

No. 25-332

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, *et al.*,

Petitioners,

v.

REBECCA KELLY SLAUGHTER, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF OF *AMICI CURIAE* THIRTEEN
RETIRED FEDERAL JUDGES IN
SUPPORT OF RESPONDENTS**

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STATEMENT OF INTEREST¹

Amici, thirteen former federal judges from across the nation, respectfully submit this amicus curiae brief in support of Respondent, Rebecca Slaughter, Commissioner of the Federal Trade Commission removed from office by the President. The following retired federal judges join as amici:

- Hon. Rubén Castillo (ret.), United States District Court for the Northern District of Illinois, 1994–2019 (Chief Judge, 2013–2019), nominated by President Bill Clinton
- Hon. Robert J. Cindrich (ret.), United States District Court for the Western District of Pennsylvania, 1994–2004, nominated by President Bill Clinton
- Hon. Andre M. Davis (ret.), United States Court of Appeals for the Fourth Circuit, 2009–2014 (Senior Judge, 2014–2017), nominated by President Barack Obama; United States District Court for the District of Maryland, 1995–2009, nominated by President Bill Clinton
- Hon. Gary A. Feess (ret.), United States District Court for the Central District of California, 1999–2014 (Senior Judge, 2014–2015), nominated by President Bill Clinton

1. No counsel for a party authored this brief in whole or in part, and no counsel other than amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

- Hon. Nancy Gertner (ret.), United States District Court for the District of Massachusetts, 1993–2011, nominated by President Bill Clinton
- Hon. Thelton Henderson (ret.), United States District Court for the Northern District of California, 1980–1998 (Chief Judge, 1990–1997; Senior Judge, 1998–2017), nominated by President Jimmy Carter
- Hon. John S. Martin, Jr. (ret.), United States District Court for the Southern District of New York, 1990–2003, nominated by President George H.W. Bush
- Hon. A. Howard Matz (ret.), United States District Court for the Central District of California, 1998–2011 (Senior Judge, 2011–2013), nominated by President Bill Clinton
- Hon. Paul Michel (ret.), United States Court of Appeals for the Federal Circuit, 1988–2010 (Chief Judge, 2004–2010), nominated by President Ronald Reagan
- Hon. Kathleen O'Malley (ret.), United States Court of Appeals for the Federal Circuit, 2010–2022, nominated by President Barack Obama; United States District Court for the Northern District of Ohio, 1994–2010, nominated by President Bill Clinton
- Hon. Shira A. Scheindlin (ret.), United States District Court for the Southern District of New

York, 1993–2011 (Senior Judge, 2011–2016),
nominated by President Bill Clinton

- Hon. Fern Smith (ret.), United States District Court for the Northern District of California, 1988–2003 (Senior Judge, 2003–2004), nominated by President Ronald Reagan
- Hon. Ursula Ungaro (ret.), United States District Court for the Southern District of Florida, 1992–2021, nominated by President George H.W. Bush

In *Marbury v. Madison*, Chief Justice Marshall declared, “[i]t is emphatically the province and duty of the Judicial Department to say what the law is.” 5 U.S. (1 Cranch) 137, 177 (1803). As former federal judges, amici understand the important role that federal courts play in the balance of the separation of powers among the three branches of the federal government.

Here, *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935), has served as binding precedent on the federal courts for ninety years. The decision interpreted the Federal Trade Commission Act, 15 U.S.C. §§ 41 *et seq.* (the “FTC Act”), effectuating Congress’s express intent in legislating reasonable restrictions on the removal of officers of federal government agencies. That decision, affirming the balance Congress struck in the statute, has served as binding precedent that amici were bound to apply in maintaining the boundaries among the three branches of government. Amici have a unique perspective as federal judges counseling in favor of reaffirming the ongoing efficacy of *Humphrey’s Executor’s* interpretation of the FTC Act respecting congressional intent and the

balance of the separation of powers. In addition, amici have experience determining the appropriate remedy for constitutional violations, including the remedies at issue in this case, such as injunctions and mandamus.

SUMMARY OF ARGUMENT

For nearly a century, Congress has relied on this Court’s understanding of the separation of powers to create dozens of independent agencies headed by multimember bodies led by officials who are removable by the President only for cause or other reasons such as inefficiency, neglect, or malfeasance in office. *See Humphrey’s Ex’r*, 295 U.S. at 628–32. Over the past ninety years, this Court has repeatedly reaffirmed *Humphrey’s Executor*. Federal judges have applied *Humphrey’s Executor* as binding precedent upholding the constitutionality of Congress’s determination to legislate a degree of separation of certain agencies from direct control by the executive branch. To upend it now would call into question the legitimacy of decades of decisions premised on the existence of independent adjudicative bodies. *See Ramos v. Louisiana*, 590 U.S. 83, 116 (2020) (“[S]tare decisis’ ‘greatest purpose is to serve a constitutional ideal—the rule of law.’”) (Kavanaugh, J., concurring) (citations omitted). Not only would it disregard ninety years of precedent, overruling *Humphrey’s Executor* would subvert congressional intent, undermine the separation of powers, and upend the constitutional balance that safeguards the rule of law.

Faced with a constitutional violation of the separation of powers—as when the executive removes an official without cause in violation of the plain language of a statute passed by the legislature—the judicial branch can and

should craft a remedy to prevent a person's effective removal from public office, as they have since *Humphrey's Executor*. For example, federal courts can order de facto reinstatement, directing a subordinate officer to restore the powers and duties of public office without directing a coordinate branch of government. Federal courts' experience in crafting remedies is crucial to deter future encroachments on the separation of powers.

ARGUMENT

I. As Binding Precedent, *Humphrey's Executor* Respects Congressional Intent and the Separation of Powers.

For ninety years, Congress has relied on *Humphrey's Executor* to pass legislation signed by the President to create agencies with reasonable removal restrictions. Overruling *Humphrey's Executor* threatens the separation of powers and institutional legacy of the Court and disregards stare decisis. This Court should resist petitioners' invitation to overrule ninety years of precedent.

A. Overturning *Humphrey's Executor* Threatens the Separation of Powers and Institutional Legitimacy of the Judicial Branch.

Changing the application of the FTC Act now would rewrite the statute and create a direct confrontation between the distinct roles of all three branches of government. Critically, the consequences of overruling *Humphrey's Executor* will likely extend beyond the FTC Act, potentially reaching other entities whose officers

serve under congressionally established for-cause removal protections. Moreover, a broad interpretation of executive power in the face of textual limits on removal would disrupt the constitutional balance of power that underpins the rule of law in this country.

1. Maintaining the Separation of Powers Is Essential to Upholding the Rule of Law.

The rule of law necessarily depends on the separation of powers—that the legislative, executive, and judicial functions of the government are vested in separate and independent bodies. No single branch has absolute, unchecked authority. The Constitution bestows upon the “executive Power . . . in the President of the United States of America” the responsibility to “take Care that the Laws be faithfully executed.” U.S. CONST. art. II, §§ 1, 3. As the Founders recognized, however, “[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” THE FEDERALIST NO. 47 (James Madison).

Humphrey’s Executor stands the test of time as a reflection of the balance the Founders intended. As the decision reflects, Congress in its distinct legislative role passed a statute that created a quasi-legislative, quasi-judicial agency. 15 U.S.C. § 41. This Court confirmed as much in its judicial role of effectuating the intent of Congress when interpreting a statute, the FTC Act. Thus, this Court confirmed that Congress appropriately acted when it limited executive authority to remove an FTC member. *See Humphrey’s Ex’r*, 295 U.S. at 628–32.

Yet *Humphrey's Executor* is under duress due to unabating efforts to stretch the bounds of executive authority at the expense of the two other branches. The President removed agency officials from multimember agencies without cause in the middle of their terms in unprecedented numbers.² In these cases, the President has conceded violations of statutory removal restrictions to present constitutional challenges to Congress's authority. Continued commitment to the separation of powers calls for continued commitment to *Humphrey's Executor*, especially when it comes to the very statute at issue in that case. *Humphrey's Executor* remains vital to maintain constitutional equilibrium with respect to the President's removal power. As the Court determined ninety years ago, "[w]e think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers" of quasi-legislative or quasi-judicial bodies, such as the FTC. *Humphrey's Ex'r*, 295 U.S. at 629.

It was Congress's specific intent to bestow certain multimember, independent agencies with adjudicative authority and to protect their members from arbitrary removal. By vesting this authority to independent agencies, Congress ensures that certain functions are performed

2. *E.g.*, *Trump v. Boyle*, 145 S. Ct. 2653 (2025) (Members of Consumer Product Safety Commission); *Trump v. Wilcox*, 145 S. Ct. 1415 (2025) (Members of National Labor Relations Board and Merit Systems Protection Board); *Harper v. Bessent*, No. 25-5268, 2025 WL 2426660 (D.C. Cir. Aug. 21, 2025) (Members of National Credit Union Administration); *Grundmann v. Trump*, No. 25-5165, 2025 WL 1840641 (D.C. Cir. July 3, 2025) (Member of Federal Labor Relations Authority); *Corp. for Pub. Broadcasting v. Trump*, 786 F. Supp. 3d 142 (D.D.C. 2025) (Members of Corporation for Public Broadcasting Board).

with neutrality and expertise rather than partisan interest. Indeed, multimember, bipartisan agencies like the FTC perform quasi-adjudicative functions and are empowered to make principled, informed, and evidence-based decisions with a critical measure of insulation from the executive branch. *See PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 183 (D.C. Cir. 2018) (Kavanaugh, J., dissenting) (independent, multimember agencies “help[] to prevent arbitrary decisionmaking and abuse of power”); *see also Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 185 (2023) (in administrative enforcement actions, “[t]he agency effectively fills in for the district court”).

In delegating adjudicative authority to the FTC, Congress leverages the agency’s subject-matter and technical expertise. This allows for specialized and efficient dispute resolution within a complex regulatory framework. Allowing agencies to weigh in first also fosters consistent, uniform policy application across cases. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 214–15 (1994) (citations omitted) (recognizing that independent agency review promotes a “uniform and comprehensive interpretation” of statutes and that “agency expertise [can] be brought to bear on’ the statutory questions”).

Moreover, vesting agencies with initial adjudicative authority reduces burdens on the judiciary, conserves judicial resources, and promotes efficient resolution. For example, enabling agencies to develop a comprehensive factual record at the administrative stage ensures that cases are better framed and more fully developed when they reach a federal court on appeal. This structure also shields the judiciary from acting as the first-instance

decisionmaker in highly technical or policy-driven disputes, thereby preserving judicial independence and avoiding the appearance of political entanglement. *See Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 855–56 (1986) (citations omitted) (refusing to defeat the “obvious purpose of the legislation to furnish a prompt, continuous, expert and inexpensive method for dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task”).

Critically, overturning *Humphrey’s Executor* would not merely dismantle a constitutional framework. It would rewrite the FTC Act. It would intrude upon Congress’s legislative imperative to impose reasonable statutory limits on removal, repeatedly reaffirmed over nearly a century. If such restraints are to be removed, that choice should lie with Congress, not the Court. The proper remedy for any perceived imbalance between executive authority and statutory limits should be legislative amendment.

2. Overturning *Humphrey’s Executor* Has Potential Implications Well Beyond Independent Agencies.

Overruling *Humphrey’s Executor* would constitute an expansive constitutional reinterpretation of executive power conferring on the President absolute, unchecked removal authority. This carries serious implications to the constitutional balance of powers and risks the constitutional equilibrium. Indeed, the impact of overturning *Humphrey’s Executive* may not just be limited to independent executive agencies. If overturned, other

tribunals would be jeopardized under the unprecedented and expansive interpretation of the President's removal power.

For example, judges for the United States Tax Court are Article I judges whose independence is similarly derived from statutory for-cause removal provisions. 26 U.S.C. §§ 7441, 7443(e), 7443(f). Indeed, Congress explicitly mandated that “[j]udges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.” *Id.* § 7443(f) (1); *see also, e.g.*, 38 U.S.C. § 7253 (declaring that judges of the United States Court of Appeals for Veterans Claims Court “may be removed from office by the President on grounds of misconduct, neglect of duty, engaging in the practice of law, or violating section 7255(c) of this title. A judge of the Court may not be removed from office by the President on any other ground.”); 10 U.S.C. § 942(c) (stating that judges for the United States Court of Appeals for the Armed Forces “may be removed from office by the President, upon notice and hearing, for (1) neglect of duty; (2) misconduct; or (3) mental or physical disability. A judge may not be removed by the President for any other cause.”).

Notably, these protections closely mirror the kind of removal limitations upheld in *Humphrey's Executor*. As such, the constitutional legitimacy of statutory removal protections for other independent, quasi-judicial officials might be cast into doubt if the Court overturns *Humphrey's Executor*. Without removal protections, a President might seek to remove other independent, quasi-judicial officials or litigants might seek to challenge their legitimacy to take issue with a decision they made. *See*,

e.g., *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 208 (2020) (plaintiff brought suit challenging civil investigative demand by agency on the basis that statutory limitations on Presidential removal of the one single director were unconstitutional). Accordingly, there is a risk that officials from these independent judicial bodies could be subject to political pressure from the Executive thereby undermining their impartiality in resolving disputes. Such a sweeping and expansive interpretation of executive power would erode the separation of powers and undermine public confidence in adjudicative processes.

B. *Stare Decisis* Counsels Reaffirming, Not Overruling, *Humphrey’s Executor*.

Stare decisis strongly favors affirming the lower court’s judgment in this case. For nearly a century, beginning with *Humphrey’s Executor*, the Court has consistently upheld the constitutionality of statutory limits on presidential removal authority, reaffirming that interpretation across successive decisions. Overturning *Humphrey’s Executor* now would unsettle not only Congress’s long-reaffirmed statutory framework but also the constitutional equilibrium the Court has preserved for nearly a century.

Humphrey’s Executor’s ninety years of precedent reflects the judicial principle of *stare decisis et non quieta movere*—to stand by things decided and not disturb settled matters. Although not an “inexorable command,” the Court has long recognized that “*stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to

the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U.S. 808, 827–28 (1991).

Indeed, “the doctrine of stare decisis protects the legitimate expectations of those who live under the law. As Alexander Hamilton observed, the doctrine is one of the means by which exercise of ‘an arbitrary discretion in the courts’ is restrained.” *Hubbard v. United States*, 514 U.S. 695, 716 (1995) (Scalia, J., concurring) (quoting THE FEDERALIST NO. 78 (Alexander Hamilton)).

Stare decisis also ensures that decisions are “founded in the law rather than the proclivities of individuals.” *Vasquez v. Hillery*, 474 U.S. 254, 265 (1986). As a practical matter, stare decisis “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.” *Kimble v. Marvel Entm’t, LLC*, 576 U.S. 446, 455 (2015).

Humphrey’s Executor stands as both statutory and constitutional precedent: statutory in its recognition of Congress’s legislative intent, and constitutional in its affirmation that such intent comports with the separation of powers. As Justice Scalia wrote, “The text is the law, and it is the text that must be observed.” Antonin Scalia, A MATTER OF INTERPRETATION 22 (1997). Courts must also avoid reading the law in a way that violates the Constitution. See *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 563 (2012) (“*NFIB*”) (quoting *Hooper v. California*, 155 U.S. 648, 657 (1895)) (“As we have explained, ‘every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.’”).

In the ninety years since *Humphrey's Executor*, the Court has repeatedly reaffirmed that reasonable removal restrictions reflect Congress's intent and do not offend the Constitution's separation of powers.³ Departing from that precedent now demands "special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). This Court has cautioned that it "will not overturn a past decision unless there are strong grounds for doing so." *Janus v. Am. Fed'n of State, Cty. & Mun. Emps.*, 585 U.S. 878, 918 (2018).

This restraint carries "enhanced force" in statutory cases because "critics of [the Court's] ruling can take their objections across the street, and Congress can correct any mistake it sees." *Kimble*, 576 U.S. at 456; *see also South Dakota v. Wayfair*, 585 U.S. 162, 192 (2018) (Roberts, C.J., dissenting) ("The bar [for departing from stare decisis and

3. *E.g.*, *Collins v. Yellen*, 594 U.S. 220, 251 (2021) (describing *Seila Law* as not revisiting decisions limiting the President's removal authority against multimember agencies); *Seila Law*, 591 U.S. at 204, 228 (expressly stating twice that this Court was not revisiting *Humphrey's Executor*); *Free Enter. Fund v. Pub. Co. Acct. Bd.*, 561 U.S. 477, 483 (2010) (declining to "reexamine" *Humphrey's Executor*); *Morrison v. Olson*, 487 U.S. 654, 688 & n.25 (1988) (recognizing *Humphrey's Executor* remains good law); *Wiener v. United States*, 357 U.S. 349 (1958) (applying *Humphrey's Executor* to conclude that the President lacked at-will authority to remove a member of the War Claims Commission, a multimember, quasi-judicial body). In addition to declining to "reexamine" *Humphrey's Executor*, the Court in *Free Enterprise Fund* concluded that the statute there did not violate the separation of powers as it gave the Board a single layer of for-cause protection "under the *Humphrey's Executor* standard." 561 U.S. at 487; *see id.* at 508–10 (remedial holding of the five-member majority, curing any separation of powers problem by leaving in place a single layer of for-cause protection).

overturning precedent] is even higher in fields in which Congress exercises primary authority and can, if it wishes, override this Court’s decisions with contrary legislation.”) (citations omitted). Thus, faced with a “superpowered form of stare decisis,” the Court requires “a superspecial justification” to reverse statutory precedent. *Kimble*, 576 U.S. at 458. In this case, the Government fails to meet the high standard required to upend settled law. It offers no showing that “the FTC’s authority has changed so fundamentally as to render *Humphrey’s Executor* no longer binding.” See *Illumina, Inc. v. FTC*, 88 F.4th 1036, 1047 (5th Cir. 2023) (“Illumina’s constitutional challenges to the FTC’s authority are foreclosed by binding Supreme Court precedent.”).

Moreover, congressional reliance upon *Humphrey’s Executor* provides an affirmative basis for upholding reasonable statutory limits on the President’s removal power. For over ninety years, Congress has relied upon *Humphrey’s Executor* and its progeny to pass legislation creating dozens of independent agencies, not only the FTC. See *Seila Law*, 591 U.S. at 230; Jane Manners & Lev Menand, *The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence*, 121 COLUM. L. REV. 1, 72–79 (2021) (detailing spectrum of agency independence across agencies in appendices). Indeed, the proliferation of complex administrative agencies over the last century has only deepened the government’s reliance on *Humphrey’s Executor* to organize, staff, and sustain such entities. Thus, because *Humphrey’s Executor* “pervades a whole corpus of administrative law, abandoning it would cast doubt on many settled constructions of rules,” thereby undermining both public and institutional reliance on settled government

operations. *See Kisor v. Wilkie*, 588 U.S. 558, 559 (2019). Overruling *Humphrey's Executor* would call into question the structure of the federal government that has developed since 1935. It would also likely result in a flood of challenges by parties to individual decisions made by agency boards that have removal protections. *See, e.g., Seila Law*, 591 U.S. at 208.

Accordingly, the principle of stare decisis should guide the Supreme Court's review of *Humphrey's Executor* in the face of an attack on the text of the FTC Act. Upholding the Court's longstanding statutory interpretation preserves not only the separation of powers and the integrity of the FTC, but also the principle of stare decisis, ensuring that settled precedent guides the Court's decisions absent a truly compelling justification to depart.

II. Federal Courts Have the Power to Craft a Remedy at Equity or Law to Prevent a Person's Effective Removal from Public Office.

Federal judges have the power to fashion a remedy that redresses a statutory violation while respecting the separation of powers between different branches of government. In *Marbury v. Madison*, Chief Justice Marshall declared, "Every right, when withheld, must have a remedy." 5 U.S. (1 Cranch) at 147 (citing 3 WILLIAM BLACKSTONE, COMMENTARIES *109). Of course, the availability of remedies depends on a number of factors. But where Congress has set restrictions on the removal of officials, as it has in the FTC Act, federal courts should have the power to fashion a remedy that fits different factual situations.

The Government’s overbroad position that the judicial branch can order neither injunctions, declaratory relief, nor mandamus against the executive branch, Pet’rs’ Br. 41–44, simply does not reflect the history or practice of the federal courts. Each of these remedies have been available for federal courts to fashion relief at different times and under different circumstances. Better understood, a different story emerges about the characterization of relief before and after Federal Rule of Civil Procedure 81(b) abolished mandamus and essentially merged actions in law and equity in 1938.

A. Relief Against Removal by the Executive Branch Was Historically Available Under Either Law or Equity After Their Merger.

Before 1938, mandamus, a legal remedy, had been available to order relief against the executive branch. The writ of mandamus was used to restore executive branch officials since at least the King’s Bench decision in *Bagg’s Case* in 1615, where the court granted a “writ of restitution” against the mayor and city council for removing Bagg from his residence in Plymouth with no legal basis. *James Bagg’s Case*, (1615) 77 Eng. Rep. 1271, 1271 (K.B.) (Coke, C.J.).

Indeed, mandamus has been well established as a remedy against the executive branch since *Marbury v. Madison*. There, this Court, considering that the Secretary of State wrongfully withheld the commission for a Senate-confirmed justice of the peace, found the scenario presented “a plain case of a mandamus.” *Marbury*, 5 U.S. (1 Cranch) at 173. Chief Justice Marshall concluded that this Court could not issue a writ of mandamus in that case

only because the Constitution did not allow the Judiciary Act to give this Court original jurisdiction over petitions for a writ of mandamus. *Id.* at 176.

With respect to relief against the executive branch, the invocation of nineteenth-century cases as evidence of a historical understanding of the limits of courts' power to order remedies is unconvincing. Better understood, while *White* and *In re Sawyer* acknowledge the limits on the availability of relief at *equity*, they also made clear that equivalent remedies were available *at law*—including mandamus. *White v. Berry*, 171 U.S. 366, 377 (1898); *In re Sawyer*, 124 U.S. 200, 212 (1888) (expressly acknowledging availability of mandamus remedy at law).

While the Government contends that a court cannot restrain the President “in the performance of his official duties,” *Mississippi v. Johnson* stands only for the elementary proposition that a court should not enjoin the President where the President has the authority to act. 71 U.S. (4 Wall.) 475, 501 (1867); *see also, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–37 (1952) (Jackson, J., concurring) (“grouping of practical situations” of the extent of a President’s powers). Here, the issue is whether a statute gives the President the authority to act by removing a member of the FTC. If the statute does not, then mandamus provides a remedy at law for the statutory violation.

In 1938, Federal Rule of Civil Procedure 81(b) essentially merged actions in law and equity, explaining that the “[r]elief previously available through them may be obtained by appropriate action or motion.” FED. R. CIV. P. 81(b). Rule 81(b) and a later change to the U.S. Code

support the continued issuance of mandamus relief. *See* 28 U.S.C. § 1361. Because Rule 81(b) allowed relief by any “appropriate action or motion,” equitable relief, especially injunctions, were increasingly used after 1938 to obtain relief previously available only through mandamus.

Federal judges fashion remedies based on the facts of each individual case. *Grupo Mexicano* did not hold as a categorical matter that equitable remedies are confined to their eighteenth-century forms but expressly acknowledged that “equity is flexible.” *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 322 (1999).

Hence, with the merging of the federal courts’ power in law and equity in 1938, the relevant consideration in this case is whether the particular remedy was historically available, not whether it was provided by a court of law or equity.

B. Federal Courts Have the Authority to Grant Relief Against Subordinate Officers that Prevents Removal of Independent Agency Commissioners.

To that end, there can be no real doubt that federal courts have the power to order relief against subordinate officers that prevents removal of independent agency commissioners whether it is characterized as a writ of mandamus or injunctive relief. The Government’s assertion that executive officers “historically contested their removal by invoking the political process . . . or by seeking backpay,” Pet’rs’ Br. 40 (citations removed), oversimplifies fact-specific circumstances of each case.

But the Government's authorities are more nuanced than portrayed in its brief. For example, in *Humphrey's Executor*, the Executor could only seek backpay in that case because Humphrey had passed away. *See Humphrey's Ex'r*, 295 U.S. at 618.

The Government cites *Franklin v. Massachusetts* for the requirement of an "express statement by Congress" to authorize remedies that could burden the President's Article II powers. But *Franklin* avoided the question of whether the President can be enjoined to perform a ministerial duty by allowing an injunction against the Secretary of Commerce as a subordinate officer. 505 U.S. 788, 803 (1992). In this sense, *Franklin* actually supports injunctive relief against a subordinate officer.

Moreover, federal courts already have the authority to order relief against subordinate officers. The All Writs Act, 28 U.S.C. § 1651(a), allows commands that apply to "persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice." *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 174 (1977).

Nor should the distinction between legal and equitable remedies prevent federal courts from ordering relief in this case or other cases arising under *Humphrey's Executor*. Courts are allowed to order injunctive relief against subordinate officers in official capacities even at the appellate stage under 28 U.S.C. § 1653(a); *see also Swan v. Clinton*, 100 F.3d 973, 980 n.3 (D.C. Cir. 1996).

Here, the district court did not need to order de jure reinstatement; the court concluded that the President’s attempt to remove Commissioner Slaughter without cause, in violation of the FTC Act, “was unlawful and without legal effect.” J.A. 78, 90; *see Kalfbus v. Siddons*, 42 App. D.C. 310, 321 (D.C. 1914) (explaining that “the office never became vacant” because the attempted removal was “illegal and void”). To the extent that a court orders reinstatement, however, de facto reinstatement is one remedy in cases where a federal official’s removal violates a statute like the FTC Act and the official remains available ready, able, and willing to exercise the powers and duties of his or her office. Under mandamus or equity, de facto reinstatement avoids questions of de jure reinstatement and any concerns of issuing injunctions that run directly against the President. In fact, de facto reinstatement furthers the principle of statutory construction that seeks to avoid constitutional issues. *See, e.g., NFIB*, 567 U.S. at 563.

The District of Columbia Circuit en banc agreed this year that an injunction is an available remedy against subordinate officers from removing an official without cause or from treating the official as removed. *Harris v. Bessent*, No. 25-5037, 2025 WL 1021435, at *2 (D.C. Cir. Apr. 7, 2025); *see also Aviel v. Gor*, No. 25-5105, 2025 WL 1600446, at *2 (D.C. Cir. June 5, 2025) (Pillard & Katsas, JJ.) (“[I]t seems appropriate to defer to the views expressed by our *en banc* Court in denying a stay pending appeal in *Harris*, which found the government unlikely to succeed in its contention that reinstatement is rarely if ever an available remedy for unlawfully removed officials.”); *see also Severino v. Biden*, 71 F.4th 1038, 1042–43 (D.C. Cir. 2023) (de facto reinstatement as remedy); *Swan*, 100 F.3d at 978 (same).

Refusing to order meaningful relief would undermine “the bedrock principle that our system of government is founded on the rule of law.” *Swan*, 100 F.3d at 978. Backpay simply does not redress the problem created by the executive branch’s failure to follow the statute’s removal provisions. Backpay would not deter the President from the constitutional violation of unlawful removals contravening congressional intent. If courts cannot order relief against constitutional or statutory violations by the executive branch simply because it is headed by the President, that will have implications for courts well beyond cases where a federal official is removed from office without statutory authorization.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the district court.

Respectfully submitted,

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