no foothold in history or tradition," here history and tradition point in the opposite direction.

Congress, moreover, has taken this action not only with the Executive Branch's "acquiesce[nce]," but also with the active participation of Presidents across the ideological spectrum. *Zivotofsky* v. *Kerry* (2015). . . . Even if *Humphrey's* had never been decided, this longstanding practice, jointly undertaken by Congresses and Presidents, should be entitled to significant weight.

The majority's only response is *INS* v. *Chadha*, 462 U. S. 919 (1983), which held unconstitutional a 50-year-old procedure by which a single House of Congress could override an executive action. *Chadha*, however, is no model for today's decision. For one thing, *Chadha* did not involve a practice that had been repeatedly approved by this Court for nearly a century. Moreover, *Chadha* rested on "[e]xplicit and unambiguous provisions of the Constitution" (specifically, Article I's bicameralism and presentment requirements) in disapproving the challenged practice. The majority here, by contrast, identifies no constitutional provision referencing or requiring an unfettered removal power. Instead, it rests heavily on structural inferences, legislative inaction, congressional debates, legal commentary, and private correspondence. Thus, unlike *Chadha*, this case does not ask whether 50 years of practice can overcome plain constitutional text. It asks whether the Constitution privileges the majority's flawed historical account as the final word on the subject, impervious to more than a century of later historical development.

The answer is no. Although the majority suggests that its view reflects a settled construction of the Constitution, the opposite is true. For more than a century, the Nation has firmly rejected the majority's view and has recognized that Congress, not this Court, has primary say over whether multimember commissions like the FTC should have some insulation from direct Presidential control. It is thus the majority, not *Humphrey's* or the FTC, that improperly "transform[s] the 'established practice' of the political branches." *Mazars*.

B

Ninety years of precedent and 140 years of consistent political practice should have been more than enough to resolve this case. They are not enough, however, for the majority. . . .

There is no need for this renewed analysis, but even if we must return to fundamentals, the majority remains deeply wrong. Until 2010, this Court had generally allowed Congress to impose reasonable limits on the President's default power to remove Executive Branch officials if doing so did not impair his ability to perform his constitutional duties. See *Free Enterprise Fund* (Breyer, J., dissenting). Recently, however, the Court has seized the issue from the political branches by fashioning a "general rule" of mandatory,

illimitable at-will Presidential removal. *Seila Law*. From the start, the majority's theory rested on shaky ground. Over time, its arguments have grown weaker still, as historical evidence has undermined key pillars of its theory. Today, the Court faced a choice: plow ahead, or acknowledge that the foundations on which the "general rule" of illimitable removal power rests are less stable than the Court has previously asserted. Unfortunately, the Court repeats and expands upon several prior errors that require correction.

1
Beginning at the founding, there is no evidence that those who shaped or ratified the Constitution adopted the majority's general rule of at-will removal. Indeed, the Court has long noted that, for the most part, "[t]he Constitution is silent with respect to the power of removal from office, where the tenure is not fixed." *Ex parte Hennen* (1839). The one exception, and only explicit removal power granted in the Constitution, is for impeachment of the "President, Vice President, and all Civil Officers," a power placed in Congress's hands, not the President's.

Still, the majority begins by claiming that its theory of Presidential removal comes from Article II's "vest[ing of] '[t]he executive Power' " in the President. That assertion begs the question. Does the "executive Power," in fact, contain an illimitable removal power beyond Congress's power to "establis[h] by Law" certain offices, as "necessary and proper" to structure the Executive Branch? After all, agencies like the FTC would not even exist if not for Congress's exercise of its Article I power to create them.

There is little to suggest that "executive Power," as understood at the time of the founding, was as capacious as the Court today asserts. . . .

Nor is there evidence that the Constitution was intended to give the President more expansive removal powers than those enjoyed by the Crown. For good reason: Doing so would have been inconsistent with the Constitution's very foundation. . . .

Removal also "was not discussed in the Constitutional Convention," *Myers* v. *United States* (1926), making an expansion of preratification executive power unlikely. Alexander Hamilton, then writing to support the States' ratification of the Constitution, explained that because the power to remove traditionally followed the power to appoint, "[t]he consent of [the Senate] would be necessary to displace as well as to appoint." The Federalist No. 77. This was a selling point for the Constitution, as it meant that "[a] change of the [President] would not occasion so violent or so general a revolution in the officers of the government as might be expected if he were the sole disposer of offices."[10] Madison also explained

[10] FN7: Far from a "passing commen[t]" by Hamilton that the majority imagines this to have been, Joseph Story later wrote that Federalist No. 77 "den[ied] the existence of the [unlimited presidential removal] power" and, in doing so, "had a most material tendency to quiet the just alarms of the overwhelming influence, and arbitrary exercise of this prerogative of the executive, which might prove fatal to the personal independence, and freedom of opinion of public officers, as well as to the public liberties of the country." 3 Commentaries on the Constitution of the United States (1833) (Story). When the political branches ultimately concluded that, contrary to Hamilton, the President did have authority to remove officials without the Senate's consent, James Kent marveled at the "striking fact" that they did so based "upon inference merely" and "in opposition to the high authority of the *Federalist*." The majority's suggestion that Hamilton might have meant something entirely different in Federalist No. 77, is also doubtful given Story's and Kent's understandings. Moreover, to the extent the majority identifies other later statements by Hamilton arguably in tension with his initial view in The Federalist, "changing minds and inconstant opinions don't usually prove the existence of constitutional rules." *Seila Law* (opinion of Kagan, J.).

that "[t]he tenure of the ministerial offices, generally, will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions." The Federalist No. 39.

The Constitution may have been intended, as the majority argues at length, to "forg[e] a new path," in contrast to some state governments at the time, by "opting for one President" and not a " 'committee-style' " Presidency. This new path, however, does not lead where the majority wishes to go. Whether executive power vests in a single President or a council, the question remains whether the Vesting Clause forecloses any limitations on that person's (or body's) power to remove subordinate officials. For proof, look no further than Hamilton, who certainly agreed that executive power ought to be "placed in a 'single hand.'". Yet Hamilton also saw this choice as entirely compatible with his view that "[t]he consent of " the Senate would be necessary "to displace as well as to appoint" officers. The Federalist No. 77. He plainly did not view "the power to remove at will [a]s a necessary corollary of the Constitution's design," and the majority is wrong to assume that a unitary Presidency implies an unlimited removal power.

The majority relatedly places undue weight on the notion that " '[t]he power of appointing and removing executive officers [is] inherent in [the] Executive.'" Under the Constitution, the President does not have unlimited appointment powers either. His power is to "nominate"; only "by and with the Advice and Consent of the Senate" may he "appoint" the "Officers of the United States." Art. II, § 2, cl. 2. What is more, the President can appoint officers only to offices "established by Law"—that is, by Congress. Any link between appointment and removal thus undermines the existence of any inherent illimitable executive removal power. Given that the Constitution did not grant the President alone an illimitable power to appoint, it is all the less likely that it silently vested in the President an unbounded power to remove.

Nor does the Take Care Clause serve as a plausible source for the expansive removal power the majority posits. . . . There is no evidence that anyone understood the Take Care Clause at or near the founding to imply a mandatory, inflexible rule of at-will removal that Congress could never modify.

In sum, nothing in the text of the Constitution, as understood at the time of the founding by those who ratified it, suggests the illimitable removal power the Court today endorses. The majority can shut its eyes to this evidence and point back to its past mistakes as support for the new ones of today. To the extent " '[o]riginal history'" is seen as "generally dispositive," however, see *United States* v. *Rahimi* (2024) (Barrett, J., concurring), this background should have prevented the Court from continuing to build on the uncertain foundation of a general rule of illimitable Presidential removal.

2

The majority quibbles with some of the evidence discussed above, but in the end cites nothing from the ratification debates or the Constitution's text endorsing its view of unbounded removal power. Instead, the majority rests mostly on postratification commentary and congressional inaction. On this score, though, the majority also comes up short. Presidential removal has long evoked strong, conflicting views from American political leaders, but the available evidence from 1789 through the end of the 19th century reflects that the political branches have long believed, and acted upon the belief, that Congress has the power to set limits on the President's removal authority and that the President was not free to flout such limits when enacted.

a

Starting where the majority starts, the debates of the First Congress over the removal process for early department heads (which culminated in the "Decision of 1789") in no way resolve the question presented here. . . .

In any event, the debates from 1789 do not support the majority's understanding of executive power. The House in 1789 did not address whether Congress could place limits on the President's power to remove; it debated whether the President could remove officers *at all* without Senate consent.

The one "'[d]ecision'" that emerged from this debate was that "a congressional role in the removal process was rejected." *Bowsher* v. *Synar* (1986). . . . No version of the bill debated or voted upon, however, suggested that Congress was prohibited entirely from limiting the causes for such removal.

As a result, nearly every scholar to have studied this episode, even those broadly supportive of the majority's view, has come to agree that "the Decision of 1789 did not endorse the view that Congress lacked authority to modify the Constitution's grant of removal power to the President." Instead, Congress in 1789 left that question to later generations.

Fumbling for a response, the majority asserts that there is no constitutional difference between a rule against congressional participation in removals, on the one hand, and a rule against tenure protections, on the other. That is not how the Court has understood matters. . . .

The majority also compares the President's removal power to the pardon and veto powers, suggesting that once Congress rejected the Senate's role in removals, that power became "as much outside Congress's control as" these other powers and so now " 'cannot be modified, abridged, or diminished by the Congress.'" The comparison is inapt. . . . The majority's rule breaks from English practice; it derives from no constitutional text speaking of a Presidential removal power (instead, it is Congress that has power over office creation); and it is inconsistent with the bulk of the American historical tradition. . . .

c

Even as the President's ability to remove executive officers was the subject of spirited debate in the early republic, limitations on Presidential removal nevertheless were enacted. The majority is correct that Presidents generally "utilized their removal power" when not limited by law, but the 19th-century history of Presidential removal is not as absolute as the majority suggests.

To start, the First Congress itself created administrative bodies that, although not identical to agencies like the FTC, enjoyed significant independence in ways that undermine the majority's simplistic history of uniform at-will removal. For instance, in 1790 Congress enacted (and President Washington signed) a law creating the Sinking Fund Commission, a five-member agency responsible for stabilizing the Nation's debt. Three Cabinet Secretaries, the Vice President, and the Chief Justice headed the Commission, and

the latter two could not be removed by the President—making the body at least semi-independent.[11] It is true that the other three members were removable at will, but the independence of some members meant that Presidential control of the fund was not complete. This structure did not stand alone: In 1790, Congress included the Chief Justice as a member of the Mint Board, again allowing an independent individual to carry out important Treasury functions and partake in the exercise of executive power. . . .

As the years went by, Congress continued to implement forms of tenure protection. In 1791 and then 1816, it created the First and Second Banks of the United States, the former run by directors accountable only to private stockholders and the latter with only 5 (out of 25 total) removable directors. . . . .In 1867, Congress enacted the Tenure of Office Act, which (most recognize today) overstepped by requiring Senate consent to the removals of many officers until its repeal in 1887. Even so, "the two-decade-long existence of the Tenure of Office Act reveals the 19th-century political system's comfort with expansive restrictions on presidential removal." *Seila Law* (opinion of Kagan, J.).

Finally, in 1887, Congress created the ICC [Interstate Commerce Commission] with removal protections that would later serve as the template for those of many other agencies, including the Federal Reserve and the FTC. See *supra*, at 10–11. For the next century and a half, that model would go on to be embraced by Congress and Presidents alike, quickly built upon, and ultimately ratified by this Court's decision in *Humphrey's*.

Against this backdrop, the majority at most can point to the paucity of many removal protections enacted during most of the 19th century. The majority's view thus appears to be that Congress's inaction, in declining to impose provisions identical to the FTC's until 1887, forfeited its ability ever to do so in the future. If that is how the majority sees things, then it is the majority that endorses an unsupported, use-it-or-lose-it "adverse possession" theory of constitutional powers.

3
Even before *Humphrey's*, the Court's precedents likewise made clear that it is the majority's radical theory of unitary executive power, not the sustained practice of the political branches over the centuries, that is out of step with traditional notions of separation of powers in this country.

No case before the turn of the 20th century suggested that the President's removal power was not regulable by Congress. In *Marbury* v. *Madison* (1803), Chief Justice Marshall approvingly recognized that an office with a 5-year fixed-term tenure was "not removable at the will of the executive" and thus was "independent of the executive." That protection meant that, "having once made [a fixed-term] appointment, [the President's] power over the office [was] terminated in all cases." Indeed, the historic dispute in that case, over whether Marbury had been commissioned to his office as a justice of the peace,

[11] FN10: The majority hypothesizes that the President, though he could not fire the Chief Justice or Vice President from their principal jobs, could remove them from their positions on the Commission. There is no evidence of this ever occurring, however; and even if it could have happened, that would have just left the Commission down a member, since the President could not add a new Vice President or Chief Justice on his own.

would have been academic if President Jefferson could have removed Marbury at pleasure once commissioned. It mattered only if Marbury, at that point, was safe from removal.[12] . . . .

In short, the 19th century closed with no judicial endorsement of an illimitable removal power.

That brings us to *Myers*, authored by former-President and then-Chief Justice Taft. If *Myers* is the "best" support for the majority's position, its theory is a castle built on sand. For one thing, as the majority admits, *Myers* did not address for-cause removal protection; the challenged statute instead required Senate consent to removal. Thus, despite the grand pretentions of the opinion, it decided no more than that the President could "remove a postmaster of the first class, without the advice and consent of the Senate."

Even in doing so, *Myers* managed to get a great many things wrong. Its expansive reading of Article II lacked any mooring in text or preratification history, conceding the lack of any "express provision respecting removals in the Constitution" or "discuss[ion] in the Constitutional Convention" and instead leaping to the Decision of 1789. Further, "[m]ost contemporary scholars agree that Taft's account of the Decision of 1789 is tendentious and historically inaccurate"; in *Myers*'s own time, moreover, "scholars and jurists attacked its historical arguments." In addition, *Myers*'s claim that there was "no act of Congress ... at variance" with its view of an illimitable removal power for the Nation's first 74 years, is at best incomplete, see *supra*, at 24–27. That is not to mention the *Myers* dissenters (Justices Holmes, Brandeis, and McReynolds), who demonstrated at great length the majority's many other errors.

Perhaps for those reasons, and despite the majority's contrary presentation, it is *Myers* that had little impact when it was decided and has only waned in influence since. Within a decade, and with four Justices from the *Myers* majority still on the Court, the Court in *Humphrey's* "reexamined the precedents referred to in the *Myers* case, and f[ou]nd nothing in them to justify a conclusion contrary to" the one it reached as to the FTC. The Court unanimously abandoned *Myers*'s expansive dicta, approving only "the narrow point actually decided" on the removability of postmasters "without the advice and consent of the Senate." All other statements "out of harmony" with *Humphrey's* were "disapproved."

For decades after that, the Court continued to cabin *Myers* to its "essence," explaining that it stands only for the proposition that "Congress [may not] 'dra[w] to itself '" the power to remove, *Morrison*, and says nothing about provisions merely "limit[ing] the President's powers of removal." . . . From *Humphrey's* to *Wiener* to *Bowsher* to *Morrison*, *Myers* had been left on the sidelines long before today, at least until the Court reinvigorated a maximalist view of Presidential power a few years ago. *Humphrey's* approval of removal protections for agencies like the FTC, to the contrary, has supplied the rule that governed the creation of the modern state over the course of the following century.

4
***43** The majority thus has very little support in text, history, or precedent. What it does have is a theory. As the majority sees things, "the buck stops" with the President, who holds all executive power and thus can be "'blame[d]'" or held "'responsib[le]'" for all executive conduct. . . .

[12] FN12: The majority argues that the office at issue in *Marbury* (a justice of the peace) may not have exercised executive power at all, but even assuming that assertion is correct, nothing in *Marbury*'s reasoning relied upon the distinctions the majority draws.

Responsiveness and responsibility are certainly valuable, but they are not the only values countenanced by our Constitution. Others are the continuity and stability of Government, The Federalist No. 77Depending on the situation, one value or another may be more or less important. Today, the majority places accountability to the President above all else.

Yet the accountability prized by the majority is not an unalloyed good. From the start, Americans distrusted the "arbitrary authority" that could result from a broad removal power, citing the "baleful influence of the royal prerogative when officers h[e]ld their commission during the pleasure of the Crown." . . .

Balancing all these concerns, and the tradeoffs they entail, has historically fallen to those who know the most about them: the political branches. This Court, on the other hand, has proven itself time and again to be the least competent branch to make these judgments. . . .

In sum, agencies like the FTC do enjoy some measure of independence by virtue of removal protections, but they also remain accountable in other ways. . . . The majority's rigid, inflexible rule goes badly astray by declaring one side of this balance constitutionally irrelevant.

III

Nothing in the text, history, or values of the Constitution shows that *Humphrey's* was wrong or that FTC Commissioners cannot enjoy for-cause removal protection. Yet even if the majority were right about all of that, it still would not be enough to justify today's destabilizing decision.

The reason, of course, is *stare decisis*, which the majority all but disregards. . . .

Along every metric that the Court usually considers in this context, *Humphrey's* should have survived. *Humphrey's* is not wrong, let alone egregiously so. The majority hardly "even acknowledge[s] the important reliance interests that [*Humphrey's*] ha[s] generated." *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College* (2023) (Sotomayor, J., dissenting). It "discards a known, workable, and predictable standard in favor of something novel and probably far more complicated," with revolutionary consequences for our Government. *Dobbs* v. *Jackson Women's Health Organization* (2022) (joint opinion of Breyer, Sotomayor, and Kagan, JJ., dissenting). In the end, it is the majority's rule, not *Humphrey's*, that "short-circuit[s] the democratic process" by eliminating an option for the political branches that has existed at least since *Humphrey's* was decided in 1935.. . .

A

. . . . The checks the political branches devised—bipartisan membership requirements, the multimember structure, lengthy fixed terms, and for-cause removal protections—struck an essential balance in this respect. Creating these agencies under the President gave the Executive Branch the tools needed to execute the law and accomplish the modern work of Government, preserving "ample authority" for the President to ensure the "competen[t] perform[ance]" of the officers leading the agency. *Morrison*. At the same time, ensuring expertise, bipartisanship, and limiting the causes of removal guarded against these new agencies

becoming mere political instruments, which could be turned against political enemies with one hand and used to grant favors to allies with the other.

Indeed, without removal protections, many of the other features of these agencies' structures risk losing their force. Bipartisan-appointment requirements can easily be evaded simply by firing all Commissioners of the opposite party. Just look at the FTC today. Lengthy fixed terms, aimed at ensuring stability, continuity, and the development of expertise within an agency, can also be cut short at the President's will. Again, look at today's FTC. With the most extreme exercises of at-will removal, the multimember structure itself could be eliminated, by executive fiat, with sufficient arbitrary firings to winnow a commission down to a sole remaining chair. The very existence of independent commissions like the FTC thus depended on (and Congress's decision to create the agencies relied upon) the premise that these agencies would exist at some remove from partisan politics and enjoy the removal protections necessary to achieve that goal.

Today's decision profoundly undermines this reliance and, as a result, undercuts one side of the balance that the political branches struck. Put simply, today the majority reshapes our Government. . . .

Seldom, if ever, has this Court worked such a profound bait and switch on a coequal branch: For more than 90 years, Congress believed, with this Court's express approval, that it was allowed to create a workable Government, including by granting certain agencies tasked with certain responsibilities some independence from Presidential control. In rejecting that project, after decades of promising the political branches that structures like the FTC's were permissible, the Court creates an Executive Branch that Congress never dreamed of establishing and that it now has little hope of ever reining in. Cf. *Learning Resources, Inc.* v. *Trump* (2026) (opinion of Roberts, C. J.) (emphasizing Congress's difficulty in paring back executive power once granted, given the need for a veto-proof supermajority). The concurrence acknowledges the "real risks" implicated by the Court's abandonment of *Humphrey's*. *Ante* (opinion of Gorsuch, J.). . . .

Finally, and equally important, the reliance interests here are not limited to Congress. Ordinary Americans and regulated firms alike have organized their affairs understanding that some Government decisions will depend not on political favoritism or partisan advantage (or at least not only on those considerations), but on expertise, adherence to law, judgment, and the public good. . . . .Because today's majority has come to believe that the American people are better off without independent agencies, it does not matter how much anyone has relied on that arrangement.

B
1
The majority's assertion that *Humphrey's* has proved unworkable also blinks reality. As just shown, for over 90 years Congress has legislated, and the Government ably functioned, against the "commonly understood" rule that heads of certain multimember agencies can enjoy modest tenure protections from at-will Presidential removal. *Free Enterprise Fund* v. *Public Co. Accounting Oversight Bd.*(CADC 2008) (Kavanaugh, J., dissenting). These agencies, in short, have become ubiquitous over the last century and a half.

To be sure, independent agencies are not carbon copies of one another, and there is some variation among their structures. . . . In establishing agencies like the FTC, Congress has thus shown little difficulty applying the rule the majority today finds too murky.[13] . . . .

The majority points to a handful of recent lower court decisions from the past year or so that purportedly show that "no one knows how to apply *Humphrey's* in practice." That tumult, though, is more fairly attributed to the Court's recent emergency-docket abandonment of *Humphrey's*. When the Court fails to adhere to its own precedents in a principled manner, it is hard to expect consistency from the lower courts that must keep up with the Court's rapidly shifting views. For decades before this Court upended the doctrine, however, *Humphrey's* was a stable, easily understood precedent of this Court.

Last, the majority takes aim at *Humphrey's* use of the terms "'quasi-legislative'" and "'quasi-judicial.'" *Humphrey's*, however, did not draw these terms from thin air. They were "well-established term[s]-of-art," recognized by figures from Madison to Taft by the time *Humphrey's* was decided. Madison, recall, recognized that even executive officers may "partak[e] strongly of the judicial character" and that such officers raise distinct considerations when it comes to removal. By the early-19th century, courts, too, were using the term " 'quasi-judicial' to describe the duties of specialist officers whose work bore functional and procedural similarities with that of the judiciary" and the term "quasi-legislative" to refer to functions served by "'subordinate agencies'" tasked with filling in the details left open by general laws. The majority can feign ignorance and deem these terms devoid of meaning, but it cannot change the historical record: Independence has long been associated with, and accepted as to, executive officers who carry out functions like the FTC's.

the end, this Court has not "been forced to clarify the doctrine" in this arena "again and again." *Loper Bright Enterprises* v. *Raimondo* (2024). Nor has *Humphrey's* spurred major "confusion and disagreement" in the lower courts, or "generated a long list of Circuit conflicts." *Dobbs*. Instead, the *Humphrey's* rule is long established and has been easily applied for decades.

2
The case for retaining *Humphrey's* becomes even stronger when compared against the majority's theory, which itself promises to unleash only chaos. With remarkable steadfastness, the majority simply refuses to explain where its theory leads or where it ends. Although declining to consider the consequences of its decision might make it easier for the majority to cast *Humphrey's* aside, it leaves courts, agencies, and

[13] FN14: The majority suggests that its rule is necessary because, without it, *Humphrey's* might permit Congress to turn the Environmental Protection Agency into a multimember commission with removal protections. *Humphrey's*, however, has been the law for nearly 100 years and this (apparently intolerable) result has not come to pass. In any event, the Constitution does not prohibit every unwise policy choice, even when it comes to structural questions. If, moreover, Congress at some point did pass a law preventing the President from "carrying out his own constitutionally assigned functions in areas like war or foreign affairs," *Seila Law* (opinion of Kagan, J.), nothing in *Humphrey's* would stop the Court from ensuring that the President can "accomplish his constitutional role," *Morrison*.

Congress with little guidance, and many new questions, on how they are supposed to assess removal questions going forward. . . .

Today, the majority replaces 90 years of proven, workable practice with a half-baked theory of executive power that is simultaneously all encompassing yet also subject to necessary but undefined exceptions. The one thing that does appear to be clear going forward is that chaos will follow.

C
Finally, the majority suggests that *Humphrey's* has been "undermined" by later cases. That is incorrect. *Morrison* did not "'repudiat[e]'" *Humphrey's*. It extended its holding to uphold removal protections for a distinct, inferior officer. The case that *Morrison* repudiated was *Myers*. In *Free Enterprise Fund*, the Court accepted the lawfulness of "one level of good-cause protection" for the SEC. Although *Seila Law* criticized *Humphrey's* at times, its conclusion was simply that *Humphrey's* could not resolve the distinct question at issueEach of these cases left *Humphrey's* firmly in place, until today.

IV
Not two years ago, I wrote of a "disconcerting trend" in this Court's cases: "When it comes to the separation of powers, this Court tells the American public and its coordinate branches that it knows best." *SEC* v. *Jarkesy* (2024) (dissenting opinion). Matters that for centuries had been left to the political branches have been subordinated, one after another, to this recent Court's rigid theories of how Government should operate.

The majority's decision continuing that trend today is egregiously wrong. In this case, the Court takes one of the oldest debates in American history and decides that the six Justices in the majority, alone, ought to be the ones to settle it for all time. That decision does not just overrule precedent; it all but ignores that precedent exists. It does not just hamstring the political branches' ability to respond to new challenges; it rewinds the clock nearly 150 years, holding that a common agency structure is, and always has been, forbidden. It is true that today's decision does not eliminate the FTC or the many other agencies whose structures are implicated by overruling *Humphrey's*. It is undeniable, however, that those agencies will be transformed in ways that those who created them never could have expected and actively sought to avoid, fundamentally recalibrating the balance of power in this country in the process.

Will these transformations yield the benefits, sounding in responsiveness and accountability, that the majority touts? Or will they risk placing "in the hands of a bold and designing man, of high ambition, ... an instrument of the worst oppression," which will "sacrific[e] every principle of independence to the will of the [President]"? Story. Neither I, nor the majority, knows with certainty. That is exactly why the Constitution leaves decisions like this one, involving sensitive tradeoffs and difficult judgment calls, to those best positioned to make them, and then to be held accountable for doing so: the political branches.

Today, the Court discards that democratic regime in favor of one that distorts the structure of Government to fit the majority's theory of unitary, total executive control. The result is a President who emerges with far greater power than ever before. It is a power, however, that neither the People, nor Congress, nor the Constitution bestowed upon him. In granting the President this unbridled authority, the Court upends its precedent, misconstrues our history, and sheds any pretense of judicial modesty. I respectfully dissent.