

In the Supreme Court of the United States

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

Petitioners,

v.

REBECCA KELLY SLAUGHTER, ET AL.,

Respondents.

*On Writ Of Certiorari To The
United States Court Of Appeals
For The District of Columbia Circuit*

**BRIEF OF AMICUS CURIAE
PACIFIC LEGAL FOUNDATION
IN SUPPORT OF PETITIONERS**

ADITYA DYNAR
MICHAEL POON
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201

OLIVER J. DUNFORD
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL
33410
(916) 503-9060
odunford@pacificlegal.org

Counsel for Amicus Curiae

QUESTIONS PRESENTED

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

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

TABLE OF CONTENTS

Identity and Interest of Amicus Curiae	1
Introduction and Summary of the Argument.....	2
Argument	4
I. The Court Should Return To First Principles And Restore One Of The President's Checks On Congress	4
A. The founders separated the government's powers to protect liberty	4
B. The Administrative State was founded on contrary principles	5
C. The Court should return to first principles	10
II. The Supposedly Pragmatic Rearrangement Of The Government's Powers Has Not Lived Up To The Progressives' Promises	17
Conclusion	22

TABLE OF AUTHORITIES

Cases

<i>Axon Enter., Inc. v. FTC</i> , 598 U.S. 175 (2023)	20
<i>Bowsher v. Synar</i> , 478 U.S. 714 (1986)	5
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)	14
<i>Calder v. Bull</i> , 3 U.S. (3 Dall.) 386 (1798)	11
<i>City of Arlington v. FCC</i> , 569 U.S. 290 (2013)	3, 9, 10, 17
<i>Collins v. Yellen</i> , 141 S.Ct. 1761 (2021)	5
<i>FCC v. Consumers’ Research</i> , 145 S.Ct. 2482 (2025)	1
<i>Free Enter. Fund v. PCAOB</i> , 561 U.S. 477 (2010)	3, 10, 13-16
<i>FTC v. Ruberoid Co.</i> , 343 U.S. 470 (1952)	11
<i>Hayburn’s Case</i> , 2 U.S. (2 Dall.) 408 (1792)	10-11
<i>Ex parte Hennen</i> , 38 U.S. 230 (1839)	15
<i>Humphrey’s Executor v. United States</i> , 295 U.S. 602 (1935)	16-17, 22
<i>INS v. Chadha</i> , 462 U.S. 919 (1983)	4
<i>Kisor v. Wilkie</i> , 588 U.S. 558 (2019)	15
<i>Leachco, Inc. v. CPSC</i> , 103 F.4th 748 (10th Cir. 2024)	20-21

<i>Leachco, Inc. v. CPSC</i> , No. 6:22-cv-00232-JAR, 2022 WL 17327494 (E.D. Okla. Nov. 29, 2022).....	20
<i>Lucia v. SEC</i> , 138 S.Ct. 2044 (2018)	2
<i>Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.</i> , 501 U.S. 252 (1991)	5
<i>Morrison v. Olson</i> , 487 U.S. 654 (1988)	12, 15
<i>Myers v. United States</i> , 272 U.S. 52 (1926)	5, 12-14
<i>NLRB v. Noel Canning</i> , 573 U.S. 513 (2014)	17
<i>Perez v. Mortg. Bankers Ass’n</i> , 575 U.S. 92 (2015)	5
<i>Rapanos v. United States</i> , 547 U.S. 715 (2006)	1
<i>Sackett v. EPA</i> , 566 U.S. 120 (2012)	1
<i>Sackett v. EPA</i> , 598 U.S. 651 (2023)	1
<i>Seila Law LLC v. CFPB</i> , 591 U.S. 197 (2020)	16, 20
<i>Slaughter v. Trump</i> , --- F. Supp. 3d ---, No. 25-cv-909, 2025 WL 1984396 (D.D.C. July 17, 2025)	21
<i>Truax v. Corrigan</i> , 257 U.S. 312 (1921)	9
<i>U.S. Army Corps of Eng’rs v. Hawkes Co., Inc.</i> , 578 U.S. 590 (2016)	1
<i>United States Telecom Ass’n v. FCC</i> , 855 F.3d 381 (D.C. Cir. 2017)	18

<i>United States v. Arthrex, Inc.</i> , 594 U.S. 1 (2021)	1-2
<i>Walmsley v. FTC</i> , 145 S.Ct. 2870 (2025)	1
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952)	5
United States Constitution	
U.S. Const. art. I, §§ 1-3	11
U.S. Const. art. II, § 1.....	12-13
U.S. Const. art. II, § 3.....	12
Statute	
15 U.S.C. § 2064(a)(2).....	18-19
Other Authorities	
1 <i>Annals of Cong.</i> 462	15
1 <i>Annals of Cong.</i> 463	16
1 <i>Annals of Cong.</i> 499	14
16 C.F.R. § 1115.4.....	19
Amar, Akhil Reed, <i>Some Opinions on the Opinion Clause</i> , 82 Va. L. Rev. 647 (1996).....	12
Brief of Amicus Curiae Jeffrey Moats in Support of Defendants’ Cross-Motion for Summary Judgment, <i>Harper v. Bessent</i> , No. 1:25-cv-01294 (D.D.C.) Dkt. No. 36.....	22
Calabresi, Steven G. & Prakash, Saikrishna B., <i>The President’s Power to Execute the Laws</i> , 104 Yale L.J. 541 (1994)	12-14
CPSC Complaint, <i>Leachco, Inc.</i> , CPSC Docket No. 22-1 (C.P.S.C. Feb. 9, 2022) https://tinyurl.com/ytjtaf5c	19

Croly, Herbert, <i>Progressive Democracy</i> (The MacMillan Co. 1915)	9
Declaration of Independence (U.S. 1776)	10
<i>The Federalist No. 47</i>	4
<i>The Federalist No. 51</i>	4, 11-12, 16
<i>The Federalist No. 72</i>	12-13, 15
Frankfurter, Felix, <i>The Public and Its Government</i> (Yale Univ. Press 1930)	7-8
Goodnow, Frank J., <i>The American Conception of Liberty and Government</i> (1916)	9
Goodnow, Frank J., <i>The Principles of Administrative Law in the United States</i> (1905)	6, 9-10
Haar, Charles M. & Wolf, Michael Allan, Euclid <i>Lives: The Survival of Progressive Jurisprudence</i> , 115 Harv. L. Rev. 2158 (2002)	8
Harrison, John, <i>Addition by Subtraction</i> , 92 Va. L. Rev. 1853 (2006)	12-13
Initial Decision, <i>Leachco, Inc.</i> , CPSC Docket No. 22-1 (July 3, 2024) https://tinyurl.com/3mk46fub	19
Kagan, Elena, <i>Presidential Administration</i> , 114 Harv. L. Rev. 2245 (2001)	15
Landis, James M., <i>The Administrative Process</i> (1938)	6
Metzger, Gillian E., <i>Foreword: 1930s Redux: The Administrative State Under Siege</i> , 131 Harv. L. Rev. 1 (2017)	5-6

Natter, Ari, <i>U.S. Safety Agency to Consider Ban on Gas Stoves Amid Health Fears</i> , Bloomberg (Jan. 9, 2023), https://tinyurl.com/34nbdpwv	17
Richards, Zoë, <i>White House Says Biden Doesn't Support Banning Gas Stoves</i> , NBC News (Jan. 25, 2023), https://tinyurl.com/sym7n8zd	17
Sunstein, Cass R., <i>Constitutionalism After the New Deal</i> , 101 Harv. L. Rev. 421 (1987)	6, 9, 12
Tushnet, Mark, <i>Administrative Law in the 1930s: The Supreme Court's Accommodation of Progressive Legal Theory</i> , 60 Duke L.J. 1565 (2011)	7-8
Wilson, James, <i>Lectures on Law</i> ch. x (1791), reprinted in 1 Collected Works of James Wilson (Kermit L. Hall & Mark David Hall eds., Liberty Fund 2011)	10
Wilson, Woodrow, <i>Leaderless Government</i> , 3 Va. L. Register 337 (1897)	6-7
Wilson, Woodrow, <i>The New Freedom</i> (Doubleday, Page & Co. 1918)	6, 10
Wilson, Woodrow, <i>The Study of Administration</i> , 2 Pol. Sci. Q. 197 (1887)	6-7
Yeatman, William & Gallagher, Keelyn, <i>The Rise of Money Sanctions in Federal Agency Adjudication</i> , 76 Admin. L. Rev. 857 (2024)	16

IDENTITY AND INTEREST OF AMICUS CURIAE¹

Founded in 1973, Pacific Legal Foundation is a nonprofit, tax-exempt, California corporation established for the purpose of litigating matters affecting the public interest. PLF provides a voice in the courts for Americans who believe in limited constitutional government, private property rights, and individual freedom.

PLF is the most experienced public-interest legal organization defending the constitutional principle of the separation of powers in the arena of administrative law. PLF's attorneys have participated as lead counsel in several cases before this Court involving the role of the Judicial Branch as an independent check on the Executive and Legislative branches under the Constitution's Separation of Powers. *See, e.g., Walmsley v. FTC*, 145 S.Ct. 2870 (2025) (mem.) (granting cert petition raising non-delegation challenge and remanding for further consideration in light of *FCC v. Consumers' Research*, 145 S.Ct. 2482 (2025)); *Sackett v. EPA*, 598 U.S. 651 (2023) (agency regulations defining "waters of the United States"); *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 578 U.S. 590 (2016) (judicial review of agency interpretation of Clean Water Act); *Sackett v. EPA*, 566 U.S. 120 (2012) (same); *Rapanos v. United States*, 547 U.S. 715 (2006) (agency regulations defining "waters of the United States"). PLF regularly participates in this Court as amicus. *See, e.g., United States v. Arthrex, Inc.*, 594 U.S. 1 (2021) (addressing principal officer's

¹ No party's counsel authored any part of this brief. No person or entity, other than Amicus Curiae and its counsel, paid for the brief's preparation or submission.

scope of authority over inferior executive-branch officers); *Lucia v. SEC*, 138 S.Ct. 2044 (2018) (holding SEC administrative-law judge is “officer of the United States” under Appointments Clause).

PLF also represents individuals and small businesses in challenges to Executive Branch overreach. See, e.g., *Princess Awesome, LLC, et al. v. U.S. Customs & Border Prot., et al.*, No. 1:25-cv-00078 (Ct. Int’l Trade) (alleging the President’s IEEPA tariffs are beyond statutory authority or, in the alternative, violative of the non-delegation doctrine); *Leachco, Inc. v. CPSC*, No. 6:22-cv-00232-JAR (E.D. Okla.) (challenging, among other things, CPSC’s in-house adjudication process and removal protections of CPSC Commissioners); *Moats v. Nat’l Credit Union Admin. Bd.*, No. 24-40259 (5th Cir.) (challenging NCUA’s administrative adjudication of private rights).

Here, discussing only the first question presented, PLF offers its experience, and the experiences of its clients, to show the threats posed by “independent” agencies, whose leaders are insufficiently accountable to the President and the People.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The first question presented goes to the heart of the government’s structure, which the Framers designed to protect the People’s liberty. The government was thus divided into three—and only three—branches. “The” executive power, all of it, was vested in “a” President, who shall take care that the laws are faithfully executed. This power, accordingly, imposes a duty, and the President is ultimately accountable for the actions of executive-branch officials. This accountability requires that the President have sufficient control

over the Executive Branch, and one crucial means of control is the power to remove principal executive officers at will.

This power is all the more important now that Congress has created a powerful federal bureaucracy that “touches almost every aspect of daily life.” *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 499 (2010). And the President’s power of removal should be viewed as an executive check on the Legislature, consistent with the original design of the Constitution.

The modern administrative state, on the other hand, derives from Progressive theories that viewed the separation of powers and its checks-and-balances as anachronisms from an earlier, simpler time. This “administrative” view of government called for Congress to delegate broad powers to administrative agencies. Congress dutifully responded. And the result is that, today, the “accumulation of powers in the same hands is not an occasional or isolated exception to the constitutional plan; it is a central feature of modern American government.” *City of Arlington v. FCC*, 569 U.S. 290, 313 (2013) (Roberts, C.J., dissenting).

This concentration of unaccountable power not only violates the Constitution’s design, but it also wreaks havoc on individuals and small businesses. This brief will conclude with examples of unaccountable “independent” agency actions.

* * *

The Court should return to first principles, hold that the President has authority to remove principal executive officers at will, so that, consistent with the Constitution, the President has an effective check

against Congress's broad delegations of power to Executive Branch agencies.

ARGUMENT

I. The Court Should Return To First Principles And Restore One Of The President's Checks On Congress.

A. The Founders separated the government's powers to protect liberty.

"The accumulation of all powers, legislative, executive and judiciary in the same hands . . . may justly be pronounced the very definition of tyranny." *The Federalist No. 47*, at 324 (Madison) (Cooke ed. 1961). Thus, while the Framers sought to establish a government without the constraints effected by the Articles of Confederation, they sought at the same time a government that would not degenerate into tyranny. And to prevent tyranny and protect liberty, the Constitution divides the "powers of the . . . Federal Government into three defined categories, legislative, executive, and judicial." *INS v. Chadha*, 462 U.S. 919, 951 (1983). The "constant aim," Madison explained, was "to divide and arrange the several [branches] in such a manner as that each may be a check on the other" and to give each branch "the necessary constitutional means, and personal motives, to resist encroachments of the others." *The Federalist No. 51*, at 349.

Division and checks would lead to disagreement, conflict, and waste. But efficiency was not the Framers' goal. As Justice Brandeis observed:

The doctrine of the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of

arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

Myers v. United States, 272 U.S. 52, 293 (1926) (Brandeis, J., dissenting).

Rather, the “ultimate purpose of this separation of powers is to protect the liberty and security of the governed.” *Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991); see also *Collins v. Yellen*, 141 S.Ct. 1761, 1780 (2021) (“[T]he separation of powers is designed to preserve the liberty of all the people.”); *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (The “declared purpose of separating and dividing the powers of government, of course, was to ‘diffus[e] power the better to secure liberty.’”) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)). Indeed, “[t]o the Framers, the separation of powers and checks and balances were more than just theories. They were practical and real protections for individual liberty in the new Constitution.” *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 118 (2015) (Thomas, J., concurring).

B. The Administrative State was founded on contrary principles.

The Progressive framers of the administrative state, however, saw the separation of powers as antiquated and simplistic.² Montesquieu’s theory was

² The modern Administrative State originated in the Progressive era. See Gillian E. Metzger, *Foreword: 1930s Redux: The*

widely accepted by 18th-century thinkers, “not, however, as a scientific theory but as a legal rule.” Frank J. Goodnow, *The Principles of Administrative Law in the United States* 31 (1905). And, although the Constitution’s distribution of powers had not (and has not) been amended, “Montesquieu did not . . . say the last word on this head.” Woodrow Wilson, *The Study of Administration*, 2 Pol. Sci. Q. 197, 213 (1887).

The problem with the separation of powers, they maintained, “is that government is not a machine, but a living thing,” and “[n]o living thing can have its organs offset against each other, as checks, and live.” Woodrow Wilson, *The New Freedom* 47 (Doubleday, Page & Co. 1918). And “[t]here can be no successful government without the intimate, instinctive co-ordination of the organs of life and action.” *Id.* at 48. As James Landis put it, “[i]n terms of political theory, the administrative process springs from the inadequacy of a simple tripartite form of government to deal with modern problems.” James M. Landis, *The Administrative Process* 1 (1938).

These would-be reformers lamented that “we have the composite thing which we call the Government of the United States. Its several parts are severally

Administrative State Under Siege, 131 Harv. L. Rev. 1, 52 (2017) (“It was in the Progressive Era at the end of the nineteenth century and the early decades of the twentieth that national administrative government truly blossomed.”); Cass R. Sunstein, *Constitutionalism After the New Deal*, 101 Harv. L. Rev. 421, 424 n.9 (1987) (“Although administrative agencies have been a part of government since the founding of the republic, the modern regulatory agency is a recent phenomenon[,] . . . [and] it was not until the New Deal that the modern agency became a pervasive feature of American government.”).

chosen; it is no unified and corporate whole.” Woodrow Wilson, *Leaderless Government*, 3 Va. L. Register 337, 349 (1897). Therefore, “[i]t is a government without definite order, showing a confused interplay of forces, in which no man stands at the helm to steer, whose course is beaten out by the shifting winds of personal influence and popular opinion.” *Id.*

And it was incumbent on the study of administration to “discover the best principles upon which to base [the] distribution [of constitutional authority].” Wilson, *The Study of Administration*, *supra*, at 213. Because “[e]nforcement of a rigid conception of separation of powers would make modern government impossible,” Felix Frankfurter, *The Public and Its Government* 78 (Yale Univ. Press 1930), these anti-framers consciously sought to rearrange the U.S. government. Indeed, “[r]esolving the deeper problems of American government required a new understanding of democracy” itself. Mark Tushnet, *Administrative Law in the 1930s: The Supreme Court’s Accommodation of Progressive Legal Theory*, 60 Duke L.J. 1565 (2011) (discussing Frankfurter and Landis).

The framers of the administrative state thus aimed to separate, not the government’s powers from each other, but rather administration from politics. *See, e.g.*, Wilson, *The Study of Administration*, *supra*, at 210 (“[A]dministration lies outside the proper sphere of *politics*. Administrative questions are not political questions. Although politics sets the tasks for administration, it should not be suffered to manipulate its offices.”); Frankfurter, *The Public and its Government*, *supra*, at 152 (“[T]he staples of contemporary politics—the organization of industry, the control of public utilities, the well-being of agriculture, the mastery of crime and disease—are deeply enmeshed in

intricate and technical facts, and must be extricated from presupposition and partisanship.”).

And, most importantly, as Frankfurter advocated, power “must more and more be lodged in administrative experts.” *Id.* at 157-58. Yet, while Frankfurter worried about arbitrariness, *see id.* at 158, this new power would *not* be controlled by “the traditional machinery and processes of law,” Tushnet, *Administrative Law in the 1930s: The Supreme Court’s Accommodation of Progressive Legal Theory*, *supra*, at 1575 (citing *The Public and its Government*, *supra*, at 159-60). Rather, safeguards were to be based on “high standards of professional service, an effective procedure . . . , easy access to public scrutiny and a constant play of alert public criticism” Frankfurter, *The Public and Its Government*, *supra*, at 159.

Therefore, ignoring the Founders’ clear-eyed view of human nature, the administrative state’s framers argued for autonomy from oversight. And the inefficient legislative process, on the one hand, and judicial oversight, on the other hand, had to be jettisoned. Tushnet, *Administrative Law in the 1930s: The Supreme Court’s Accommodation of Progressive Legal Theory*, *supra*, at 1568. Thus, courts were to apply only “deferential oversight of their co-equal branches . . . so that the nation’s regulatory experiment could continue.” Charles M. Haar & Michael Allan Wolf, *Euclid Lives: The Survival of Progressive Jurisprudence*, 115 Harv. L. Rev. 2158, 2161 (2002) (footnote omitted).

As a result, the modern administrative agencies “as a practical matter . . . exercise” all three powers of government, subject to deferential oversight by the polit-

ical branches. *City of Arlington*, 569 U.S. at 312 (Roberts, C.J., dissenting); *see also* Sunstein, *Constitutionalism After the New Deal*, *supra*, at 446 (“[T]he New Deal agency combines executive, judicial, and legislative functions.”); Herbert Croly, *Progressive Democracy* 364 (The MacMillan Co. 1915) (acknowledging that the new “commission” did “not fit into the traditional classification of governmental powers” because “[i]t exercises an authority which is in part executive, in part legislative, and in part judicial, and which must be sharply distinguished from administration in its conventional sense. . . . It is simply a convenient means of consolidating the divided activities of the government for certain practical social purposes.”).

The People’s liberties were negotiable. *See, e.g.,* *Truax v. Corrigan*, 257 U.S. 312, 376 (1921) (Brandeis, J., dissenting) (“In the interest of the public and in order to preserve the liberty and the property of the great majority of the citizens of a state, rights of property and the liberty of the individual must be remolded, from time to time, to meet the changing needs of society.”); Frank J. Goodnow, *The American Conception of Liberty and Government* 47 (1916) (Describing the Founders’ project: “Apparently, little thought was given to the question whether the government was efficient. What was desired was not so much efficiency as liberty.”).

Indeed, according to Goodnow, “constitutional law goes no further than to sketch out the general plan” and “simply states in a general way what are individual rights[.]” *The Principles of Administrative Law in the United States*, *supra*, at 17. Therefore, he continued, it is “[left] to the administrative law to indicate how far [individual rights] are modified by the powers granted to administrative officers, and what remedies

are open in case individual rights are violated.” *Id.* (emphasis added).

C. The Court should return to first principles.

1. Our Founders “could hardly have envisioned today’s ‘vast and varied federal bureaucracy’ and the authority administrative agencies now hold over our economic, social, and political activities.” *City of Arlington*, 569 U.S. at 313 (Roberts, C.J., dissenting) (quoting *Free Enter. Fund*, 561 U.S. at 499).

On this point, there can be no debate: the Founders declared independence from Great Britain to escape a government that “erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.” THE DECLARATION OF INDEPENDENCE (U.S. 1776). Yet that is the government Americans live under today. And while Wilson lamented that “[s]ome citizens of this country have never got beyond the Declaration of Independence,” *The New Freedom* 48, the principles in the Declaration continue to inform our Constitution’s meaning.

Contrary to the Progressive theories of administration, “[li]berty and security in government depend not on the limits, *which the rulers may please to assign* to the exercise of their own powers, but on the boundaries, within which their powers are circumscribed by the constitution.” James Wilson, *Lectures on Law* ch. X (1791) (emphasis added), *reprinted in* 1 *Collected Works of James Wilson* 705 (Kermit L. Hall & Mark David Hall eds., Liberty Fund 2011).

As this Court said early in the Nation’s history, “the legislative, executive and judicial departments are each formed in a separate and independent man-

ner; and . . . the ultimate basis of each is *the constitution only*, within which the limits of which each department can alone justify any act of authority.” *Hayburn’s Case*, 2 U.S. (2 Dall.) 408, 410 n.* (1792) (emphasis added); *see also Calder v. Bull*, 3 U.S. (3 Dall.) 386, 387 (1798) (“All the powers delegated by the people of the United States to the Federal Government are defined, and NO CONSTRUCTIVE powers can be exercised by it[.]”) (Chase, J.).

2. But, as Justice Jackson recognized, vesting unaccountable power in “a veritable fourth branch of the Government[] . . . has deranged our three-branch legal theories.” *FTC v. Ruberoid Co.*, 343 U.S. 470, 487 (1952) (Jackson, J., dissenting).

The Court should now re-enforce the Constitution’s separation of powers and restore one of the President’s checks on Congress.

When the Framers gathered in Philadelphia to structure the new government, their “constant aim” was “to divide and arrange the several [branches] in such a manner as that each may be a check on the other.” *The Federalist No. 51*, at 349 (Madison). They recognized that, among the three branches, the Legislature was by far the most powerful and most likely to usurp the powers of the other branches. *See id.* To address this concern, the Framers divided the Legislature into two houses, each with different “modes of election[] and different principles of action[.]” *Id.* at 350; *see* U.S. Const. art. I, §§ 1-3.

But, just “[a]s the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified.” *The Federalist No. 51*, at 350. The primary “fortification” was the veto power.

Id. But the Founders also refused to weaken the executive by dividing its power among different functionaries. As Justice Scalia observed, “the Founders conspicuously and very consciously declined to sap the Executive’s strength in the same way they had weakened the Legislature: by dividing the executive power.” *Morrison v. Olson*, 487 U.S. 654, 698-99 (1988) (Scalia, J., dissenting).

Instead, they vested “[t]he” executive power solely in “a” single “President of the United States of America.” U.S. Const. art. II, § 1. See Steven G. Calabresi & Saikrishna B. Prakash, *The President’s Power to Execute the Laws*, 104 Yale L.J. 541, 568-69 (1994) (“Article II’s vesting of the President with all of the ‘executive Power’ give[s] him control over all federal governmental powers that are neither legislative nor judicial[.]”).

The Constitution further provides that the President “shall take Care that the Laws be faithfully executed[.]” U.S. Const. art. II, § 3. He is thus “both empowered and obliged” to do so. Akhil Reed Amar, *Some Opinions on the Opinion Clause*, 82 Va. L. Rev. 647, 658 (1996). See also Sunstein, *Constitutionalism After the New Deal*, *supra*, at 476 (“The ‘take Care’ clause is a duty, not a license.”).

The President, however, cannot personally execute all of the laws and, therefore, he “must execute them by the assistance of subordinates.” *Myers*, 272 U.S. at 117. These subordinates—executive officers of the United States—who carry out some portion of the President’s executive power, are and must be agents of the President—and “*of no one else*.” John Harrison, *Addition by Subtraction*, 92 Va. L. Rev. 1853, 1862 (2006) (emphasis added). See also *The Federalist No.*

72, at 487 (Hamilton) (The “persons . . . to whose immediate management these different [executive] matters are committed ought to be considered as the assistants or deputies to the chief magistrate[.]”).

If these officers “were agents of someone [other than the President], [then] that someone else would have the executive power, or some share of it.” Harrison, *Addition by Subtraction*, *supra*, at 1862. The Constitution, however, does not vest anyone but the President with “[t]he” executive power. U.S. Const. art. II, § 1. Accordingly, the administrative power “must be a subset of the President’s ‘executive Power’ and not of one of the other two traditional powers of government.” Calabresi & Prakash, *The President’s Power to Execute the Laws*, *supra*, at 569 (footnote omitted).

Further, the President’s exclusive authority and obligation to “take Care that the Laws be faithfully executed” require that the President have sufficient control over his agents—control traditionally effected through the power to remove executive officers at will. *Free Enter. Fund*, 561 U.S. at 483 (citing *Myers*, *supra*).

Although not expressly provided for in the Constitution, the President’s removal power has long been considered a necessary incident of *the* executive power vested *exclusively* in the President. See *Myers*, 272 U.S. at 163-64 (“[A]rticle 2 grants to the President the executive power of the government—i.e., the general administrative control of those executing the laws, including the power of appointment and removal of executive officers—a conclusion confirmed by his obligation to take care that the laws be faithfully executed[.]”); *Free Enter. Fund*, 561 U.S. at 513-14 (The

Constitution “that makes the President accountable to the people for executing the laws also gives him the power to do so. That power includes, as a general matter, the authority to remove those who assist him in carrying out his duties.”).

Thus, although Congress may establish administrative agencies, *Buckley v. Valeo*, 424 U.S. 1, 138-39 (1976), it may not invade the President’s executive power of removal and thereby “reduce the Chief Magistrate to a cajoler-in-chief.” *Free Enter. Fund*, 561 U.S. at 502; *see also id.* at 500 (“Congress has plenary control over the salary, duties, and even existence of executive offices. Only Presidential oversight can counter its influence.”); Calabresi & Prakash, *The President’s Power to Execute the Laws, supra*, at 581 (“Once created, these agencies and officers executing federal law must retain the President’s approval and be subject to presidential superintendence if they are to continue to exercise ‘the executive Power.’”).

The removal power is critical to ensuring accountability because, without it, the President “could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else.” *Free Enter. Fund*, 561 U.S. at 514. *See also Myers*, 272 U.S. at 131 (“Vest this [removal] power in the Senate jointly with the President, and you abolish at once that great principle of unity and responsibility in the executive department, which was intended for the security of liberty and the public good.”) (quoting Madison, 1 *Annals of Cong.* 499).

The people do not vote for administrators—they “instead look to the President to guide the ‘assistants or deputies . . . subject to his superintendence.’” *Free*

Enter. Fund, 561 U.S. at 497-98 (quoting *The Federalist* No. 72, at 487 (Hamilton)). Therefore, agencies “have political accountability, because they are subject to the supervision of the President, who in turn answers to the public.” *Kisor v. Wilkie*, 588 U.S. 558, 571-72 (2019) (citations omitted). As Justice Scalia explained, the President is “directly dependent on the people, and since there is only *one* President, *he* is responsible. The people know whom to blame.” *Morrison*, 487 U.S. at 729 (Scalia, J., dissenting). See also James Madison (June 16, 1789), 1 *Annals of Cong.* 462 (The “first Magistrate should be responsible for the executive department; so far therefore as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to his country.”).

In short, the President “cannot ‘take Care that the Laws be faithfully executed’ if he cannot oversee the faithfulness of the officers who execute them.” *Free Enter. Fund*, 561 U.S. at 484. Therefore, under the long-“settled and well understood construction of the Constitution[,]” the President must have the power to remove principal executive officers at will. *Id.* at 492 (quoting *Ex parte Hennen*, 38 U.S. 230 (1839)).

3. The vast, varied, and powerful federal bureaucracy is a creation of Congress: “From the beginning of the twentieth century onward, many statutes authorizing agency action included open-ended grants of power, leaving to the relevant agency’s discretion major questions of public policy.” Elena Kagan, *Presidential Administration*, 114 Harv. L. Rev. 2245, 2255 (2001) (footnote omitted). And many of these delegations were made to “independent” agencies, intentionally protected against “too much” Presidential interference.

Thus did Congress restrict one of the President’s “constitutional means, and personal motives, to resist” Congress’s “encroachments.” *The Federalist No. 51*, at 349 (Madison). As this Court recognized, a “key ‘constitutional means’ vested in the President—perhaps *the* key means”—to “resist encroachments” by the other branches, is the President’s “power of appointing, overseeing, and *controlling* those who execute the laws.” *Free Enter. Fund*, 561 U.S. at 501 (emphasis of *controlling* added) (quoting James Madison (June 8, 1789), 1 *Annals of Cong.* 463).

By restricting the President’s ability to control those who execute the laws, Congress has usurped executive power from the President, making him and those agencies less accountable to the people whom they serve.

4. For all of these reasons, the Court should overrule *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935). Any justifications for its holding have evaporated. Since *Humphrey’s* was decided, administrative agencies exercise core executive powers. See *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020). And they have become even more powerful. See William Yeatman & Keelyn Gallagher, *The Rise of Money Sanctions in Federal Agency Adjudication*, 76 Admin. L. Rev. 857 (2024) (noting Congress first authorized agencies to impose civil money penalties in 1970 and has since enacted at least 188 authorizations for agencies to seek such penalties through administrative adjudications). Thus, agencies’ discretion to invade the People’s liberties is greater than it was in 1935.

It is “one of the most vital functions of this Court” to “polic[e] the enduring structure of constitutional government when the political branches fail to do so.”

NLRB v. Noel Canning, 573 U.S. 513, 572 (2014) (Scalia, J., concurring in the judgment) (cleaned up). The Court should overrule *Humphrey's Executor*.

II. The Supposedly Pragmatic Rearrangement Of The Government's Powers Has Not Lived Up To The Progressives' Promises.

The Progressive framers of the administrative state promised neutral expert administration. But experience reveals partisanship, influence, and arbitrary actions. Indeed, as the following discussion shows, arbitrary and unaccountable agency action is itself “a central feature of modern American government.” *City of Arlington*, 569 U.S. at 313 (Roberts, C.J., dissenting).

First, a couple of examples that made headlines. In 2023, former CPSC Commissioner Richard Trumka, Jr. declared that the CPSC was considering banning gas stoves.³ Apparently that wasn't true, as former CPSC Chair Alexander Hoehn-Saric announced.⁴ For its part, the Biden Administration distanced the President from Mr. Trumka's remarks, claiming that the White House cannot “speak to” the “safety or the effect of gas stoves” and that the CPSC is “independent.”⁵ One may justifiably wonder just who is in charge of the Executive Branch.

The answer may be the President—sometimes. President Obama pressured the FCC to reverse its

³ Ari Natter, *U.S. Safety Agency to Consider Ban on Gas Stoves Amid Health Fears*, Bloomberg (Jan. 9, 2023), <https://tinyurl.com/34nbdpwv>.

⁴ Zoë Richards, *White House Says Biden Doesn't Support Banning Gas Stoves*, NBC News (Jan. 25, 2023), <https://tinyurl.com/sym7n8zd>.

⁵ *Id.*, <https://tinyurl.com/sym7n8zd>.

previous interpretation of federal law and embrace so-called net-neutrality. See *United States Telecom Ass’n v. FCC*, 855 F.3d 381, 409-11 (D.C. Cir. 2017) (Brown, J., dissenting) (discussing President Obama’s pressuring the “independent” FCC to adopt net-neutrality rule). Thus, Presidents may disclaim the actions of “independent” agencies or, when they see it as politically advantageous, use their authority to affect the agencies’ decisions. Accountability is an afterthought.

While these two examples garnered significant press attention, many more instances of arbitrary and unaccountable actions take place without the headlines. Amicus PLF has seen firsthand the arbitrary but unaccountable actions of today’s independent administrative agencies. Two examples are discussed here.

Leachco, Inc. In *CPSC v. Leachco, Inc.*, CPSC No. 22-1, the Consumer Product Safety Commission began investigating a product made by Leachco, a small, family business in Ada, Oklahoma.

The Commission alleged that Leachco’s infant lounger, called the Podster, was a “substantial product hazard,” i.e., “a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.” 15 U.S.C. § 2064(a)(2). The allegation was ludicrous. It was based on three tragic infant deaths that, the CPSC knew, were *not* caused by the Podster. Nor could the CPSC come close to establishing the statutory requirements that the Podster had a defect

or that any defect created a substantial risk of injury.⁶ Instead, the Commission relied on its own non-binding interpretive regulation to assert that it was foreseeable that consumers might misuse the product.⁷ After an administrative trial, the administrative law judge agreed with Leachco that the CPSC's enforcement lawyers had failed to prove its claim.⁸ Undaunted, the agency's enforcement lawyers have appealed—to the Commission, the very body that authorized the lawsuit in the first place. Leachco continues to wait for this administrative process—now almost four years old—to end.

But the end of that process may not be the end of Leachco's odyssey. If the Commission overrules the ALJ, only limited judicial review will be available to Leachco. The courts will defer to the Commission's determinations of mixed questions of law and fact and will treat findings of fact as dispositive so long as they

⁶ The Commission's allegation was based on caregiver misuse of the Podster (sleep). As the ALJ found, tragically between 1,000 and 3,500 infants die in their sleep each year—even in products, like cribs, that the Commission itself promotes for a “safe-sleep environment.” The Podster, as the Commission admits, is not a sleep product; it's for supervised awake infants only. And, as the ALJ noted, there is no evidence of any injury when the Podster was used as intended. Common sense, too, shows that no “substantial” risk of injury to the public (15 U.S.C. § 2064(a)(2)) could exist here. Consider: if each of the 180,000 Podsters sold was used just once (an unreasonably low estimate), the injury rate the Commission links to the Podster ($3 / 180,000$) is less than two-one thousandths of a percent (0.0017%). A realistic estimate—hundreds of uses per Podster—reduces that rate to near-zero.

⁷ See CPSC Complaint ¶¶ 43-47 (relying extensively on 16 C.F.R. § 1115.4), <https://tinyurl.com/ytitaf5c>.

⁸ See Initial Decision (July 3, 2024), <https://tinyurl.com/3mk46fub>.

are supported by “substantial” evidence. Such a process has already violated Leachco’s rights to a fair trial before a neutral arbiter—and should the Commission reverse the ALJ’s ruling, Leachco will suffer additional constitutional violations.

For these reasons, Leachco filed a collateral challenge to the Commission’s in-house proceeding. *Leachco, Inc. v. CPSC*, No. 6:22-cv-00232-JAR (E.D. Okla. Complaint filed Aug. 17, 2022). Leachco immediately sought a preliminary injunction—to postpone the CPSC’s administrative hearing until a court of law could determine whether the CPSC hearing was even constitutional. As grounds for the motion, Leachco argued, *inter alia*, that the CPSC was unconstitutionally structured because its Commissioners are protected by for-cause removal protections.

The lower courts rejected Leachco’s arguments through strained and impossibly narrow readings of this Court’s opinions in *Seila Law* and *Axon Enter., Inc. v. FTC*, 598 U.S. 175 (2023). Thus, although *Seila Law* held, “when [a removal protection] violates the separation of powers it inflicts a ‘here-and-now’ injury on affected third parties that can be remedied by a court,” *Seila Law*, 591 U.S. at 212, the district court found that this was limited to the Court’s decision on *standing*. *See Leachco, Inc. v. CPSC*, No. 6:22-cv-00232-JAR, 2022 WL 17327494, at *3 (E.D. Okla. Nov. 29, 2022).

Similarly, although Leachco’s here-and-now injury precisely mirrored what *Axon* recognized as a separation-of-powers violation that is “impossible to remedy,” 598 U.S. at 191—the Tenth Circuit held that *Axon* “did not address the issue of irreparable harm.” *Leachco, Inc. v. CPSC*, 103 F.4th 748, 758 (10th Cir.

2024). The Tenth Circuit’s decision has been cited repeatedly by courts rejecting removal challenges, including by the district court below. *See Slaughter v. Trump*, --- F. Supp. 3d ---, No. 25-cv-909, 2025 WL 1984396, at *9 (D.D.C. July 17, 2025).

Finally, it’s worth noting that because Leachco is a small business, it could not have sustained its defense to the CPSC’s administrative hearing without pro bono legal assistance. But far too many small businesses ultimately lose wars of attrition to unaccountable federal agencies.

Jeffrey Moats. PLF also represents Jeffrey Moats in his challenge to the administrative action filed against him in the Office of Financial Institution Adjudication by the National Credit Union Administration.⁹ *See Moats v. NCUAB*, No. 24-40259 (5th Cir.). Moats filed a collateral action against NCUA in district court. Soon after, the parties entered a stipulation that NCUA board members were removable at will by the President. Based on that stipulation, Moats filed an amended complaint and dropped his challenge to the NCUA members’ removal protections. But when President Trump removed one of the NCUA board members, Todd Harper, he challenged his removal in federal court—contradicting the stipulation that was executed while Harper was a member of NCUA and a named defendant in *Moats v. NCUA*. *See Harper v. Bessent*, No. 1:25-cv-01294 (D.D.C. Complaint filed Apr. 28, 2025). Moats filed an amicus brief in *Harper* to inform the court of Harper’s actions. *See*

⁹ The Office of Financial Institution Adjudication is an agency created through a series of inter-agency agreements among NCUA, FDIC, OCC, and the Board of Governors of the Federal Reserve.

Brief of Amicus Curiae Jeffrey Moats in Support of Defendants' Cross-Motion for Summary Judgment, No. 1:25-cv-01294 (D.D.C.), Dkt. No. 36.

These are only a few examples of the many abuses inflicted upon individuals and small businesses by independent agencies. While affirming the President's authority to remove the heads of the agencies is not a panacea, it will at the very least restore a measure of control and oversight to the President and, through him, to the People.

CONCLUSION

The Court should hold that the President may remove superior executive officers like FTC Commissioners without cause and overrule *Humphrey's Executor*.

Respectfully submitted,

ADITYA DYNAR
MICHAEL POON
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201

OLIVER J. DUNFORD
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL
33410
(916) 503-9060
odunford@pacificlegal.org

Counsel for Amicus Curiae

OCTOBER 2025