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 BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR ISSUE ONE, THE HONORABLE BRIAN BAIRD, THE HONORABLE CHARLES BOUSTANY, THE HONORABLE JOSEPH HOEFFEL, THE HONORABLE STEVE GUNDERSON, THE HONORABLE BILL SARPALIUS, AND THE HONORABLE PETER SMITH AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI[1]

Issue One is a leading cross-partisan, nonprofit reform organization dedicated to safeguarding and strengthening American democracy. It works to fix the political system by advancing bipartisan solutions that bolster elections, build a healthier digital information environment, strengthen ethics and accountability, and curb the power of big money in politics. As democratic institutions face unprecedented strain, the organization educates, mobilizes, and drives policy change to ensure a government that works for everyone. Issue One is thus interested in preserving the lawful independence of administrative agencies such as the Federal Trade Commission.

The Honorable Brian Baird is a former Democratic Congressman from Washington. The Honorable Charles Boustany is a former Republican Congressman from Louisiana. The Honorable Steve Gunderson is a former Republican Congressman from Wisconsin. The Honorable Joseph Hoeffel is a former Democratic Congressman from Pennsylvania. The Honorable Bill Sarpalius is a former Democratic Congressman from Texas. The Honorable Peter Smith is former Republican Congressman from Vermont. Each of these former Congressmen is a member of Issue One's ReFormers Caucus, the largest bipartisan coalition of its kind ever assembled to advocate for sweeping political reforms and restoring trust in America's public institutions. As former elected officials who have sworn to uphold the Constitution, amici share

1. No counsel for a party authored this brief in whole or in part, and no person other than amicus made a monetary contribution to its preparation or submission.

a deep understanding of the careful balance of powers that safeguards the rule of law and the integrity of our democracy.

Amici have seen firsthand how Congress and the Executive Branch each play essential and complementary roles in ensuring effective governance. Throughout their careers, amici have relied on independent institutions, such as the Federal Trade Commission and other expert agencies, to implement and enforce the laws Congress enacts in a manner that is professional, impartial, and insulated from political interference. That independence is not a defect in the Constitution's design but one of its defining strengths.

INTRODUCTION AND SUMMARY OF ARGUMENT

The parties' briefs in this case, along with those of other *amici*, address whether the modern Federal Trade Commission (FTC) is distinguishable from the agency as it existed at the time the Court decided *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and whether this Court should overrule *Humphrey's Executor*. On these questions, we agree with Commissioner Slaughter.

That, however, is not the principal reason why we write. Instead, we are submitting this brief to urge the Court, no matter the position it takes on the constitutionality of tenure protection for FTC commissioners, to resolve this case in a way that recognizes our constitutional system of checks and balances and that fully vindicates Congress' significant overlapping authority with respect to the establishment, organization, and defining of federal offices.

It has become commonplace for the Executive Branch to exalt and overstate the President's constitutional powers while ignoring or vastly understating those of Congress. As a consequence, the Executive Branch often claims not only that the President has an exclusive authority to act on a subject but also that Congress has no corresponding authority to legislate on that subject. *See, e.g.*, *Statutory Restrictions on the PLO's Washington Office*, 42 Op. O.L.C. 108 (2018); *Legal Authorities Supporting the Activities of the National Security Agency Described by the President* (Jan. 18, 2006), available at https://www.justice.gov/sites/default/files/olc/opinions/2006/01/31/nsa-white-paper.pdf; *Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A*, Memorandum for Alberto Gonzalez, Counsel to the President, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel (August 1, 2002,), available at https://nsarchive2.gwu.edu/NSAEBB/NSAEBB127/02.08.01.pdf.

The brief filed on behalf of the United States in this case follows this misguided approach, invoking a dictum in one of this Court's recent decisions. *See* Pet. Br. 16 ("*Trump v. United States*, 603 U.S. 593 (2024), reaffirmed that the removal power is 'conclusive and preclusive,' 'disabling the Congress from acting upon the subject.' *Id.* at 608 (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637-638 (1952) (R. Jackson, J., concurring))."). That approach to separation of powers issues is diametrically opposed to the Constitution's text and structure, the original understanding of that text and structure, and the precedents of this Court.

The Constitution's text and structure create a system of checks and balances. That system is designed

to operate by blending the powers it establishes. By blending powers, the Constitution enables each branch to act as a check on the others. James Madison extolled this design as the Constitution's bulwark against threats to individual liberty. The blending of power is the rule, not the exception. Indeed, deviations from the blending of power—which is to say, claims of exclusive and preclusive power—are truly exceptional outliers to the Constitution's plan for the allocation of power between the branches.

So it is with the President's powers to appoint and remove officers of the United States. The Government in this case erroneously claims a power that excludes Congress from legislating on the subject. This ignores Congress' substantial authority in the area. It is Congress that creates offices; fixes the tenure, duration, and emoluments of their officers; defines those officers' duties; and sets forth the manner and mode by which those officers must, may or may not perform their duties. The limits that Congress sets forth in so defining offices are presumptively binding on the officers—and on the President. As the Court has put the point, "agencies are creatures of statute. They accordingly possess only the authority that Congress has provided." *See Nat'l Fed'n of Indep. Bus. v. Dep't of Labor*, 595 U.S. 109, 117 (2022)

Decisions of this Court confirm Congress' power to so establish and define the character of offices of the United States.. In reaffirming *Humphrey's Executor*, this Court in *Seila Law* recognized that Congress may, in some circumstances, create an agency that is to be headed by commissioners who exercise their functions pursuant to their expert professional judgment and independent of political considerations. *Seila Law v. CFPB*, 591 U.S.

197, 215-216 (2020). One of the mechanisms that Congress employs to define the character of the office of Federal Trade Commissioner is to grant it a measure of protection from the President's removal authority. The Court's opinion in *Seila Law* endorsed this view of Congress' authority, at least as applied to the FTC in 1935.

However the Court rules on the specific question of the President's power to remove FTC Commissioners in 2025, Amicus urges the Court to recognize that the Constitution blends powers relating to office-holding, granting Congress extensive powers in this area.

ARGUMENT

Congress' broad constitutional powers, including the power to make laws necessary and proper for carrying into execution *all* powers of the federal government, belie Petitioner's assertion that Congress is completely disabled from legislating on subjects, such as the removal power, that the Constitution commits to the President.

The Constitution is structured to promote the preservation of liberty. The key component of the constitutional architecture designed to achieve this goal is the system of checks and balances. James Madison described these design features in The Federalist Nos. 47, 48 & 51 (1961 Clinton Rossiter, ed.). Those who opposed the Constitution's ratification argued that it violated the principle of separation of powers. The Anti-Federalist position was that the proposed Constitution should not be ratified because it blended the powers of the federal government. *Id.* No. 47. Madison responded that the Anti-

Federalists misunderstood the principle. As Madison famously put it, the principle of separation of powers is violated only "where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted." *Id.* at 302-303. The principle does "not mean that these departments ought to have no partial agency in, or no control over, the acts of each other." *Id.* at 303. Thus, the principle of separation of powers does not require that the executive, legislative, and judicial powers be hermetically sealed off from one another.

Madison continued to extol the blending of the branches' powers as a feature, not a bug, in the Constitution's design. The scheme of overlapping authorities was essential to constraining governmental power over individuals. As he posed the issue, "[w]ill it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power?" The Federalist No. 48, at 308. To Madison, the answer was obvious: "[U]nless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained." *Id.* Madison then elaborated that the federal government's power would be constrained

> by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper

> places. … But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

Id. No. 51, at 320-21.

The Constitution, as designed and originally understood, thus created powers that overlap. Justice Robert Jackson summed up this design:

> The actual art of governing under our Constitution does not and cannot conform to judicial definitions of the power of any of its

> branches based on isolated clauses or even single Articles torn from context. While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress….

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

The Constitution, then, is designed with a deep distrust of unconstrained autonomy—of areas in which any branch may operate freely, without the checking power of the others. It is indisputable that the Constitution means to insulate some exercises of Presidential discretion from the full scope of Congress' legislative powers. *See, e.g.*, *United States v. Klein*, 80 U.S. 128 (1871) (Congress may not negate the effect of a presidential pardon). Nevertheless, as the Constitution's text makes clear, this does not mean that Congress is completely debarred from legislating on a subject of the Executive's authority. *See, e.g.*, U.S. Const. art. I, § 8, cl. 18 (authorizing Congress to make laws to carry into effect all the powers of the federal government, including those vested "in any department or officer thereof").

Turning to the Constitution's text and structure, we see that the Constitution effectuates the system of checks and balances that Madison described in *The Federalist*.

The Constitution divides the federal government into the legislative, executive, and judicial branches. It is not happenstance that Congress is the first branch established. The Framers expected that Congress would predominate. Indeed, it is Congress that determines what the components of the other branches will be. Article III, for example, vests the judicial power of the United States in "one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, § 1, cl. 1. It is left to Congress to determine—within constitutional limits, to be sure—what the structure of those inferior federal courts might be, *see id.*; what the composition of the Supreme Court should be, *see, e.g.*, Judiciary Act of 1789, 1 Stat. 73 (1789); and what the jurisdiction of the various federal courts should be, *see, e.g., id.*; 28 U.S.C. §§ 1331 (establishing federal question jurisdiction), 1332 (diversity jurisdiction).

Congress likewise determines the structure of the Executive Branch. Article II provides that "the executive power shall be vested in a President of the United States of America." U.S. Const. art. II, § 1, cl. 1. Article II further provides that the President shall be the Commander in Chief of the Army and Navy. But the Constitution does not require that there be an Army or Navy. *See* The Federalist No. 24. Those decisions are left to Congress. U.S. Const. art. I, § 8, cls. 12-13. Likewise, although the Constitution clearly contemplates that there will be executive departments, *see, e.g.*, *id.* art. II, § 2, cl. 1, the Constitution leaves it to Congress to establish what they will be, *id*, art. I, § 8, cl. 18.

As a rule, the Constitution creates powers that are overlapping. As discussed above, for example, the

Constitution makes the President the Commander in Chief of the Army and Navy of the United States, U.S. Const. art. II, § 2, cl. 1. In addition to the authority to raise and support armies and to provide and maintain a navy, Congress has the power to declare or authorize war. *Id.* art. I, § 8, cl. 11. Congress is further authorized to make rules for the government and regulation of the land and naval forces. *Id.* cl. 14. Significant as the President's Commander-in-Chief power may be, it is subject to Congress' own extensive war powers. *See, e.g.*, *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Little v. Barreme*, 6 U.S. (2 Cranch) 170 (1804).

All presidential power is subject to two encompassing congressional authorities: the spending power and the Necessary and Proper power. The first two clauses of Article I, section 8 grant Congress the power to impose taxes and to borrow money to "provide for the common defense and general welfare of the United States." To clinch Congress' monopoly of the purse, the Constitution declares that "no money shall be drawn from the treasury but in pursuance of appropriations made by law." Art. I, § 9, cl. 7. While the President holds some powers exclusively, the exercise of those powers depends on the availability of at least some funding. For example, the President's pardon power is clearly exclusive. *See Klein*. As a practical matter, a pardon must be recorded so that its recipient may be notified and so that those who must observe and effectuate the pardon can know its authenticity and parameters. The simplest recording, however, requires paper, ink, and delivery—each of which requires some expenditure of funds. This, as discussed below, is not to say

that Congress can employ its spending power to control the President's exercise of his exclusive authority. *See Office of Personnel Management v. Richmond*, 496 U.S. 414, 435 (White, J., concurring) (Congress can't deny try to control President's pardoning power by denying him funding for pen and paper).

The Constitution additionally empowers Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution *in the Government of the United States, or in any department or officer thereof*." U.S. Const. art. I, § 8, cl. 18 (emphasis added). The Constitution thus expressly empowers Congress to enact laws that it regards as appropriate, *see M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), for establishing, organizing, and staffing the executive branch.

The fact that a power is vested exclusively in the President does not end the inquiry into the validity of a particular enactment that regulates the exercise of that power. Congress clearly holds the authority to legislate even in areas that affect powers exclusively vested in the President, subject to the limitation that Congress may not exercise its constitutional powers in such a way as to "prevent[] the Executive Branch from accomplishing its constitutionally assigned functions." *Zivotofsky v. Kerry*, 576 U.S. 1, 28-29 (2015) (*quoting Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 443 (1977)).

The Executive Branch's position is also fundamentally inconsistent with this Court's understanding of the Constitution's system of checks and balances. Justice Robert Jackson's classic opinion in the *Steel Seizure*

case provides the framework the Court has adhered to for over 70 years. Within that framework, the President must comply with statutory limits on his authority unless the Constitution grants a power to the President so exclusively as to debar Congress from legislating on the matter. Justice Jackson's opinion makes clear that such "preclusive" grants of power to the President are, for good reason, exceptional and do not describe all of the President's "exclusive" powers:

> When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

343 U.S. at 637-38 (Jackson, J., concurring). In the *Steel Seizure* framework, the mere fact that a power is granted to the President does not mean that the power is preclusive or that Congress is debarred from legislating on that same subject. To the contrary: An executive claim of that sort "must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system."

For example, the Constitution gives the President the exclusive power to issue pardons for federal offenses.

Nonetheless, Congress can enact, and has passed, laws on the subject of pardons. Congress has passed laws funding the Office of Pardon Attorney in the Department of Justice. Congress has also passed laws forbidding bribing federal officials and those laws apply fully to officials, such as the Pardon Attorney, who assist the President in the exercise of the constitutional pardon power. 18 U.S.C. § 201 (making it a federal crime to bribe any "officer or employee or person acting for or on behalf of the United States").

This Court's opinions on the removal power fully accord with the position that Congress' authority may reach even exclusive presidential powers. The Constitution vests the executive power in the President. Because, as a practical matter, no one individual could possibly exercise all the executive functions of the federal government, the President must have subordinates to assist and carry out those functions on the President's behalf. *Seila Law*, 591 U.S. at 213. The President's authority to supervise those subordinates is nevertheless subject to Congress' authority to create the agencies and offices that assist the President in executing the laws—laws that Congress itself enacts. As discussed *supra* at 7, this authority is expressly granted in the Necessary and Proper Clause and includes the authority to define the duties and powers of a federal office as well as to dictate the manner in which those duties and powers are to be carried out.

As the Court held in *Myers* and affirmed in *Seila Law*, the President must have the authority to supervise subordinates in order to ensure that the subordinate is faithfully executing the law. Indeed, any rule to the contrary would impermissibly obstruct the President

from fulfilling his own constitutional duty to "take care that the laws be faithfully executed." Chief Justice Taft put the point this way in *Myers*:

> Of course there may be duties so peculiarly and specifically committed to the discretion of a particular officer as to raise a question whether the President may overrule or revise the officer's interpretation of his statutory duty in a particular instance. Then there may be duties of a quasi-judicial character imposed on executive officers and members of executive tribunals whose decisions after hearing affect interests of individuals, the discharge of which the President cannot in a particular case properly influence or control. But even in such a case he may consider the decision after its rendition as a reason for removing the officer, on the ground that the discretion regularly entrusted to that officer by statute has not been on the whole intelligently or wisely exercised. Otherwise he does not discharge his own constitutional duty of seeing that the laws be faithfully executed.

272 U.S. at 135.

It is clear from Chief Justice Taft's reasoning that Congress has authority to assign duties and powers to a specific office, and that only the person holding that office may perform those duties and exercise its powers. *Myers* is also clear, indeed express, that Congress may preclude the President from attempting to influence or control the performance of those duties and the exercise of those powers. To fulfill his constitutional duty, it is true that

the President must be able to remove an officer who fails to exercise discretion properly. It does not follow that the President must have authority to remove an officer for no reason at all or where the officer has performed duties according to the requirements of the law, but contrary to the President's policy preferences.

Consider, for example, a federal program that, by statute, provides a defined benefit to anyone who meets a statutorily-fixed set of eligibility requirements. The passage quoted above from *Myers* instructs that the determination of eligibility may be committed to an officer and that the President may be precluded from influencing or controlling the officer's determination. This accords with the longstanding position of the Executive Branch. *See, e.g., The President and Accounting Offices*, 1 Op. Att'y Gen. 624, 625-629 (1823). Nothing in *Myers* demands that the President be able to alter the statutorily-fixed eligibility requirements. Nor must the President have authority to do more than remove an officer who has failed to exercise statutory discretion wisely and intelligently. This recognizes that Congress may organize offices to be independent of the President's immediate supervision and control, as long as the President remains able to remove officers who discharge their discretion unwisely or unintelligently.

The Court in *Myers* also considered the President's related authorities to nominate and appoint officers. Specifically, Chief Justice Taft addressed the question of Congress' authority to impose qualifications for office:

> It is argued that the denial of the legislative power to regulate removals in some way involves

> the denial of power to prescribe qualifications for office, or reasonable classification for promotion, and yet that has been often exercised. We see no conflict between the latter power and that of appointment and removal, provided of course that the qualifications do not so limit selection and so trench upon executive choice as to be in effect legislative designation. … To Congress under its legislative power is given the establishment of offices, the determination of their functions and jurisdiction, the prescribing of reasonable and relevant qualifications and rules of eligibility of appointees, and the fixing of the term for which they are to be appointed and their compensation-all except as otherwise provided by the Constitution.

272 U.S. at 128-129.

Accordingly, even though the President's power to nominate officers is exclusive, *see Public Citizen v. Dep't of Justice*, 491 U.S. 440, 483-84 (1989) (Kennedy, J., concurring), the exercise of that power is subject to Congress' legitimate and overlapping authority, derived from the Necessary and Proper Clause, to set reasonable qualifications for office. Prominent examples of such provisions include the requirement that the Secretary of Defense be appointed from civilian life and be at least seven years removed from active duty, 10 U.S.C. §113(a); that the Solicitor General be "learned in the law," 28 U.S.C. §505; and the requirement established in the Judiciary Act of 1789 that the Attorney General must be "a meet person. learned in the law," Act of Sept. 24, 1789, ch. 20, § 35, 1 Stat. 73, 93. By the time *Myers* was

decided, the practice was firmly established. As Justice Brandeis observed,

> Such restriction upon the power to nominate has been exercised by Congress continuously since the foundation of government. Every President has approved one or more of such acts. Every President has consistently observed them. … Congress has, from time to time, restricted the President's selection by the requirement of citizenship. It has limited the power of nomination by providing that the office may be held only by a resident of the United States; of a State; of a particular State; of a particular district; of a particular territory; of the District of Columbia; of a particular foreign country. It has limited the power of nomination further by prescribing specific professional attainments, of occupational experience. It has, in other cases, prescribed the test of examinations. It has imposed the requirement of age; of sex; of race; of property; and of habitual temperance in the use of intoxicating liquors. Congress has imposed like restrictions on the power of nomination by requiring political representation; or that the selection be made on a nonpartisan basis. It has required in some cases, that the representation be industrial; in others, that it be geographic. It has at times required that the President's nominees be taken from, or include representatives from, particular branches or departments of the Government. By still other statutes, Congress has confined the President's selection to a small number of persons to be named by others.

272 U.S. at 265-74 (Brandeis, J., dissenting) (footnotes omitted). Chief Justice Taft's opinion for the Court accepted Congress' authority to impose reasonable qualifications on an office. *See id.* at 128-29.

Indeed, this Court has recently suggested that such qualifications may be constitutionally mandatory in order to justify a grant of tenure protection. *Seila Law* upheld the independence of the Federal Trade Commission on the ground that the FTC is headed by a multi-member body, serving staggered terms, with a requirement that no more than a bare majority may be members of the same political party. The Court regarded this political balancing requirement, a classic qualification for office, to be crucial to establishing that an agency may be granted tenure protection under the so-called *Humphrey's Executor* exception. 591 U.S. at 215-16 (2020).

The Court most straightforwardly dealt with the issue of how to treat exclusive presidential power in the context of an overlapping congressional authority in *Zivotofsky v. Kerry*, 576 U.S. 1 (2015). There Congress enacted a statute that, *inter alia*, directed the State Department upon request to list the passport holder's place of birth as "Jerusalem, Israel." At the time, this designation was contrary to the longstanding Executive Branch position to remain neutral on the territorial status of Jerusalem.

The Court first held that the Constitution grants the President the recognition power exclusively. *Id.* at 28. Crucially, the Court did not claim that Congress lacked overlapping authority with respect to the content of passports. Congress has long exercised authority over all aspects of immigration and naturalization including

passports. That authority derives from Congress' constitutional power "to establish an uniform rule of naturalization." U.S. Const. art. I, § 8, cl. 4. Therefore, because *both* branches had authorities that bore upon the subject, the Court proceeded to ask whether Congress' law "prevents the Executive Branch from accomplishing its constitutionally assigned functions." *Zivotofsky*, 576 at 29 (*quoting Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977)). It was only because the closely divided Court answered that question in the affirmative that it held that the requirement in question was unconstitutional. *Id.* at 28-32; *see also id.* at 62-64 (Roberts, C.J., dissenting) (arguing that the President's recognition power must yield to congressional authority).

Applying *Zivotofsky* to the instant case, the statutory limit on the President's power to remove FTC Commissioners does not prevent the President from accomplishing his constitutionally assigned functions. The President may remove Commissioners for cause, which preserves what was crucial to the Court in *Myers*—the ability of the President to take care that the laws be faithfully executed. *See* 272 U.S. at 135. The Court accepted this view in *Humphrey's Executor* and maintained these precedents recently in *Seila Law.*

CONCLUSION

The Court should affirm the judgment of the court of appeals. No matter how the Court answers the Questions Presented in this case, however, it should recognize that our constitutional system of checks and balances prescribes that Congress has significant overlapping authority with respect to the establishment, organizing, and defining of federal offices.

Respectfully submitted,

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November 14, 2025