No. 23-1323

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

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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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 (CPSC) violates the separation of powers.

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files amicus briefs.

This case interests Cato because the Framers carefully crafted a tripartite federal government of separated powers to best preserve liberty. Removal protections for principal executive officers like the Consumer Product Safety Commissioners undermine the Framers' scheme and unlawfully expand the power of unelected government officials.

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[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

Quietly, and over decades, "independent" federal agencies have accumulated substantial executive power, including the power to impose severe financial penalties on Americans and their businesses. Some agencies grew their powers piecemeal, while others received broad new powers abruptly via Congressional authorization. Notably, the growth of this shadowy "fourth branch" of government—which possesses the power to investigate, adjudicate, and enforce financial penalties against parties for regulatory violations—began around 1970. *See* William Yeatman & Keelyn Gallagher, *The Rise of Monetary Sanctions in Federal Agency Adjudication*, PAC. LEGAL FOUND., at 25 (Rsch. Paper No. 202401) (2024).[2]

Despite the recent vintage of these agencies' powers, lower courts still evaluate independent agencies as if they were mere "judicial or legislative aids" from a bygone era. *See Humphrey's Executor v. United States*, 295 U.S. 602 (1935). The Consumer Product Safety Commission (CPSC) is one of those agencies that claims substantial executive power, yet its Commissioners are largely shielded from the President's removal. The 50-year "leakage" of executive power to unelected, difficult to remove government officials must be abated to preserve the separation of powers scheme that the Constitution requires.

The Constitution "vest[s]" in the President all the "executive Power" and gives him the duty to "take Care that the Laws be faithfully executed." U.S. CONST. art. II, § 1, cl. 1 & § 3. For the President to fulfill his

[2] Available at https://tinyurl.com/4xnb3f8w.

constitutional responsibilities, he must oversee, supervise, and control his principal subordinates. Therefore, the President has "as a general matter, the authority to remove those who assist him in carrying out his duties." *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 513–14 (2010). This Court has recognized only two exceptions to the presidential removal power. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 218 (2020). The exception relevant to this case stems from *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). That case upheld for-cause removal protections for FTC Commissioners on the basis that the Commissioners "occup[y] no place in the executive department and . . . exercise[] no part of the executive power." *Id.* at 628.

This Court has since acknowledged the deficiencies in *Humphrey's Executor*'s reasoning[3] and sharply narrowed its application.[4] But although this Court has "repudiated almost every aspect of *Humphrey's Executor*," *Seila Law*, 591 U.S. at 239 (Thomas, J., concurring), this Court has not yet overruled it. *See id.* at 228 (majority opinion); *accord Free Enter. Fund*, 561 U.S. at 483.

The Fifth Circuit in the proceedings below concluded that *Humphrey's Executor* "still protects any 'traditional independent agency headed by a multimember board.'" Pet. App. 16a (quoting *Seila*

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[3] *See* Part II.A.

[4] *See Seila Law*, 591 U.S. at 218–19 & n.4 (interpreting *Humphrey's Executor* to involve an agency acting as a "mere legislative or judicial aid" and not possessing "broad[] rulemaking, enforcement, and adjudicatory powers").

Law, 591 U.S. at 207 (majority opinion)). According to the Fifth Circuit:

> [A]lthough the FTC's powers may have changed since *Humphrey's Executor* was decided, the question of whether the FTC's authority has changed so fundamentally as to render *Humphrey's Executor* no longer binding is for the Supreme Court, not us, to answer.

Pet. App. 16a n. 51, 24a n.86 (quoting *Illumina, Inc. v. Federal Trade Comm'n*, 88 F.4th 1036, 1047 (5th Cir. 2023)). And because "[t]he law of precedent teaches that like cases should generally be treated alike," the Fifth Circuit deemed the CPSC Commissioners to be covered by the *Humphrey's Executor* exception, because the CPSC has the same structure as the FTC. Pet. App. 36a (quoting *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018)).

Thus, in limiting *Seila Law* to agencies with single directors, the Fifth Circuit rejected this Court's holding in *Seila Law* regarding substantial executive power. *See id.* at 20a–23a.

A straightforward reading of *Seila Law* would exclude basically any modern expert agency, including the FTC itself, from *Humphrey's Executor* protection. *See* Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, and Future*, 2020 SUP. CT. REV. 83, 85 (2020); *FTC v. Walmart Inc.*, 664 F. Supp. 3d 808, 844 (2023). Yet, until this Court overrules *Humphrey's Executor*, lower courts will decline to limit executive power so that it is exercised solely by

accountable, removable officers. As this Court has held:

> If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.

Rodriguez de Quijas v. Shearson/American Exp., Inc., 490 U.S. 477, 484 (1989).

This Court "has created uncertainty that only it can ultimately alleviate." Pet. App. 27a. The Fifth Circuit's decision below shows that lower courts recognize that little remains of *Humphrey's Executor* following *Seila Law*, but they are unsure how to apply those precedents to commissions like the CPSC.

Only this Court can say that *Humphrey's Executor* does not apply to multimember expert agencies that wield substantive executive power. This case presents the perfect vehicle for resolving the uncertainty, as it is the only issue of the case, with no lingering jurisdictional questions or separate issues like complexities of remedy. *See* Pet. 30–31.

As stated by Judge Willett, who authored the majority opinion below,[5] "this cert petition writes itself." Pet. App. 39a.

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[5] *See* Pet. App. 2a.

ARGUMENT

I. THE PRESIDENT MUST HAVE REMOVAL AUTHORITY OVER OFFICERS WHO POSSESS SUBSTANTIAL EXECUTIVE POWER.

Article II of the Constitution begins with the statement "The executive Power shall be vested in a President of the United States of America." U.S. CONST. art. II, § 1, cl. 1. By the plain terms of this clause, the totality of "the executive power" is placed in the hands of a single member of the executive branch, "the President." Furthermore, Article II states that the President "shall take Care that the Laws be faithfully executed." U.S. CONST. art. II, § 3.[6]

In practice, it is impossible for "one man . . . to perform all the great business of the State," and thus "the Constitution provides for executive officers to 'assist the supreme Magistrate in discharging the duties of his trust.'" *Free Enter. Fund*, 561 U.S. at 483 (quoting 30 WRITINGS OF GEORGE WASHINGTON 334 (J. Fitzpatrick ed. 1939)). But notably, the Constitution does not vest any executive power in any such subordinate executive officials. Gary Lawson, *Command and Control: Operationalizing the Unitary Executive*, 92 FORDHAM L. REV. 441, 443 (2023). Instead, subordinate executive officials may only

[6] To be precise, the President's power to ensure the law is faithfully executed probably stems from the Article II Vesting Clause, and the Take Care Clause merely prohibits him from choosing to not do so. *See* Gary Lawson, *The Jeffersonian Treaty Clause*, 2006 U. Ill. L. Rev. 1, 33 (2006). But the exact source of the power does not matter for this argument—merely that the President has the power.

exercise whatever executive power the President delegates to them. *See id.* at 444–45.[7]

The President has both the power and duty to personally oversee and supervise his subordinates' execution of the laws. *See* LAWSON & SEIDMAN, *supra* n.6, at 128. And the President "cannot delegate ultimate responsibility or the active obligation to supervise that goes with it." *Free Enter. Fund*, 561 U.S. at 496 (quoting *Clinton v. Jones*, 520 U.S. 681, 712–13 (1997) (Breyer, J., concurring in judgment)). This power and duty require the President to be able to step in "if the President determines that the officer is neglecting his duties or discharging them improperly." *Id.* at 484. After all, "It is *his* [the President's] responsibility to take care that the laws be faithfully executed. The buck stops with" him. *Id.* at 493.

This responsibility requires the President to have the power to remove at least principal subordinates who exercise "policymaking or significant administrative authority." *Seila Law*, 591 U.S. at 218 (quoting *Morrison v. Olson*, 487 U.S. 654, 691 (1989)). The President must control and oversee his executive officials to ensure that they faithfully execute the law.

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[7] "[T]he general rule [is] that the functions vested in the President by the Constitution are not delegable and must be performed by him." GARY LAWSON & GUY SEIDMAN, A GREAT POWER OF ATTORNEY: UNDERSTANDING THE FIDUCIARY CONSTITUTION 127 (2017) (quoting *Presidential Succession and Delegation in Case of Disability*, 5 OP. O.L.C. 91, 93 (1981)). However, the power to execute the laws is by "both . . . necessity and custom" delegable to lower executive officials. *Id.* at 128. Thus, the President "may generally delegate powers that have been conferred upon him by Congress." *Id.* at 127 (quoting *Presidential Succession, supra*, at 95).

But "it is only the authority that can remove [an officer] . . . that he must fear and, in the performance of his functions, obey." *Bowsher v. Synar*, 478 U.S. 714, 726 (1986) (quoting *Synar v. United States*, 626 F. Supp. 1374, 1401 (D.D.C. 1986)). Without a general removal power, the President cannot ensure that his subordinates follow his will; "the buck would stop somewhere else." *Free Enter. Fund*, 561 U.S. at 514.

Vesting the President with a general removal power was deemed a necessary measure by the Framers to create the three co-equal branches of government. While in 1776 the thirteen American colonies fought the Revolutionary War largely because of an out-of-control executive,[8] in 1787 the Framers of the Constitution faced a different problem. State governments had sharply weakened the executive since independence, with several providing very short terms for governors and vesting the appointment power entirely in the state legislatures. *See* STEVEN GOW CALABRESI & GARY LAWSON, THE U.S. CONSTITUTION: CREATION, RECONSTRUCTION, THE PROGRESSIVES, AND THE MODERN ERA 28 (1st ed. 2020). Thomas Jefferson, for instance, was frustrated that his term as Governor of Virginia was only a single year. *See id.* Weak executives meant that appointments of executive officials were hamstrung by factionalism and logrolling. *See id.*

The Framers, therefore, believed it "necessary to secure the authority of the Executive so that he could

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[8] *See* THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (Arguing that the Colonies have a right and duty to "throw off" the British government because the British King committed "repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.").

carry out his unique responsibilities." *Seila Law*, 591 U.S. at 223. According to Madison, while "the weight of the legislative authority requires that it should be . . . divided, the weakness of the executive may require . . . that it should be fortified." THE FEDERALIST NO. 51, at 290–91 (James Madison) (Clinton Rossiter ed., 1961). Thus, the Framers created a "vigorous executive" by vesting all the executive power "in a single magistrate." THE FEDERALIST NOS. 69, 70, at 383, 391 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

But "this unity may be destroyed by vesting the [executive] power] . . . ostensibly in one man, subject, in whole or in part, to the control and co-operation of others." THE FEDERALIST NO. 70, *supra*, at 392. The Framers therefore created a unitary executive specifically to prevent differences of opinion from obstructing executive action, threatening national security, and destroying responsibility. *See id.* at 395. If the President cannot remove his subordinates for differences of opinion, the Framers' design for three co-equal branches is undermined.

This Court therefore recognized the President's authority to remove principal executive officers in *Myers v. United States*, 272 U.S. 52 (1926). In that "landmark case," *Free Enter. Fund*, 561 U.S. at 492, this Court performed an extensive analysis of history[9]

[9] While some scholarship claims that the First Congress' iconic "Decision of 1789" was not actually a strong endorsement of presidential removal power—*see* Jed H. Shugerman, *Movement on Removal: An Emerging Consensus about The First Congress and Presidential Power*, 63 AM. J. LEGAL HIST. 258 (2023)—it was treated as such by all three branches of government in the aftermath: this Court "affirmed [the view] . . . in unmistakable terms" in *Ex parte Hennen* (1839) and *Parsons v. United States*

and concluded that the President has "the general administrative control of those executing the laws, including the power of appointment and removal of executive officers." *Myers*, 272 U.S. at 164.[10] Ultimately, the President must have "sufficient control . . . to ensure that [he] is able to perform his constitutionally assigned duties." *Morrison*, 487 U.S. at 696.

Relevant here, the CPSC Commissioners are, like FTC Commissioners, officers largely shielded from removal by the President. Congress created the CPSC in 1972 to regulate a vast number of consumer products and enforce its mandates with financial penalties. Pet. 7. Critically, Congress made it an "independent regulatory commission," with layered protections for its Commissioners. 15 U.S.C. § 2053(a). The President cannot remove a Commissioner except for "neglect of duty or malfeasance in office" and he is expressly barred from firing a Commissioner "for [any] other cause." *Id*. In short, Congress designed the CPSC to regulate without accountability to the President.

(1897); Presidents "uniform[ly] adopted the view "whenever [the] issue ha[d] clearly been raised;" and Congress "followed and enforced the [view] . . . for seventy-four years." *Myers*, 272 U.S. at 145, 148, 169.

[10] While this Court has at times strayed from this rule and permitted some restrictions on the President's removal power, those were "exceptions." *Seila Law*, 591 U.S. at 204.

II. LITTLE REMAINS OF *HUMPHREY'S EXECUTOR* TO GUIDE LOWER COURTS IN EVALUATING THE CONSTITUTIONALITY OF REMOVAL RESTRICTIONS.

Less than a decade after *Myers*, the Court in *Humphrey's Executor* held that removal restrictions for FTC Commissioners were constitutional. 295 U.S. at 631–32. The Court distinguished *Myers* on the basis that Myers involved a "purely executive officer[]," while *Humphrey's Executor* involved an officer "who occupies no place in the executive department and who exercises no part of the executive power." *Id.* at 628. This reasoning was not accurate at the time of the decision, and it certainly does not apply to multimember expert agencies like the CPSC today.

A. This Court Has Rejected Much of *Humphrey's Executor*'s Rationale.

According to the Court in *Humphrey's Executor*, the FTC's powers in 1935 were "predominantly quasi-judicial and quasi-legislative," and "to the extent that it exercise[d] any executive function . . . it d[id] so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers, or as an agency of the legislative or judicial departments of the government." *Id.* at 624, 628. In particular:

> In making investigations and reports thereon for the information of Congress under § 6, in aid of the legislative power, it acts as a legislative agency. Under § 7, which authorizes the commission to act as a master in chancery under rules

> prescribed by the court, it acts as an agency of the judiciary.

Id. at 628.

This Court candidly acknowledged in *Seila Law* that its 1935 conclusion in *Humphrey's Executor*—that the FTC did not exercise executive power—"has not stood the test of time." *Seila Law*, 591 U.S. at 216 n.2. Likewise, in *Morrison* this Court admitted that "it is hard to dispute that the powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered 'executive,' at least to some degree." 487 U.S. at 690 n.28.

"Quasi-legislative" and "quasi-judicial" powers do not exist in the Constitution. *See Seila Law*, 591 U.S. at 247 (Thomas, J., concurring). Such concepts stem from the idea that administrative agencies are not exercising executive power when engaging in rulemaking and adjudication. *See* Daniel A. Crane, *Debunking Humphrey's Executor*, 83 GEO. WASH. L. REV. 1835, 1844 (2015). But agency rulemaking and adjudication "are exercises of—indeed, under our constitutional structure they *must be* exercises of—the 'executive Power.'" *City of Arlington v. FCC*, 569 U.S. 290, 304 n.4 (2013) (quoting U.S. CONST. art. II, § 1, cl. 1).

Even in 1935 the FTC did not act as a mere agent of the judiciary like a master in chancery. Under Section 5 of the Federal Trade Commission Act of 1914 (FTCA), the FTC could impose by agency adjudication cease-and-desist orders against businesses it finds engaged in "unfair methods of competition." Ch. 311, 38 Stat. 717, 719 (1914) (current version at 15 U.S.C. § 45) (hereinafter "FTCA § 5"). Although the FTC could

only enforce those orders through suit in federal circuit court,[11] the court had to uphold the FTC's findings of fact if supported by substantial evidence. *See* FTCA § 5 ("The findings of the commission as to the facts, if supported by testimony, shall be conclusive."); *accord FTC v. Pac. States Paper Trade Assn.*, 273 U.S. 52, 63 (1927) ("The weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn from them, is for the commission.").

Meanwhile, courts review the decisions of *actual* masters in chancery de novo. *See* Phillip Hamburger, *Nondelegation Blues*, 91 GEO. WASH. L. REV. 1083, 1142 (2023); *accord* FED. R. CIV. PROC. 53(f)(3), (governing special masters, which replaced masters in chancery when the courts of law and chancery merged).

The Court in *Humphrey's Executor* ignored this aspect of section 5 when discussing the section, instead emphasizing that the commission could not enforce its decisions without a court order. *See* 295 U.S. at 620–21. Furthermore, the Court ignored section 5 entirely when proclaiming that the FTC "exercises no part of the executive power vested by the Constitution in the President." *Id.* at 628. This Court has acknowledged that the 1935 FTC may have "possessed broader rulemaking, enforcement, and adjudicatory powers than the *Humphrey's* Court appreciated." *Seila Law*, 591 U.S. at 219 n.4 (majority opinion).

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[11] *See* Thomas E. Kauper, *Cease and Desist: The History, Effect, and Scope of Clayton Act Orders of the Federal Trade Commission*, 66 MICH. L. REV. 1095, 1099 (1968).

Humphrey's Executor's inexplicable silence on the FTC's executive powers is in part due to the decision's brevity—unlike *Myers*' "carefully researched and reasoned 70-page opinion," *Humphrey's Executor* provided "six quick pages devoid of textual or historical precedent." *Morrison*, 487 U.S. at 726 (Scalia, J., dissenting). As Justice Thomas (joined by Justice Gorsuch) has stated, "the foundation for *Humphrey's Executor* is not just shaky. It is nonexistent." *Seila Law*, 591 U.S. at 248 (Thomas, J., concurring). Several other Justices have joined in condemning *Humphrey's Executor*, including Kavanaugh,[12] Scalia,[13] and Robert Jackson.[14] Numerous academics have also criticized the *Humphrey's Executor* decision. *See* Pet. 29 n.3. Even the author of the opinion below could not defend its reasoning.[15] There are few precedents more worthy of this Court's reconsideration than *Humphrey's Executor*.

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[12] *See* Pet. 28–29 (citing *In re Aiken Cnty.*, 645 F.3d 428, 441–42 (2011) (Kavanaugh, J., concurring); *Free Enter. Fund v. PCAOB*, 537 F.3d 667, 696 (D.C. Cir. 2008)).

[13] Pet. 28 (citing *Morrison*, 487 U.S. at 724–26 (Scalia, J., dissenting)).

[14] *See id.* (citing *FTC v. Ruberoid Co.*, 343 U.S. 470, 487–88 (1952) (Jackson, J., dissenting)).

[15] *See id.* (quoting Pet. App. 38a) ("*Humphrey's Executor* . . . seems nigh impossible to square with the Supreme Court's current separation-of-powers sentiment.").

B. *Humphrey's Executor* is Inapplicable for Many Multimember Expert Agencies Today.

Even if *Humphrey's Executor* is correct as applied to the stipulated facts in that case, it is wrong when applied to many agencies today. That case blessed removal protections only for "multimember expert agencies that do not wield substantial executive power." *Seila Law*, 591 U.S. at 218 (majority opinion). But virtually every modern multimember expert agency, including the FTC, now wields substantial executive power.

This Court in *Seila Law* set out three types of agency action that constitute substantial executive power. First is "the authority to promulgate binding rules" about what constitutes illegal conduct. *Id.* Second is the authority to "unilaterally issue final decisions awarding legal and equitable relief in administrative adjudications." *Id.* at 219. Last is "the power to seek daunting monetary penalties against private parties on behalf of the United States in federal court—a quintessentially executive power." *Id.*

"*[N]o one*—not the government, not the majority opinion below—disputes that the CPSC exercises 'substantial executive power.'" Pet. 16. The CPSC has statutory authority to promulgate substantive rules. *See* Pet. App. 5a. It has the power to "launch administrative proceedings" and "issue legal and equitable relief." *Id.* And the CPSC can "commence civil actions in federal court." *Id.* Thus, under the plain holding of *Seila Law*, removal protections for the CPSC exceed the outermost constitutional limits. *Seila Law*, 591 U.S. at 218 (quoting *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 196 (D.C. Cir. 2018)

(Kavanaugh, J., dissenting) ("[R]emoval protections for 'multimember expert agencies that do not wield substantial executive power . . . 'represent what up to now have been the outermost constitutional limits of permissible congressional restrictions on the President's removal power . . . .'")).

Despite this Court's holding that an agency's exercise (or non-exercise) of executive power is the determinative issue, the court below held that an agency's *structure* is the determinative issue. Specifically, the Fifth Circuit upheld the CPSC removal protections because the CPSC is structurally identical to the FTC. *See* Pet. App. 3a–4a, 24a n.86. According to the Fifth Circuit, because *Humphrey's Executor* is still good law and that case upheld the FTC's removal protections, the FTC's removal protections must still be constitutional no matter the changes to the FTC's powers since 1935. *See* Pet. App. 23a–24a & n.86.

The Fifth Circuit was correct in stating that the FTC now wields substantial executive power. Just three years after *Humphrey's Executor*, Congress broadened the FTC's regulatory authority to all "unfair or deceptive acts or practices" and gave its cease-and-desist orders finality, backed by civil penalties enforceable by the Justice Department. Yeatman & Gallagher, *supra*, at 16. No longer were FTC adjudications merely advisory and subject to de novo court review. And the FTC's adjudicatory authority has been expanded further since. *See, e.g.*, Kauper, *supra* note 9, at 1099–100. Thus, the FTC now can "unilaterally issue final decisions awarding legal and equitable relief in administrative adjudications"—that is, exercise executive power.

Furthermore, while the FTC had rulemaking authority under the 1914 FTCA, it was unclear whether this authority included substantive trade regulation rules, and the FTC did not promulgate any such rule until 1965. *See* Crane, *supra*, at 1860, 1862. In 1973, the D.C. Circuit agreed that the FTC had such authority. *Nat'l Petroleum Refiners Ass'n v. FTC*, 482 F.2d 672, 673, 698 (D.C. Cir. 1973). Thus, while latent and unexercised in 1935, the FTC now uses its "authority to promulgate binding rules" to determine what constitutes illegal conduct.

Finally, Congress in acts passed in 1973 and 1975 gave the FTC authority to directly seek monetary penalties against violators in court. *See AMG Capital Mgmt., LLC v. FTC*, 593 U.S. 67, 72–73 (2021); *Walmart*, 664 F. Supp. 3d at 844; Crane, *supra*, at 1865. These payments often are for millions of dollars. *See* Yeatman & Gallagher, *supra*, at 35. Thus, the FTC now has "the power to seek daunting monetary penalties against private parties on behalf of the United States in federal court."

In summary, the FTC today has significant adjudicatory, rulemaking, and enforcement authority that it did not have in 1935. Thus, even the modern FTC falls outside the *Humphrey's Executor* exception for "multimember expert agencies that do not wield substantial executive power."

However, the Fifth Circuit has held that "whether the FTC's authority has changed so fundamentally as to render [*Humphrey's Executor*] no longer binding is for the Supreme Court, not [lower courts], to answer." Pet. App. 24a n.86. The reasoning of this Court in *Seila Law* commands that Commissioners in the CPSC and the modern FTC cannot have removal protections. But

so long as *Humphrey's Executor* stands, lower courts will be unwilling to apply *Seila Law* rigorously. And because "like cases should generally be treated alike," lower courts feel they must hold that removal protections are constitutional for all multimember expert agencies, even when those agencies wield substantial executive power. Pet. App. 36a n.11 (quoting *Epic Sys. Corp.*, 584 U.S. at 510).

Only this Court can overrule or cabin *Humphrey's Executor* and clarify that *Seila Law* applies to powerful multimember expert agencies like the CPSC. Until then, the growing "fourth branch" will continue to undermine Americans' constitutional rights and the Framers' design for three co-equal branches of government.

CONCLUSION

For the foregoing reasons, and those described by the Petitioner, this Court should grant the petition.

Respectfully submitted,

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