No. 23-___

IN THE

Supreme Court of the United States

CONSUMERS' RESEARCH ET AL.,

Petitioners,

v.

CONSUMER PRODUCT SAFETY COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the for-cause restriction on the President's authority to remove Commissioners of the Consumer Product Safety Commission violates the separation of powers.

PARTIES TO THE PROCEEDING

Petitioners Consumers' Research and By Two, L.P. were the plaintiffs in the district court, appellees in court of appeals case number 22-40328, and appellants in court of appeals case number 24-40317.

Respondent Consumer Product Safety Commission was the defendant in the district court, appellant in court of appeals case number 22-40328, and appellee in court of appeals case number 24-40317.

RULE 29.6 STATEMENT

Neither Consumers' Research nor By Two, L.P. has a parent corporation. Neither is publicly held, and no publicly held corporation owns 10% or more of either's stock.

STATEMENT OF RELATED PROCEEDINGS

United States District Court (E.D. Tex.):

Consumers' Research v. CPSC, No. 21-cv-256 (Mar. 18, 2022) (entering partial summary judgment for petitioners)

Consumers' Research v. CPSC, No. 21-cv-256 (Apr. 29, 2024) (entering final judgment on all counts for respondent)

United States Court of Appeals (5th Cir.):

Consumers' Research v. CPSC, No. 22-40328 (Jan. 17, 2024) (reversing grant of partial summary judgment for petitioners)

Consumers' Research v. CPSC, No. 22-40328 (April 16, 2024) (denying rehearing)

Consumers' Research v. CPSC, No. 24-40317 (May 21, 2024) (summarily affirming final judgment on all counts for respondent)

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JURISDICTION

The Fifth Circuit issued its judgment in case number 22-40328 on January 17, 2024, and denied rehearing on April 16, 2024. The Fifth Circuit issued its summary-affirmance order in case number 24-40317 on May 21, 2024. This Court has jurisdiction over this petition seeking review of both judgments under 28 U.S.C. § 1254(1) and Supreme Court Rule 12.4.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of Article II of the United States Constitution provides in relevant part:

> The executive Power shall be vested in a President of the United States of America. …

Section 2053(a) of Title 15 of the United States Code provides in relevant part:

> (a)Establishment; Chairman
>
> An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

INTRODUCTION

This petition "tees up" a question that goes to the heart of our system of government: Whether a federal agency may exercise substantial executive power while shielded from the President's supervision and control. Pet.App.2a. A bare majority of the Fifth Circuit answered yes—but only on the ground that *Humphrey's Executor* forced its hand. And while the opinions below disagreed strongly about whether *Humphrey's* extends so broadly, all agreed that this Court's review is warranted. Even the author of the majority opinion said so, going so far as to state that the "cert petition writes itself." Pet.App.39a.

For good reason. This case concerns the Consumer Product Safety Commission, perhaps one of the most powerful independent agencies ever created. The CPSC is a multimember commission that regulates nearly every aspect of our lives—from the mattresses in our beds, to the clothes in our closets, to the gas stoves in our kitchens. It can ban products, file enforcement suits, and secure eight-figure penalties. But it does all of this outside the lines of political accountability. The President cannot fire the CPSC's Commissioners except for cause. The result is a federal agency entrusted with substantial executive power, but wholly unaccountable to the Chief Executive whose power it wields.

That is unconstitutional. In *Seila Law LLC v. CFPB*, this Court reaffirmed that "the President's removal power is the rule, not the exception." 591 U.S. 197, 228 (2020). And as for the exception created by *Humphrey's Executor*, this Court was explicit that it shields *only* the heads of "multimember expert agencies that do not wield substantial executive power." *Id.* at 218.

Seila Law controls here. Nobody doubts—indeed, everyone below readily agreed—that the CPSC has substantial executive power, including the same "quintessentially executive power[s]" at issue in *Seila Law*. *Id.* at 219. That should have been the end of the matter: Because the CPSC wields substantial executive power, its Commissioners must be removable at will.

But the court of appeals held otherwise. And it did so on the back of a constitutional Frankenstein. On its reanimated version of *Humphrey's*, the decision covers *every single* traditional multimember agency, no matter the power the agency wields. The Fifth Circuit thus held that because the CPSC is *structured* as such an agency, its removal protections are constitutional.

That was seriously wrong—at least if *Seila Law* meant what it said. As this Court explained, *Humphrey's* reaches only multimember agencies that do not exercise "substantial executive power," because it was premised on the 1935 FTC not exercising *any* executive power—instead performing only "specified duties as a legislative or as a judicial aid." *Id.* at 215, 218. But as eight judges emphasized in dissent, the CPSC is different in kind: It exercises substantial power, so it falls outside *Humphrey's* bounds.

In reality, holding that *Humphrey's* covers an agency like the CPSC would *expand* that decision, not *apply* it. And that expansion would reach well past what Article II can tolerate. If the *entire* executive power is vested in a single accountable President, he must have control over any substantial exercise of his authority. Even the majority opinion below agreed on this point as a matter of first principles; it just insisted that this Court needed to be the one to say so (again). Pet.App.4a.

This Court should take up the majority's invitation. If allowed to stand, the Fifth Circuit's decision will further entrench an unaccountable Fourth Branch—one that rules Americans without having to answer to them. But the Founders did not fight a revolution so that their descendants could live under the dictates of unelected commissioners and tenured bureaucrats. And this Court's precedent does not substitute a technocracy for the Founders' vision. It is therefore imperative for this Court to enforce what it already made express in *Seila Law*: If a federal agency wields substantial executive power, its heads must be accountable to the President.

This petition presents an ideal vehicle for this Court to vindicate that fundamental principle. The Fifth Circuit squarely addressed the question presented in a split decision inviting this Court's review. And all of the judges below agreed that this case is free of any jurisdictional or remedial issues. This petition thus cleanly asks a question that goes to the essence of our government—and one that only this Court can definitively answer.

This Court should not wait to do so. The Constitution demands an accountable Executive Branch. But that is not the government that exists today. As it stands now, independent agencies decide much of the law in this country, while the President is sidelined to cajole those actually "taking care" that the laws be faithfully executed. That is not the presidency that Article II promises, nor the one that the American people deserve. But it is the one we have until the Court acts.

STATEMENT OF THE CASE

1. In 1972, Congress passed, and President Nixon signed, the Consumer Product Safety Act. Pub. L. No. 92-573, 86 Stat. 1207 (codified as amended at 15 U.S.C. §§ 2051-2089). The Act established the CPSC "to protect the public against unreasonable risks of injury associated with consumer products." 15 U.S.C. § 2051(b)(1).

This marked the first time "since the days of the New Deal" that Congress decided "to create an independent commission for the purpose of imposing federal regulation on an established area of commercial activity." Antonin Scalia & Frank Goodman, *Procedural Aspects of the Consumer Product Safety Act*, 20 UCLA L. Rev. 899, 899 (1973). In particular, Congress gave the CPSC authority over all "consumer product[s]"—defined to include virtually everything distributed to consumers, except for tobacco and certain other products already regulated under other federal regimes (such as boats and aircraft). 15 U.S.C. § 2052(a)(5).

Based on that delegation (and its authority to administer six other statutes), the CPSC exercises "jurisdiction over thousands of types of consumer products used in the home, in schools, in recreation, or otherwise." CPSC, *The Regulated Products Handbook* 5 (May 6, 2013), https://perma.cc/GJA8-HM5M. "At the time it was established," the CPSC's domain "covered an estimated ten thousand consumer products and more than a million sellers and producers." Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 Tex. L. Rev. 15, 65-66 (2010). And its purview has only grown since, covering everything from batteries to bicycles, clothing to cribs,

mattresses to mouthwash. *See* CPSC, *Regulations, Mandatory Standards, and Bans*, https://perma.cc/8P3X-384A (last visited June 11, 2024). The consumer products subject to the CPSC's control total over $1.6 *trillion* in consumption. Gov't Accountability Office, *Consumer Product Safety Commission: Actions Needed To Improve Processes for Addressing Product Defect Cases* 1 (Nov. 2020), https://perma.cc/3DU9-HN45.

2. Congress bestowed the Commission with broad powers to match its broad domain. In fact, scholars of the administrative state have branded the CPSC as the "most powerful Federal regulatory agency ever created." Barkow, *supra*, at 65-66; Pet.App.46a-47a (collecting some of the CPSC's various "potent tools").

For starters, Congress gave the CPSC extensive rulemaking authority. The agency may "promulgate consumer product safety standards," 15 U.S.C. § 2056(a), as well as "ban[]" hazardous products outright, *id.* § 2057. And its pronouncements carry the force of law. *Id.* § 2068(a)(1), (3), (4) (providing it is "unlawful for any person" to manufacture, distribute, or import any covered product that does not conform with the Commission's bans, regulations, or standards).

The CPSC also has sweeping enforcement powers. It can file enforcement suits that seek civil penalties up to $100,000 per violation—and capped at $15 million for a "related series of violations." *Id.* §§ 2069(a)-(b), 2076(b)(7)(A); *see also id.* § 2065(a), (b) (providing the CPSC with far-reaching investigatory powers). The Commission can also sue in federal court for injunctive relief to "[r]estrain any violation" of its rules, and to seize any alleged offending products. *Id.* § 2071(a)-(b).

Last, the agency has robust adjudicatory authority. *Id.* § 2076(a); *see also id.* § 2064(c), (d), (f). For example, the CPSC recently filed an internal administrative enforcement action seeking to compel Amazon to recall over 400,000 products. CPSC, *CPSC Sues Amazon to Force Recall of Hazardous Products Sold on Amazon.com* (July 14, 2021), https://perma.cc/K4XJ-9W5W.

3. For the CPSC, with great power comes great unaccountability. At its inception, "[c]onsumer groups and their proponents in Congress … doubted President Nixon's commitment to protecting consumers." Barkow, *supra*, at 66. So Congress rejected President Nixon's proposal to "hous[e] the new consumer agency within the Department of Health, Education, and Welfare." *Id.* Instead, it made the CPSC an "independent regulatory commission," with layered protections to match. 15 U.S.C. § 2053(a). The defining feature of the new agency was therefore its robust "independence from presidential control." Scalia & Goodman, *supra*, at 899.

Most fundamental, Congress structured the CPSC as a multimember commission whose Commissioners are shielded from removal by for-cause tenure protection. The CPSC is composed of five Commissioners—initially appointed by the President, and confirmed by the Senate—who serve staggered seven-year terms, with no more than three from the same political party. *Id.* §§ 2053(b)(1), (c). The President cannot remove a Commissioner absent "neglect of duty or malfeasance in office." *Id.* § 2053(a). He is expressly barred from firing a Commissioner "for [any] other cause." *Id.*; *see also Seila Law*, 591 U.S. at 229-30 (explaining that this standard strictly limits the President's "discretion").

Moreover, Congress cabined the President's ability to influence the CPSC's Chair—"the principal executive officer of the Commission" who "exercise[s] all of [its] executive and administrative functions." 15 U.S.C. § 2053(f)(1). Upon taking office, a new President cannot immediately designate a new CPSC Chair from among the existing Commissioners—because, by statute, a new Chair must obtain Senate confirmation. *Id.* § 2053(a). And even though the Executive Branch has taken the view that the President may remove the Chair for any reason (although the person will still be a Commissioner), it is the *Commissioners* who pick the temporary replacement Chair. *Id.* § 2053(d); *see also* John C. Yoo, *President's Authority To Remove the Chairman of the Consumer Product Safety Commission*, 25 Op. O.L.C. 171, 173, 176 (2001).

Congress took further steps to ensure the CPSC's independence. It gave the President no role in appointing the CPSC's inferior officers, 15 U.S.C. § 2053(g)(4), and only a limited ability to remove the agency's high-ranking officials, including its General Counsel, 5 U.S.C. § 3392(d). The CPSC can also litigate independently of the Attorney General, submit budget requests directly to Congress, and speak about any legislative matter without preapproval from the White House. 15 U.S.C. §§ 2071(a), 2076(b)(7)(A), 2076(k).

In short, Congress allowed the CPSC to govern without being accountable to the President—and for the President to disclaim accountability for the CPSC. In early 2023, for instance, news leaked that the CPSC was considering a ban on gas stoves. After a firestorm of controversy, the President distanced himself from the agency's efforts, claiming that while he "does not support banning gas stoves," "the Consumer Product

Safety Commission" is an "*independent*" agency. Elana Shao & Lisa Friedman, *Ban Gas Stoves? Just the Idea Gets Some in Washington Boiling*, N.Y. Times (Jan. 12, 2023), https://tinyurl.com/2vj9sc9j (emphasis added). Despite the President's professed opposition, the CPSC is still considering new federal regulations for gas stoves. *See* 88 Fed. Reg. 14150, 14151 (Mar. 7, 2023).

4. Petitioners are two educational organizations that conduct research on consumer products. As part of their work, they regularly submit Freedom of Information Act (FOIA) requests to the Commission—over 50 such requests to date—seeking agency information about consumer products. Pet.App.5a. Such requests are governed by Commission regulations—including how to process FOIA requests, and whether and when to waive fees that are applicable to the processing of those requests. 5 U.S.C. § 552(a)(3)(A), (a)(4)(A)(i). Both organizations "plan[] to submit more" FOIA requests in the near future. Pet.App.5a.

After the CPSC denied a set of their FOIA requests in 2021, petitioners sued the agency. They argued that they were subject to FOIA procedures administered by an agency that is unconstitutionally insulated from the President. Petitioners therefore sought a declaratory judgment that the removal restriction in 15 U.S.C. § 2053(a) violates the separation of powers (Count I). In addition to this forward-looking claim, petitioners brought two others: One challenge to a recent FOIA rule, brought under the Administrative Procedure Act (APA) (Count II); and another to a FOIA denial, brought under FOIA (Count III). While those claims also rested on the theory that the CPSC is unlawfully insulated, they challenged distinct agency acts and sought distinct remedies under separate statutes.

5. The district court granted partial summary judgment for petitioners on Count I. Pet.App.65a. To begin, the court held that petitioners had Article III standing to bring their separation-of-powers claim, because they have suffered (and will continue to suffer) a "constitutional injury" as a result of "being subject to a regulatory scheme and governmental action lacking Article II oversight." Pet.App.71a (citing *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 513 (2010)).

As for the merits, the court held the Commissioners' statutory removal protection unconstitutional. It first observed that under *Seila Law*, *Humphrey's* extends only to agencies that do not "wield substantial executive power." Pet.App.76a. And because the CPSC undoubtedly wields substantial executive power, the court held that *Humphrey's* "does not apply." *Id.* Instead, the court applied the rule from *Myers v. United States*, 272 U.S. 52 (1926), and held that the CPSC's "removal restriction[s]" were unconstitutional. Pet.App.94a. It then certified the judgment as final under Rule 54(b). Pet.App.96a.

6. A split panel of the Fifth Circuit reversed. All members of the panel agreed that the declaratory judgment was properly certified under Rule 54(b). Pet.App.8a; Pet.App.27a. And they all agreed that petitioners had standing to bring their separation-of-powers claim. Pet.App.10a; Pet.App.27a. But, writing for himself and Judge Dennis, Judge Willett rejected that claim on the merits. While agreeing the CPSC wields substantial executive power, Pet.App.3a, they read *Humphrey's* as endorsing tenure protections for "any traditional independent agency headed by a multimember board," regardless of the power it wields. Pet.App.16a; *see* Pet.App.23a-24a & n.86.

Judge Jones dissented, reasoning that the CPSC was too powerful to fit within the narrow exception created by *Humphrey's*. Pet.App.28a. And because *Humphrey's* did not apply, she would have held its removal restriction unconstitutional under this Court's cases.

7. The Fifth Circuit declined rehearing *en banc* 9-8. Pet.App.33a. Judge Willett wrote to concur in the denial, but also to urge this Court to consider reversing him. Pet.App.38a. Judge Oldham, joined by the seven other dissenting judges, wrote to say why the CPSC flunks current precedent. Pet.App.41a. Judge Ho added a separate dissent. Pet.App.40a.

Following denial of rehearing *en banc*, the courts below disposed of the full complaint. The district court had stayed proceedings with respect to Counts II and III, as it adjudicated (and the Fifth Circuit reviewed) petitioners' separation-of-powers claim. After the Fifth Circuit reversed the grant of partial summary judgment on Count I, the district court entered final judgment for the CPSC on the remaining claims (which depended on the same Article II argument), and the Fifth Circuit summarily affirmed—issuing a final judgment with respect to all three claims for relief. *See* Pet.App.100a; Pet.App.57a.

REASONS FOR GRANTING THE PETITION

This petition cleanly presents a separation-of-powers question that goes to the heart of our system of government: Whether an agency can wield substantial executive power—*i.e.*, whether it can define and enforce the law governing millions of regular Americans—while shielded from the President's removal power. Article II and this Court's cases yield a definitive answer: No.

But the lower courts have not gotten the message. And the decision here typifies the problem. The court below adopted an expansive misreading of *Humphrey's Executor*, viewing it as blessing removal restrictions for the heads of *any* multimember agency, regardless of the power it wields. But this Court expressly rejected that proposition in *Seila Law*. And this Court should grant review to underscore that it meant what it said: If an agency is bestowed with substantial executive power, its heads must be removable at will. Article II can tolerate no other rule. And to the extent there is any doubt about whether *Humphrey's* says otherwise, this Court should expressly limit that case to its facts.

Moreover, there is every reason for this Court to act now, and to make plain the precise scope of *Humphrey's*. As it stands today, a huge swath of the Executive Branch is administered by subordinate officials who exercise the President's power outside of his control. That is not our Framers' government. It is not one designed for the preservation of individual liberty. And—little surprise—it has not served that end well. But until this Court intervenes, that sort of government will remain the *status quo*. This Court should intervene, and this petition is the perfect vehicle to do so.

I. THE DECISION BELOW CONFLICTS WITH BOTH THE SEPARATION OF POWERS AND THIS COURT'S PRECEDENT.

CPSC Commissioners exercise substantial executive power without meaningful supervision by the Chief Executive. That violates Article II. The CPSC wields only the President's delegated authority; it must be accountable to him for how it uses his borrowed power.

In this case, the Fifth Circuit upheld the CPSC's removal restriction only by extending *Humphrey's Executor* to all multimember agencies—focusing solely on the *structure* of those agencies, versus the *substance* of the power they possess. That was marked error. Neither Article II nor this Court's precedent permit a federal agency to exercise substantial executive power while shielded from the specter of at-will removal. Indeed, *Seila Law* said this explicitly four years ago. But if necessary to resolve any doubt, this Court should limit *Humphrey's Executor* to its precise facts.

A. The CPSC Satisfies Neither Exception to the President's Removal Power.

1. This Court has established the "general rule" that the President has an "unrestricted removal power" over executive subordinates. *Seila Law*, 591 U.S. at 215. Text, structure, and history demand nothing less.

Article II "vest[s]" all of "[t]he executive Power … in a President." U.S. Const. art. II, § 1, cl. 1. And it places on him a corresponding duty to "take Care that the Laws be faithfully executed." *Id.* art. II, § 3. With that enormous and exclusive mandate comes the power to supervise and control those that assist the President in discharging his constitutional obligations. *See Seila Law*, 591 U.S. at 213-14.

Indeed, the structure of the Constitution—and its vesting of the "entire" executive power in the President "alone," *id.* at 213—demands that the President be able to freely remove subordinates. Because it "would be impossible for one man to perform" all duties of the Executive Branch, the Constitution "assumes" the President will carry out his obligations through "lesser executive officers." *Id.* But the buck still stops at the

top: The President is responsible for his inferiors; and they in turn must be accountable to him. *See Free Enter.*, 561 U.S. at 513-14. That "clear and effective chain of command" is at the heart of Article II. *Id.* at 498; *see Seila Law*, 591 U.S. at 204 (without removal power, the President "could not be held fully accountable for discharging his own responsibilities").

The Constitution has been understood this way "[s]ince 1789." *Seila Law*, 591 U.S. at 215. In creating the seminal executive departments, the First Congress settled that the President must have the "power to remove—and thus supervise—those who wield executive power on his behalf." *Id.* at 204. As James Madison explained: The executive power necessarily encompasses "the power of appointing, overseeing, and controlling those who execute the laws." 1 Annals of Cong. 481 (1789) (Joseph Gales ed., 1834). And as Chief Justice Taft reaffirmed roughly 135 years later, the President's "control of those executing the laws" includes—really, depends upon—the "essential" power of "removal." *Myers*, 272 U.S. at 117, 163-64; *see also Seila Law*, 591 U.S. at 214.

2. Given all this, the Court has "recognized only two exceptions to the President's unrestricted removal power." *Seila Law*, 591 U.S. at 204.

First, this Court has allowed removal restrictions for "multimember expert agencies that do not wield substantial executive power." *Id.* at 218 (citing *Humphrey's Executor v. United States*, 295 U.S. 602 (1935)). The *Humphrey's* Court "viewed the FTC (as it existed in 1935) as exercising no part of the executive power," and having only a limited authority to act "as a legislative or as a judicial aid"—*e.g.*, by making reports

to Congress, or recommendations to courts. *Id.* at 215. And its holding reached no further than *that* understanding—*i.e.*, no further than the demarcated "set of powers" that served as the "basis" for the Court's decision. *Id.* at 219 n.4.

Second, but of no relevance to this petition, this Court has also allowed modest removal restrictions for inferior officers who have "limited duties and no policymaking or administrative authority." *Id.* at 218 (citing *Morrison v. Olson*, 487 U.S. 654 (1988); *United States v. Perkins*, 116 U.S. 483 (1886)).

But that is it. These two exceptions have marked "the outermost constitutional limits of permissible congressional restrictions on the President's removal power." *Id.* And the Court has—without fail—rejected every attempt to go past those limits. *Collins v. Yellen*, 141 S. Ct. 1761, 1783-84 (2021); *Seila Law*, 591 U.S. at 204; *Free Enter.*, 561 U.S. at 483-84. In doing so, it has stressed that the existence of its two narrow exceptions is not an "invitation" for new ones. *Seila Law*, 591 U.S. at 228. In short, "the President's removal power is the rule, not the exception." *Id.*; *see also Free Enter.*, 561 U.S. at 492-95. And this Court has brooked no more departures.

3. The CPSC does not qualify for either of these exceptions. The *Morrison* exception is off the table, because the CPSC's Commissioners are not inferior officers. And the *Humphrey's* exception fares no better. This is because *no one*—not the government, not the majority opinion below—disputes that the CPSC exercises "substantial executive power." *See* Pet.App.20a.

Indeed, this Court already said as much in *Seila Law*. As it explained, the CFPB was "modeled after" the CPSC. 591 U.S. at 205. And like the CFPB, the CPSC has the same powers to "issue final regulations, oversee adjudications, set enforcement priorities, initiate prosecutions, and determine what penalties to impose on private parties," *id.* at 225, as well as "seek daunting monetary penalties against private parties on behalf of the United States in federal court—a quintessentially executive power not considered in *Humphrey's Executor*," *id.* at 219.

Accordingly, just as with the CFPB, the CPSC undeniably "wields significant executive power." *Id.* at 204. And accordingly, just as in *Seila Law*, the CPSC falls well outside the bounds of *Humphrey's Executor*.

B. Article II Does Not Permit a New Exception for Agencies that Exercise Substantial Executive Power.

The question therefore "is whether to extend" these exceptions to a "new situation"—"an independent agency" wielding "substantial executive power." *Seila Law*, 591 U.S. at 218, 220. Both Article II and this Court's precedent foreclose such an encroachment upon the President's ability to control the Executive Branch. That arrangement has "no place in our constitutional structure." *Id.* at 220.

1. Foremost, countenancing tenure protections for subordinates who wield substantial executive power would eviscerate the system of accountability that Article II's unitary structure was designed to promote.

The touchstone for this Court's Article II cases has been the *power* the insulated officer wields. *Morrison* extends only to those with "limited duties and no

policymaking or administrative authority," and *Humphrey's* covers only multimember agencies lacking "substantial executive power." *Id.* at 218. That is no accident. Article II's structure rests on the President being *accountable* for his subordinates. *United States v. Arthrex*, 594 U.S. 1, 16 (2021). This Court has thus held that it is tolerable (barely) to "blur the lines of accountability" only where there is little for the People to hold the President accountable over—*i.e.*, only where the subordinate has no substantial executive power to affect the lives of ordinary Americans. *Id.* In *those* cases, the President's otherwise "unrestrictable power" of removal may be limited. *Seila Law*, 591 U.S. at 217.

But the "logic" of those narrow exceptions "does not apply" to an agency that wields substantial executive power. *Id.* at 219. Once a subordinate executive officer (let alone an agency head) has the capacity to make significant decisions—once he has the capacity to define the law, and shape the lives of everyday citizens—the constitutional calculus changes dramatically. In *those* cases, the subordinate must be accountable to the President, because the President must be accountable to the People. After all, the "legitimacy" of having "thousands of officers wield executive power on behalf of the President in the name of the United States" turns on those officers answering to "the President, on whom all the people vote." *Arthrex*, 594 U.S. at 11. But the People cannot blame (or reward) the President for significant executive decisions made by those who are independent of him.

Article II is not designed to function in any other way. The Framers devised a system where "individual executive officers [can] still wield significant authority, but that authority [must] remain[] subject to the

ongoing supervision and control of the elected President." *Seila Law*, 591 U.S. at 224. But only with real control is "the chain of dependence … preserved," such that "the lowest officers, the middle grade, and the highest" all "depend, as they ought, on the President, and the President on the community." 1 Annals of Cong. 518 (statement of Rep. James Madison). And that chain of dependence exists only if the President has the unrestricted ability to remove at will. *Collins*, 141 S. Ct. at 1784 (explaining the removal power is unique).

In short, this Court's Article II cases are about one thing: "Power." *Morrison*, 487 U.S. at 699 (Scalia, J., dissenting). But this Court's admonition that *all* of the executive power is vested in *the* President would be empty rhetoric if subordinates could still exercise *substantial* amounts of that power against the President's will, and outside his control. Instead, such persons must be removable at will. To hold otherwise—to create a new exception for agencies like the CPSC—would be nothing less than a complete repudiation of our constitutional design. *Seila Law*, 591 U.S. at 220.

2. The fact the CPSC wields substantial executive power makes it "incompatible with our constitutional structure." *Id.* at 222. That is "enough to render [it] unconstitutional." *Id.* at 225.

But to the extent more is needed, there is. Even if the President's Article II authority could be diminished through adverse possession, the CPSC also has "no basis in history" sufficient to save its removal restrictions. *Id.* at 220.

To begin with, Congress did not create its first multi-member independent agency until 1887. That alone forecloses the notion such agencies have been part of an

"open, widespread, and unchallenged" practice "since the early days of the Republic." *NLRB v. Noel Canning*, 573 U.S. 513, 572 (2014) (Scalia, J., concurring in the judgment). When such a governmental action arrives so late in the day, it is an *innovation* on our constitutional design—not an *illumination* on what it has meant all along. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 36-37 (2022); *see also Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 312 (2008) (Roberts, C.J., dissenting) ("The belated innovations of the mid- to late-19th-century courts come too late to provide insight into the meaning of Article III.").

Regardless, the CPSC is a historical anomaly, even measured against the original collection of independent agencies. Before the New Deal, Congress created three relevant multimember independent agencies. None provides a historical analog able to sustain the CPSC.

Start with the Federal Reserve (1913). As Judge Oldham explained, the Fed is different in kind from the CPSC, because its "most important responsibility"—the administration of the money supply—"is not an executive function." Pet.App.55a. By contrast, the CPSC performs core executive functions, and wields heartland executive powers. It enforces the law—and has the "quintessentially executive power" of being able "to seek daunting monetary penalties against private parties." *Seila Law*, 591 U.S. at 219. It also issues regulations—perhaps "the very essence of the execution of the law." *Collins*, 141 S. Ct. at 1785-86. And it has a far-reaching array of powers within administrative adjudications—another traditional executive power. *See City of Arlington v. FCC*, 569 U.S. 290, 305 n.4 (2013).

The Fed thus provides no historical cover for an agency like the CPSC. Because it does not perform a core executive function, the "Fed's independence does not offend the traditional principle that all executive power is vested in the President." Pet.App.55a. Indeed, that is why the Fed (and agencies like it) have been able to "claim a special historical status," consistent with Article II. *Seila Law*, 591 U.S. at 222 n.8. The CPSC, on the other hand, does nothing *but* wield core executive power. That makes it a constitutional horse of an entirely different color.

The CPSC fits no better with respect to the other two multimember agencies—the Interstate Commerce Commission (1887) and the FTC (1913). As explained, the original FTC was understood to have a limited ambit, and exercise "no part of the executive power." *Humphrey's Executor*, 295 U.S. at 628. And *Humphrey's* said the exact same thing about the ICC, *id.* at 624—the "nature and functions" of which this Court understood to be cut from the same cloth. *PHH Corp. v. CFPB*, 881 F.3d 75, 186 (D.C. Cir. 2018) (Kavanaugh, J., dissenting); *see* Henry B. Hogue, Cong. Rsch. Serv., R47897, *Abolishing a Federal Agency: The Interstate Commerce Commission* 3-4 (2024) ("The ICC was not initially established with the level of authority and independence that it later achieved" and first lacked "the power to enforce its own decisions and orders.").

But the CPSC stands in stark contrast to these sorts of bounded agencies. Again, the Commission acts neither as a legislative aide, nor as a judicial master. *See Seila Law*, 591 U.S. at 215. Instead, unlike the ICC

in 1887 and the FTC in 1935, it exercises core executive power—and quite a substantial amount of it, at that.[1]

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The upshot is that nothing supports a new exception to the President's removal power for heads of an agency like the CPSC. And there is every reason to hold that such officers must be removable at will. Indeed, absent the power to remove Commissioners, the President—by intent and design—has been "reduce[d]" to a "cajoler-in-chief" when it comes to the massive regulatory domain of consumer product safety. *Free Enter.*, 561 U.S. at 502. Within this domain, the executive power of the federal government is very much *not* vested in the President. It is vested elsewhere.

The Constitution does not tolerate such an enfeebled Chief Executive. For product safety as anywhere else, it is the President—and the President alone—who must take care that federal law be faithfully executed. Congress cannot transfer that central constitutional duty to unaccountable bureaucrats. Yet thanks to removal restrictions like the one here, that is *precisely* what is happening in much of our government.

C. The Fifth Circuit Erred in Upholding the CPSC's Removal Restriction.

The Fifth Circuit nonetheless upheld the removal restriction shielding the CPSC's Commissioners. It did

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[1] Granted, after *Humphrey's*, Congress created a number of new federal agencies, some of which are powerful multimember commissions. *See West Virginia v. EPA*, 597 U.S. 697, 741 n.2 (2022) (Gorsuch, J., concurring). But the constitutional justification for those agencies rested on a misreading of *Humphrey's*—the very misreading this Court corrected in *Seila Law*—not any sound insight about our constitutional structure.

so on two interrelated grounds—first, that *Humphrey's Executor* blesses tenure protections for the heads of *any* traditional multimember commission; and second, that the CPSC's structure sufficiently resembles the FTC's to justify making it unaccountable to the President.

Both points are wrong. And neither can salvage the CPSC's tenure protections under existing law. Indeed, as Judges Jones and Oldham detailed in dissent below, the majority's decision does not "apply[]" *Humphrey's Executor*; it "*expands*" it. Pet.App.29a; Pet.App.53a.

1. Principally, the Fifth Circuit upheld the CPSC's removal restriction because it understood *Humphrey's Executor* to endorse tenure protections for the heads of "*any* traditional independent agency headed by a multimember board." Pet.App.16a (emphasis added). On this reading, it does not matter how much executive power an agency wields. Pet.App.17a, 20a. All "[p]rincipal officers may retain for-cause protection when they act as part of an expert board." Pet.App.25a.

That is grievously wrong under *Seila Law*. Again, this Court was clear that *Humphrey's Executor* extends only to those "multimember expert agencies *that do not wield substantial executive power*." 591 U.S. at 218 (emphasis added). And this was not some stray aside. Absent that limitation, there was no cogent way for *Humphrey's* to sit alongside this Court's other Article II precedents. *See id.* at 215-18. Simply put, if Article II commands that the President control the entire executive power—as this Court's cases have stressed—*Humphrey's* cannot neuter the President's ability to supervise those who exercise substantial parts of that power. *See id.* at 251 (Thomas, J., concurring in part).

That is so even if those subordinates sit on a commission, and even if they are so-called "experts."

The Fifth Circuit's maximalist view of *Humphrey's* is irreconcilable with the letter and logic of *Seila Law*. Indeed, the panel below barely tried to square the two. Revealingly, the best it could do was quote from *Seila Law*'s background section—which said the CFPB was not designed to be "a traditional independent agency headed by a multimember board or commission," *id.* at 207 (majority op.)—and conjure from that line that *Humphrey's* "still protects any 'traditional independent agency,'" Pet.App.16a (quoting the above). But the far (far) better source for what *Seila Law* thought about the reach of *Humphrey's* is what *Seila Law* explicitly said about the reach of *Humphrey's*. *See* Pet.App.49a (rejecting panel's reading). The panel did not engage with this, however, because it could not: After all, everyone—including the panel majority—agreed that if this Court actually meant what it said in *Seila Law*, the removal restriction shielding the Commissioners of the CPSC would be inescapably unconstitutional. Pet.App.19a-21a.

2. Relatedly, the Fifth Circuit also maintained that, under this Court's precedent, what really matters most is whether an agency's *structure* is novel—or instead resembles a traditional multimember agency. Pet.App.17a. Thus, the court found dispositive that the CPSC was "structurally identical" to the 1935 FTC. Pet.App.37a-38a. The CPSC is fine, reasoned the lower court, because that agency "shares each of [the main] characteristics" of the 1935 FTC—"save one," the fact that the CPSC wields substantial executive power. Pet.App.18a.

But for Article II, what matters is *power*. *See Morrison*, 487 U.S. at 699 (Scalia, J., dissenting). That is why this Court took pains in *Seila Law* to explain that—for purposes of *Humphrey's Executor*—the FTC was seen as "exercising no part of the executive power." 591 U.S. at 215-16; *see id.* at 219 n.4. The Court did not simply note the structural differences between the CFPB and FTC, and move on. Instead, a foundational point was that while the FTC was understood in 1935 to be little more than a "mere legislative [and] judicial aid," the CFPB exercised "quintessentially executive power[s]"—such as the power to seek monetary penalties against private parties, a specific authority "not considered in *Humphrey's Executor*." *Id.* at 218-19.

The same analysis controls here. Once more, the CPSC's powers far exceed those of the 1935 FTC, in the same exact way that the CFPB's did. This Court has never "considered"—let alone sanctioned—an agency that wields such *power*, while insulated from the President. *Id.* at 218. In focusing solely on the CPSC's structure, the Fifth Circuit lost sight of this point. And in doing so, it failed to faithfully apply *Seila Law*.[2]

At bottom, the fundamental question in any Article II case is whether the President has control over—and is accountable for—the workings of the Executive Branch. Nothing in *Humphrey's*, properly read, alters that analysis. And once a subordinate has been delegated "the coercive power of the state" to define and

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[2] None of this is to say an agency's structure is *irrelevant*. Quite the contrary. But what the Fifth Circuit failed to appreciate is that to qualify for the *Humphrey's* exception, a multimember structure is a *necessary*, but not *sufficient* condition. *See Seila Law*, 591 U.S. at 222-25; *PHH*, 881 F.3d at 193-94 (Kavanaugh, J., dissenting).

shape the law for "millions of private citizens and businesses," that is the end of the inquiry. *Id.* at 219-20. Under this Court's precedent, such an official—whether acting alone, as part of a commission, or within some novel design—must be removable at will. The structure of his immediate employer is irrelevant; he is wielding substantial executive power, so he must answer to the President.

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In short, *Humphrey's Executor* does not control here because it does not apply. And in invoking *Humphrey's* to uphold the CPSC's tenure protections, the court below did not apply that case "in a manner consistent with settled historical practice, the Constitution's protection of individual liberty, and Article II's assignment of executive authority to the President." *PHH*, 881 F.3d at 194 n.18 (Kavanaugh, J., dissenting).

Instead, as the dissenting judges catalogued below, the Fifth Circuit expanded *Humphrey's*—and did so in the teeth of both Article II and this Court's cases. This Court should not allow this subversion of precedent to stand. The decision below returns to a discredited era where *Humphrey's*—not *Myers*—sets the rule of presidential removal, rather than the exception. And if allowed to stand, it will further calcify a powerful bureaucracy within the Federal Government, able to wield executive power without being accountable to either the President or the People. To end that constitutional anomaly, this Court's review is needed.

D. Even if *Humphrey's Executor* Could be Extended to the CPSC, It Should Be Limited to Its Precise Facts.

There is no reason for this Court to revisit *Humphrey's Executor* in this case. As Judge Jones wrote below, "a decision holding the CPSC's structure unconstitutional would sit comfortably side-by-side with *Humphrey's Executor*," because the CPSC exercises substantial executive power. Pet.App.29a. So this case does not turn on whether to apply *Humphrey's*, but whether to extend it—and as to *that* question, the only answer faithful to this Court's precedent is a resounding *no*.

But if *Humphrey's* somehow applies to the CPSC, then this Court should take the step of expressly limiting that decision to its precise facts. In particular, it should hold that *Humphrey's* applies only to multimember agencies that wield no more than the powers of the 1935 FTC (as understood by the Court in *Humphrey's*)—and leave for another day the appropriate remedy for the current FTC, which Congress has given additional powers since 1935. *See Seila Law*, 591 U.S. at 219 n.4.

Expressly limiting *Humphrey's Executor* to its facts would involve little more than repeating what this Court has already said (repeatedly). Even before *Seila Law*, it was clear—including to the Government—that "the reasoning for *Humphrey's Executor* does not withstand careful analysis"; "the decision was concededly inconsistent with the exhaustive and careful reasoning of the *Myers* decision"; and "legal developments since *Humphrey's Executor* have only clarified that independent agencies exercise executive

power—particularly those agencies like the CFPB that have the authority to bring enforcement actions in federal court seeking civil penalties." Brief for the Solicitor General at 45, *Seila Law*, 591 U.S. 197 (No. 19-7).

And after *Seila Law*, the logical "foundation" of *Humphrey's Executor* has become "nonexistent." 591 U.S. at 248 (Thomas, J., concurring in part); *see also id.* at 216 n.2 (majority op.) (recognizing that *Humphrey's* logic has "not withstood the test of time"). Even the author of the majority opinion below accepted that it was "nigh impossible to square" *Humphrey's* with this Court's "current separation-of-powers" precedent. Pet.App.38a; *see also, e.g.*, *Fleming v. USDA*, 987 F.3d 1093, 1119 (D.C. Cir. 2021) (Rao, J., concurring in part) (this Court's cases have "repudiated" the reasoning of *Humphrey's*).

This skepticism toward *Humphrey's Executor* enjoys an established pedigree. Justice after Justice has noted that *Humphrey's* was wrong the day it was decided—and that straight-faced rationales for extending it beyond its facts are increasingly hard to summon. *See, e.g.*, *Seila Law*, 591 U.S. at 251 (Thomas, J., concurring in part) (criticizing *Humphrey's*); *Morrison*, 487 U.S. at 724-26 (Scalia, J., dissenting) (castigating *Humphrey's* for shedding the "carefully researched and reasoned 70-page opinion" in *Myers* based on "six quick pages devoid of textual or historical precedent"); *FTC v. Ruberoid Co.*, 343 U.S. 470, 487-88 (1952) (Jackson, J., dissenting) (criticizing its "retreat to the qualifying 'quasi'" labels of government power); *In re Aiken Cnty.*, 645 F.3d 428, 441-42 (D.C. Cir. 2011) (Kavanaugh, J., concurring) (describing *Humphrey's* as a "relic[]" from an "overly activist anti-New Deal Supreme Court");

Free Enter. Fund v. PCAOB, 537 F.3d 667, 696 (D.C. Cir. 2008) (Kavanaugh, J., dissenting) (*Humphrey's* has "long been criticized by many as inconsistent with the text of the Constitution, with the understanding of the text that largely prevailed from 1789 through 1935, and with prior precedents").[3]

The case against *Humphrey's* is thus a familiar one: The opinion's logical underpinnings have been entirely discredited, and it begat an unaccountable Fourth Branch within the Executive that is anathema to Article II. But what to do about *Humphrey's* has also become largely academic—at least if *Seila Law* is to be taken seriously. To the extent this Court did not mean what it said about *Humphrey's* the first time, however, it should take this opportunity to (even more) clearly say the case does not reach beyond its immediate facts.

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[3] *Humphrey's* has not escaped scrutiny in the academy, either. *See, e.g.*, Richard J. Pierce Jr., *The Scope of the Removal Power Is Ripe for Reconsideration*, 58 Judges' J. 19, 21 (Spring 2019) ("The opinion in *Humphrey's Executor* has traditionally been interpreted to be inconsistent with the opinion in *Myers* and to authorize Congress to create agencies with vast power that are 'independent' of the president."); Aditya Bamzai & Saikrishna Bangalore Prakash, *The Executive Power of Removal*, 136 Harv. L. Rev. 1756, 1759-60 (2023) (The Court "seems keen to prune (or root out) cases like *Humphrey's Executor*"); Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, Future*, 2020 Sup. Ct. Rev. 83, 100 (describing *Humphrey's Executor* as "widely reviled" and noting that it "deals not at all with constitutional history and barely at all with constitutional text"); Christopher S. Yoo, Steven G. Calabresi, & Laurence D. Nee, *The Unitary Executive During the Third Half-Century, 1889–1945*, 80 Notre Dame L. Rev. 1, 88 (2004) (concluding "*Humphrey's Executor* was a shocking and poorly reasoned [decision]").

II. This Case Is An Excellent Vehicle to Consider The Question Presented.

This case presents a clean separation-of-powers challenge to perhaps one of the most powerful independent agencies ever created. It is an ideal vehicle to consider whether Article II allows a federal agency to wield substantial executive power while shielded from the President's otherwise "unrestrictable power" of removal. *Seila Law*, 591 U.S. at 217; *Humphrey's Executor*, 295 U.S. at 632; *Myers*, 272 U.S. at 175-76.

First, the CPSC is an ideal candidate for considering the question presented, because it is undisputed the Commission exercises substantial executive power, and enjoys express tenure protections. Every judge agreed on this below. Nor is there an argument to the contrary. The CFPB—which this Court already said exercises substantial executive power—was modeled after the CPSC. *See Seila Law*, 591 U.S. at 205; *see also* Pet.App.18a-20a; Pet.App.29a-30a. And unlike other multimember commissions whose removal protections are unclear, *see PHH*, 881 F.3d at 173 n.1 (Kavanaugh, J., dissenting), the CPSC has express removal protection, 15 U.S.C. § 2053(a)—indeed, the same level of removal protection at issue in *Humphrey's*.

Second, this case squarely "tees up" the question presented in a single separation-of-powers claim. Pet.App.2a. Here too, every judge concluded that there are no jurisdictional impediments to reaching the merits—and the sole ground the courts below gave for denying relief was based on the merits. *See, e.g.*, Pet.App.8a-16a; *see also* Pet.App.100a; Pet.App.57a.

Third, on the merits, the Fifth Circuit cleanly split, with Judge Willett defending the CPSC's removal

restriction, and Judges Jones and Oldham providing roadmaps for invalidating that restriction under this Court's existing precedent. The question presented is thus ripe for this Court's resolution—and as even Judge Willett emphasized, this petition is a clean vehicle for this Court to answer it. Pet.App.38a-39a.

Fourth, this case involves no complex remedial issues. As for their primary claim, petitioners seek—and the district court awarded—the precise declaratory relief this Court has already endorsed for challenges like the one here. Pet.App.97a; *Free Enter.*, 561 U.S. at 513 (plaintiffs are "entitled to declaratory relief sufficient to ensure" prospectively that they are "subject" to "a constitutional agency accountable to the Executive"). And as the courts below held, a declaratory judgment would provide complete relief to the "here-and-now" injuries that petitioners are otherwise fated to incur at the hand of an unlawfully insulated agency. *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 191 (2023). This petition thus does not turn on any of the hard remedial issues involved in requests for retrospective relief (as in *Collins*) or enforcement actions (as in *Seila Law*). Most of all, this is a forward-looking separation-of-powers challenge lending itself to a straightforward remedy.[4]

Fifth, declaring the CPSC's removal restriction unconstitutional would bring accountability to the agency without inviting practical disruption to the public. As this Court's removal cases show, "the remedy for holding an independent agency unconstitutional

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[4] As for Count II (the APA claim) and Count III (the FOIA claim), any remedial questions would be resolved on remand. But Count I—which is wholly forward-looking—presents no remedial issue under this Court's cases. *See Free Enter.*, 561 U.S. at 513.

under Article II is *not* to abolish the agency." *Aiken*, 645 F.3d at 446 n.5 (Kavanaugh, J., concurring) (citing *Free Enter.*, 561 U.S. at 508-09). And here, nobody is seeking that relief. So, just like the CFPB, the CPSC would "continue to operate"—except that its Commissioners would become "removable by the President at will." *Seila Law*, 591 U.S. at 205; *see PHH*, 881 F.3d at 194 n.18 (Kavanaugh, J., dissenting).

Sixth, this challenge is not without legal bound, and making the CPSC accountable to the President will not jeopardize every other independent agency. Nothing in this petition challenges those multimember agencies that do not wield substantial executive power—such as the Sentencing Commission. Pet.App.21a. Nor does it cast any doubt over entities like the Fed, which enjoys a "special historical status," *Seila Law*, 591 U.S. at 222 n.8, and does not exercise any "executive function," Pet.App.55a; *see also PHH*, 881 F.3d at 192 n.17 (Kavanaugh, J., dissenting) (making similar point about Fed). Instead, this petition concerns one thing and one thing only: Federal administrative agencies that wield substantial executive power, outside the reach of the President's removal authority.

Finally, the Court is unlikely to encounter a cleaner case. Cases challenging removal protections for principal officers rarely reach this Court, because they often settle, *Am. Home Furnishings All. v. CPSC*, No. 22-60639 (5th Cir.), *appeal dismissed per stipulation* (2023), are decided on alternative grounds, *Window Covering M'frs Ass'n v. CPSC*, 82 F.4th 1273, 1293 (D.C. Cir. 2023), or fail for remedial reasons, *Kaufmann v. Kijakazi*, 32 F.4th 843, 849 (9th Cir. 2022). And since *Humphrey's*, contested removals have become virtually nonexistent, because Presidents are loathe to remove a

principal officer with statutory removal protection. Indeed, Presidents Trump and Biden removed the heads of the CFPB and FHFA only *after Seila Law* and *Collins*.

There is thus no guarantee the Court will ever have a better opportunity to consider the question presented. And *without* the Court's review in this case, the CPSC will go on exercising substantial executive power beyond the President's control, while the lower federal courts continue to "*expand*[]" *Humphrey's Executor* across the administrative state. Pet.App.29a.

III. THE QUESTION PRESENTED IS IMPORTANT.

At heart, this petition asks whether federal agencies may wield the President's power without bearing the President's supervision. It is hard to imagine many questions more important than the one presented here.

As it exists today, administrative agencies exercise remarkable power over the lives of ordinary Americans, wholly outside the reach of the President. The CPSC is perhaps one of the worst offenders. But it is by no means the only one. Given the bulwark of independent agencies within the federal government, "the President to this day lacks day-to-day control over large swaths of regulatory policy and enforcement in the Executive Branch." *Aiken*, 645 F.3d at 442 (Kavanaugh, J., concurring) (listing varied examples).

Whatever else can be said of such a system, it is not the one the Framers designed. The Constitution vests all executive power in one President, who is "directly accountable to the people through regular elections." *Seila Law*, 591 U.S. at 224. Allowing agencies to wield the President's power outside of his control severs the chain of accountability. *Collins*, 141 S. Ct. at 1784.

And that has consequences well beyond gas stoves—"from securities to antitrust to telecommunications to labor to energy." *PHH*, 881 F.3d at 170 (Kavanaugh, J., dissenting). The result is a system that "allows Presidents to avoid making important decisions or to avoid taking responsibility for decisions made by independent agencies." *Aiken*, 645 F.3d at 444 n.4 (Kavanaugh, J., concurring). It is one where the buck stops not under the bright lights of the Oval Office—but instead in some fluorescent-lit room in the bowels of an agency few Americans know exists.

That is not "our constitutional structure." *Seila Law*, 591 U.S. at 239 (Thomas, J., concurring in part). And until this Court acts to restore it, "the liberty of the American people" will suffer. *Id.*; *see Free Enter.*, 561 U.S. at 501 (emphasizing that "structural protections" are "critical to preserving liberty"). Indeed, only this Court can fix this fundamental problem. As the decision below typifies, the lower courts have taken today's unaccountable administrative state as a given, mandated by *Humphrey's Executor*. And as all agreed below, only this Court can correct that misimpression. *See, e.g.*, Pet.App.38a-39a (Willett: urging this Court's review); Pet.App.27a (Jones: "The Supreme Court has created uncertainty that only it can ultimately alleviate.").

In short, this petition asks whether we ought to "have a government that functions without being ruled by functionaries, and a government that benefits from expertise without being ruled by experts." *Free Enter.*, 561 U.S. at 499. The Constitution provides a clear answer. But only this Court can make it a reality.

CONCLUSION

The petition for a writ of certiorari should be granted.

June 14, 2024

Respectfully submitted,

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