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 OF INDEPENDENT AGENCY BOARD MEMBERS AND SCHOLARS AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Amici are removed board members from independent federal agencies and scholars whose work includes the study of independent agencies and the separation of powers between the President and Congress. Amici advance the view that there are federal agencies whose responsibility for protecting the safety and stability of the national infrastructure or ensuring the structural integrity of government necessitates their independence. Significant negative consequences would likely follow if these agencies were to lose their independence and their work were to become politicized.

Samuel Bagenstos, the Frank G. Millard Professor of Law at the University of Michigan and the Arlene Susan Kohn Professor of Social Policy at the University of Michigan Gerald R. Ford School of Public Policy, specializes in civil rights, labor and employment law, health law, and governance. He held several positions in the federal government, including as general counsel to the Office of Management and Budget, where his responsibilities included advising the entire Executive Branch on issues of administrative law.

Alvin Brown was nominated by President Biden to serve as a member of the National Transportation Safety Board and was unanimously confirmed by voice vote by the Senate on March 8, 2024, to a term expiring December 31, 2026. Mr. Brown served as Vice Chair from December 23, 2024 to May 5, 2025.

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

On May 5, 2025, Mr. Brown was removed from the Board by President Trump in a one-sentence email that did not offer a reason. Mr. Brown has filed suit seeking to have his position restored. *Brown v. Trump*, No. 25-cv-10764 (D.D.C.)

John Dearborn is an Assistant Professor of Political Science at Vanderbilt University. His research and teaching interests include the Presidency, Congress, American Political Development, American Political Thought, and Archival Methods. He recently co-authored *Congressional Expectations of Presidential Self-Restraint*, which explores how Congress has designed laws reliant on an assumption of presidential self-constraint.

Susan Tsui Grundmann became a Member of the Federal Labor Relations Authority on May 12, 2022. She was appointed by President Joseph R. Biden and confirmed by the Senate to a term set to expire on July 1, 2025, although under the governing statute, 5 U.S.C. § 7104(c), she is permitted to continue serving until either her successor takes office or the last day of the Congress beginning after the original expiration date, which in her case would fall in January 2029. She served as Chairman of the Authority from January 3, 2023 to February 10, 2025. On February 10, 2025, she was removed from the Authority by President Trump in a two-sentence email that provided no reason. She has filed suit challenging her removal, *Grundmann v. Trump*. 25-cv-425 (D.D.C.). Ms. Grundmann also served as a member of the Merit Systems Protection Board from November 12, 2009 to January 7, 2017 and served as Chairman for her entire tenure.

Justin Levitt is a nationally recognized scholar of constitutional law, administrative law, and the law of democracy at LMU Loyola Law School. He has been invited to testify before federal and state legislative and administrative bodies and courts. He served as the White House's inaugural Senior Policy Advisor for Democracy and Voting Rights and before that helped lead the work of the DOJ's Civil Rights Division on voting rights and employment discrimination.

Donald Moynihan is the J. Ira and Nicki Harris Family Professor at the Gerald R. Ford School of Public Policy at the University of Michigan. His research seeks to improve how government works by studying the administrative burdens people encounter in their interactions with the government. He co-directs the Better Government Lab, which looks for technology and other types of interventions to help government improve access to the social safety net.

Robert Primus was nominated by President Trump to fill a vacancy on the Surface Transportation Board. The Senate confirmed Mr. Primus, and he was sworn in on January 7, 2021. He served as Vice Chairman from February 2021 to February 2022. Mr. Primus was then nominated by President Biden for a full five-year Board term and was confirmed by the Senate to a term expiring on December 31, 2027. Mr. Primus served as Chairman of the Board from May 2024 until January 2025. On August 27, 2025, President Trump removed Mr. Primus from the Board in a two-sentence email that did not offer a reason. Mr. Primus has challenged his removal in a lawsuit. *Primus v. Trump*, No. 25-cv-3521 (D.D.C.).

William G. Resh is professor and chair of the Department of Public Management and Policy

(PMAP) at Georgia State University's Andrew Young School of Policy Studies. A nationally recognized scholar of executive politics, public personnel policy, civil service systems, and the U.S. presidency, his award-winning book, *Rethinking the Administrative Presidency*, received top honors from the American Political Science Association and the American Society for Public Administration.

Ciara Torres-Spelliscy is a professor at Stetson University Law School teaching courses in Election Law, the First Amendment, Corporate Governance, Business Entities, and Constitutional Law. She has testified before Congress, and state and local legislative bodies as an expert on campaign finance reform. She researches and speaks publicly on campaign finance law as well as judicial selection.

SUMMARY OF ARGUMENT

Congress created the first modern independent agency out of the national imperative to stabilize the railroad industry. The industry was a focal point of the American economy and infrastructure at the end of the nineteenth century but was subject to instability and dysfunction. A body was needed to resolve disputes among railroads, shippers, and customers so that the nation's primary means of interstate transportation would operate effectively. Impartiality and independence were essential to this function because a body vulnerable to political pressure would undermine consistency in decision making and defeat the agency's purpose of providing stability to the railroad industry. In the late 1880s, Congress accordingly devised a structure that would enable the body, the Interstate Commerce Commission (ICC), to be independent and impartial: a multi-member, bipartisan independent commission

whose members were appointed by the President and confirmed by the Senate and could be removed during their term by the President only for inefficiency, neglect, or malfeasance in office.

In subsequent years, Congress has created dozens of independent agencies with similar structures and removal protections. Among them are agencies that, like the ICC, serve vital functions of protecting our public and economic infrastructure and our system of government. These agencies include those that oversee public infrastructure and utilities, such as the Surface Transportation Board (STB), which is the successor agency to the ICC, and the National Transportation Safety Board (NTSB), which investigates aircraft and other major transportation accidents and makes recommendations to prevent similar accidents in the future. They include agencies that protect the structural integrity of government, by overseeing aspects of federal elections (such as the Election Assistance Commission (EAC) and Federal Election Commission (FEC)) and adjudicating disputes concerning the integrity of the civil service (such as the Merit Systems Protection Board (MSPB) and the Federal Labor Relations Authority (FLRA)). And they include independent agencies like the National Credit Union Administration (NCUA) and Securities and Exchange Commission (SEC) that, like the Federal Reserve, play critical roles in stabilizing the economy.

While each of the aforementioned agencies has a unique history and function, they share in common the critical role that independence plays in ensuring the agency can fulfill its responsibility to protect the nation's physical and economic infrastructure and the structural integrity of government. An agency charged with investigating and preventing airplane

accidents, for instance, requires consistency of mission, stability in leadership, and insulation from pressures that would compromise its priorities. Significant negative consequences would likely follow if such agencies were to lose their independence and their work were to become politicized. Any constitutional analysis of the validity of an officer's for-cause removal protections should therefore consider not only the agency's structure and history, *see, e.g.*, *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025), but also the agency's role in protecting the safety and stability of the national infrastructure and its need for independence to effectively discharge that function. As shown below, independence from political pressure will in many cases be critical to an agency's ability to carry out its mission, and the Court should not endorse any rule that would fail to take account of an agency's responsibility for protecting public safety or critical infrastructure. *Cf.* U.S. Br. 13.

ARGUMENT

When Congress created the ICC to perform the nationally critical responsibility of regulating railroads—the industry perhaps most essential to the nation's infrastructure—it recognized that the agency could not perform its function of stabilizing the railroad industry unless it was impartial and independent. Congress has followed that model in structuring other agencies that also play vital roles in safeguarding public safety and infrastructure in this country, the structural integrity of government, and the nation's economic infrastructure. These agencies' independence from excessive political influence is critical to their ability to discharge these functions. Any constitutional analysis of the validity of an agency's removal protections should consider the

agency's function and the harms to public safety and infrastructure that would result from politicization.

I. REMOVAL PROTECTIONS SAFEGUARD THE INDEPENDENCE OF AGENCIES THAT OVERSEE ESSENTIAL PUBLIC INFRASTRUCTURE

A. The ICC's creation exemplifies the need for independent, nonpolitical bodies to protect and stabilize essential national infrastructure. The ICC was established to address a longstanding and substantial public need for national regulation of the railroad industry in the late nineteenth century. This was needed for two reasons. First, the railroad system was central to the nation's livelihood: "The railroad dominated [the U.S.] economy and society in the 19th century. The domination existed from every standpoint, capitalization, employment, community impact or entrepreneurial opportunity. There was no force, industrial or religious which matched the societal impact of the railroad after the first third of the 19th century." Joseph Auerbach, *The Expansion of ICC Administrative Law Activities*, 16 Transp. L.J. 92, 92 (1987).

Second, the railroad industry was unstable and riddled with problems stemming from uneven competition, labor issues, and political corruption. Railroads, particularly in rural areas, had monopolies on certain routes and could charge exorbitant rates to shippers and agricultural and other businesses. Paul Stephen Dempsey, *The Rise and Fall of the Interstate Commerce Commission: The Tortuous Path From Regulation to Deregulation of America's Infrastructure*, 95 Marq. L. Rev. 1151, 1155-56 (2012). Conversely, where there was intense competition among railroads, shippers engaged in destabilizing rate wars. Henry B. Hogue, Cong. Rsch. Serv.,

R47897, *Abolishing a Federal Agency: The Interstate Commerce Commission* 2 (2024). The industry also suffered from political corruption, bankruptcy, consumer revolt, and labor unrest. Dempsey, *Rise and Fall*, 95 Marq. L. Rev. at 1158-60. By 1886, 30 of the 38 States had adopted some form of railroad regulation, which was insufficient due to the interstate nature of railroads and also created inconsistent piecemeal regulation. Hogue, *Abolishing a Federal Agency* 2; Marshall J. Breger & Gary J. Edles, *Independent Agencies in the United States: Law, Structure, and Politics* 28 (2015). This Court's decision that States could not regulate railroads engaged in interstate commerce contributed to the need for centralized regulation. *Wabash, St. Louis & Pac. Ry. Co. v. Illinois*, 118 U.S. 557 (1886).

The central importance of the railroad industry and these myriad problems, especially instability, led to widespread recognition that federal regulation of the industry was essential to ensure that interstate commerce was not imperiled. But Congress faced challenges in finding the right solution: "[b]etween 1868 and 1886, more than 150 [railroad regulation] bills were introduced in Congress." Breger & Edles, *Independent Agencies in the United States* 28. Among other challenges, the House and the Senate disagreed for years on whether the legislation should provide for judicial enforcement or an administrative oversight commission. *Id.*

In the eventual compromise, the Interstate Commerce Act (ICA), Congress adopted the Commission structure but created the Commission as a quasi-judicial body. *Id.* at 29-30; Hogue, *Abolishing a Federal Agency* 4. Additionally, Congress structured the Commission as a bipartisan body to accomplish a primary objective of impartiality. Breger & Edles,

Independent Agencies in the United States 30. The Commission was composed of five members, nominated by the President and confirmed by the Senate, appointed to five-year terms with no more than three Commissioners from one party. ICA, Pub. L. No. 49-41, § 11, 24 Stat. 379, 383 (1887).

Commission independence from political interference in its operations was also a key consideration. Some members of Congress were concerned about "conferring direct authority on the president to regulate what was the most significant aspect of the American economy." Breger & Edles, *Independent Agencies in the United States* 30. Additionally, many recognized that state railroad commissions had been plagued with politically motivated removals, which undermined their effectiveness because replacement commissioners were often seen as incompetent. Charles Francis Adams, Jr., *Railroads: Their Origin and Problems* 134 (1878). So when Congress passed the ICA, it included a provision that "[t]he President could only remove Commissioners for inefficiency, neglect, or malfeasance in office." ICA, § 11, 24 Stat. at 383. Two years later, Congress moved the ICC out of the Department of Interior and recast it as a standalone, independent agency. Act of Mar. 2, 1889, § 7, 25 Stat. 855, 861. This change was made in part to further protect the ICC from undue political interference that could undermine its mission. Breger & Edles, *Independent Agencies in the United States* 32; Hogue, *Abolishing a Federal Agency* 4-5; David K. Zucker, *The Origin and Development of the Interstate Commerce Commission and Its Impact on the Origination of Independent Regulatory Commissions in the American Legal System: A Historical Perspective* 139 (2016).

B. Congress has followed the same model in structuring other agencies with responsibility for regulating essential public infrastructure, recognizing the necessity of independence to their functioning. Though there may be not a single private industry that today plays as a dominant role in the nation's public infrastructure as the railroads in the 1800s, there are industries that are vital and essential to the public infrastructure and require oversight that ensures stability and advances public safety. Central to these agencies carrying out these critical functions is their impartiality and their independence from political interference.

One example is the Surface Transportation Board (STB). The ICC Termination Act of 1995 established the STB as the successor to the ICC. ICC Termination Act of 1995, Pub. L. No. 104-88, tit. II, 109 Stat. 803, 932. The STB's primary role is to adjudicate matters involving railroads, but it also has some regulatory power over motor carrier, water carrier, and pipeline interstate commerce. Ben Goldman, Cong. Rsch. Serv., R47013, *The Surface Transportation Board (STB): Background and Current Issues* 1 (2025). The STB is structured to ensure independence. The STB is an "independent establishment of the United States Government," 49 U.S.C. § 1301(a), whose five members are appointed by the President and confirmed by the Senate and may be removed by the President only for inefficiency, neglect or malfeasance in office. *Id.* § 1301(b). Congress also sought to protect the STB from political interference in its operations by requiring that no more than three of its five members come from the same political party, at least three members have "professional standing and demonstrated knowledge" of issues of transportation

or regulation, and at least two have experience in the private sector. *Id.*[2]

Similar to the ICC, an impartial STB ensures that freight rail—still a backbone of the U.S. economy—is regulated fairly, transparently, and in the public interest. For example, the STB regulates railroads that often operate as monopolies in certain regions, especially where shippers have no alternative carriers. The STB has authority to cap rates when a railroad is "market dominant." Goldman, *The Surface Transportation Board* 4. If politicized, this power could be used to punish or reward specific industries or regions, or STB decisions could unfairly favor powerful railroad companies or politically connected shippers. This could ultimately harm manufacturers and consumers by increasing, if not making prohibitive, the cost of shipping certain goods.

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[2] Allowing unfettered presidential removal would undermine one of the core structural features—bipartisanship—of numerous "traditional" multimember independent agency boards. This feature results in a "'diverse set of viewpoints and experiences.'" *Seila Law LLC v. CFPB*, 591 U.S. 197, 205-06 (2020). The bipartisan structure has often resulted in Presidents nominating, and the Senate confirming, a slate of both Republican and Democratic nominees, including President Trump in his first term. For example, Amicus Robert Primus, a Democrat, was originally confirmed by the Senate to the STB on November 19, 2020, *see* Congress.gov, PN2151, Nomination of Robert E. Primus for Surface Transportation Board, 116th Cong., https://perma.cc/C4ET-6BKZ—the same day that the Senate confirmed Michele Schultz, a Republican, to the STB, *see* Congress.gov, PN70, Michelle A. Schultz for Surface Transportation Board, 116th Cong., https://perma.cc/G5U2-THWP. President Trump removed Mr. Primus earlier this year without offering a reason.

Additionally, under certain circumstances, the STB can intervene to prioritize rail service to a particular customer on an emergency basis when necessary to serve the public. 49 U.S.C. § 11123. In 2022, for example, the STB invoked that authority to issue an emergency order requiring Union Pacific to prioritize the delivery of corn to Foster Farms, a major contributor to the nation's food supply that was facing the potential starvation of millions of chickens. *Foster Poultry Farms—Ex Parte Pet. for Emergency Serv. Ord.*, Dkt. No. FD 36609, 2022 WL 18024160, at *1-3 (S.T.B. Dec. 30, 2022). In response to Foster Farms's concern that there had been recurring problems with Union Pacific's service, the Board later required the railroad to provide weekly status reports for 180 days. *Foster Poultry Farms—Ex Parte Pet. for Emergency Serv. Ord.*, Dkt. No. FD 36609, 2023 WL 2026579, at *1-4 (S.T.B. Feb. 14, 2023). The Foster Farms cases exemplify the essential public function the STB can play by using its emergency powers to protect the nation's infrastructure and food supply. But it is also easy to see how a STB subject to political interference could misuse its emergency powers. For example, if the STB was subject to political interference, Board members could invoke § 11123 to prioritize the shipping of goods of the President's supporters even when no emergency justified it.

C. The National Transportation Safety Board (NTSB) provides another example of an independent agency that serves an essential function related to public safety and infrastructure that Congress determined must be independent and not influenced by political considerations. The mission of the NTSB is "to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations."

Independent Safety Board of Act of 1974, Pub. L. No. 93-633, § 302(1), 88 Stat. 2156, 2166-67 (1975).

The NTSB's independence from political interference is essential to its function—and to the public safety—because its work includes investigating other executive agencies and making recommendations regarding them:

> Proper conduct of the responsibilities assigned to this Board requires vigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands continual review, appraisal, and assessment of the operating practices and regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.

Id. § 302(2).

To enable the NTSB to function as an independent, nonpolitical body of experts, Congress structured it like the STB (and its predecessor the ICC) as an independent bipartisan agency, whose members are presidentially appointed and Senate confirmed and can only be removed by the President for inefficiency, neglect, or malfeasance in office. 49 U.S.C. § 1111.[3] Additionally, to reinforce the Board's

[3] When the NTSB was first created in 1966, it was housed within the Department of Transportation, though Congress made clear that the NTSB was to operate "independent of the

status as a body of experts, Congress introduced a technical requirement: "At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation." 49 U.S.C. § 1111(b).

A tragic example from this year illustrates the important need for the NTSB to be able to investigate and make recommendations independent of the President and other politically controlled departments and agencies. On January 29, 2025, a U.S. Army helicopter collided with a commercial passenger plane over the Potomac River near Ronald Reagan Washington National Airport (DCA), killing 67 people. The next day, the President suggested that diversity, equity, and inclusion initiatives for air traffic controllers had contributed to the accident. The NTSB performed its responsibility by conducting an independent investigation. Glenn Kessler, *Trump Launched Air Controller Diversity Program That He Now Decries*, Wash. Post (Jan. 30, 2025), https://perma.cc/693L-JZ5R. About six weeks after the collision, after examining the wreckage, cockpit voice recordings, and other information, the NTSB issued its preliminary report along with an urgent recommendation that the Federal Aviation

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Secretary of Transportation and the other offices and officers of the Department." Department of Transportation Act, Pub. L. No. 89-670, § 5(f), 80 Stat. 931, 936 (1966). Less than a decade later, in the Independent Safety Board Act of 1974, Congress recognized that the NTSB's essential functions required total independence and established the NTSB as a completely independent agency outside of the Department of Transportation. Independent Safety Board Act of 1974, Pub. L. No. 93-633, §§ 302(1), 303(a), 88 Stat. 2156, 2166-67 (1975).

Administration (FAA) prohibit helicopter operations near DCA when certain runways are in use. *See* NTSB, NTSB Makes Urgent Recommendations on Helicopter Traffic Near Reagan National Airport (Mar. 11, 2025), https://perma.cc/9WUX-7GZK. Three days later, the FAA announced that it was "taking a series of steps to improve safety around Ronald Reagan Washington National Airport (DCA) that follows the NTSB's recommendations." FAA, FAA Statement on NTSB Recommendations for DCA (Mar. 14, 2025), https://perma.cc/R6KJ-5TYW.

By operating independently from political speculation about the causes of the accident, the NTSB was able to investigate and make recommendations that may well prevent future collisions and thus save lives. Such work would be compromised without the NTSB's independence. In the case of the DCA accident, the NTSB was able to do its work on an expedited basis free of the politics surrounding the crash. Furthermore, the NTSB could be critical of an executive agency that had not been sufficiently protective of public safety. If NTSB members were subject to removal at will, they might be less willing to be critical, and public safety could suffer as a result.

II. AGENCIES THAT SAFEGUARD THE STRUCTURAL INTEGRITY OF GOVERNMENT MUST BE INDEPENDENT AND IMPARTIAL

Independence similarly serves the missions of several agencies that play vital roles in protecting the structural integrity of government.

A. First, in regard to elections, this Court has long recognized that "the right of suffrage is a fundamental matter in a free and democratic society" and that "the

right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964). For elections to be free and fair, they must be administered impartially. Unfair, corrupt, and flawed election administration "undermine[s] broader feelings of political legitimacy, including confidence in elected officials and institutions, satisfaction with the performance of democracy and the record of human rights, and voluntary legal compliance." Pippa Norris, *Why Electoral Integrity Matters* 113-14 (2014).

Though Congress has generally left the bulk of election administration to the States, it has created two independent agencies to help ensure the integrity of federal elections—the United States Election Assistance Commission (EAC) and the Federal Election Commission (FEC). Congress has carefully constructed these agencies to prevent improper politicization of elections by the federal government, giving them only limited but important authority and providing that they can act only upon a bipartisan majority vote of commissioners.

Given the tremendous cost of political interference in agencies overseeing elections, Congress deemed it absolutely essential that these agencies be protected from that possibility. Indeed, without such assurances, it is inconceivable that Congress would have established these agencies.

After the closely contested 2000 presidential election exposed election administration problems, Congress enacted the Help America Vote Act of 2002 (HAVA), Pub. L. No. 107-252, 116 Stat. 1666, and created the EAC to administer some components of HAVA. The EAC's duties include adopting voluntary

voting system guidelines; testing, certification, decertification, and recertification of voting system hardware and software; conducting studies and carrying out other activities to promote the effective administration of federal elections; developing a mail voter registration application form for elections for federal office; managing and distributing federal grants to states and local jurisdictions that administer elections; making voting accessible for disabled Americans; and providing a report to Congress after each two-year federal election cycle assessing the impact of the National Voter Registration Act of 1993 on elections for federal office that includes recommendations for improvements. 52 U.S.C. §§ 20508(a), 20922.

Given these functions, Congress built in features to ensure the EAC's independence and impartiality. Congress established the EAC "as an independent entity." *Id.* § 20921. Its four members are "appointed by the President, by and with the advice and consent of the Senate" to four-year terms. *Id.* §§ 20923(a)(1), 20923(b)(1). Each member of the Commission must have experience with or expertise in election administration or the study of elections. *Id.* § 20923. Congress also ensured that no political party could dominate the EAC. Not more than two members can be affiliated with the same political party. *Id.* § 20922(b)-(c). The Majority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives each submit a recommendation to the President for one position on the EAC "affiliated with the political party of the Member of Congress involved." *Id.* § 20923(a)(2). Bipartisan decision making is guaranteed by the

requirement that "[a]ny action which the Commission is authorized to carry out under this chapter may be carried out only with the approval of at least three of its members." *Id.* § 20928.

Though the EAC's duties are limited, it is not difficult to envision how a politicized, non-independent EAC could undermine the fairness and impartiality of elections. For example, a politicized EAC could certify or decertify voting system hardware and software not based on the quality and security of those systems but based on the political contributions of system vendors. Similarly, a presidentially controlled or otherwise politicized EAC could vote to add unnecessary and draconian requirements to the federal mail voter registration application form. But because of the EAC's structure, any decision by the EAC would be independent and bipartisan, and thus free of the reality or perception that it was adopted to bolster the electoral prospects of one political party.

The FEC is similarly independent and bipartisan—for good reason, given the agency's functions. "Congress created the FEC in 1974, after controversial fundraising during presidential campaigns in the 1960s and the early 1970s Watergate scandal. The FEC is responsible for administering federal campaign finance law and for civil enforcement of the Federal Election Campaign Act (FECA). "The FEC also discloses campaign finance data to the public, conducts compliance training, and administers public financing for participating presidential campaigns." R. Sam Garrett, Cong. Rsch. Serv., R45160, *Federal Election Commission: Membership and Policymaking Quorum, In Brief* 1 (2025); *see also* 52 U.S.C. §§ 30101-30146. The FEC describes itself as "the independent regulatory agency charged with administering and

enforcing the federal campaign finance law" and states that its mission is "[t]o protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws." FEC, *Mission and History*, https://perma.cc/8Q4E-CHE9 (last visited Nov. 13, 2025).

The FEC's civil enforcement power by itself provides an important reason for agency independence. On dozens of occasions since 1980, the FEC has imposed civil penalties of six figures or more, with the largest reaching $3.8 million. FEC, Selected Cases in which the Civil Penalties are $50,000 or Greater Made Public Between 1980 and Present (updated June 2025), https://perma.cc/D7XU-67FT. A non-independent, politically controlled FEC could easily be weaponized to pursue such penalties against the political opponents of a presidential administration or similarly could shield members or supporters of a presidential administration from investigation. Such a commission would threaten election integrity, sow public distrust in the election system, and lead to democratic decay. As this Court observed in *Buckley v. Valeo*, 424 U.S. 1, 134 (1975), "one c[ould] not dispute … as a practical matter" that presidential control of the FEC would be concerning because the FEC's "administration of the [Federal Election Campaign] Act would undoubtedly have a bearing on any incumbent President's campaign for reelection." Far more concerning would be presidential interference with FEC decision making.

Cognizant of this concern, Congress structured the FEC to make sure it acts in a bipartisan manner. The six members of the FEC are appointed by the President and confirmed by the Senate for six-year terms, and no more than three members may be from

the same political party. 52 U.S.C. § 30106(a). Certain Commission actions require the vote of four members—bipartisan support—including initiating, defending, and appealing civil actions, rendering advisory opinions, rulemaking, conducting investigations and hearings, encouraging voluntary compliance, and reporting apparent violations to law enforcement authorities. *Id.* §§ 30106(c), 30107(a).

It would harm American democracy to have agencies that are not independent and bipartisan overseeing federal elections. Improperly politicized federal election agencies would have the opportunity to manipulate the process nationally in favor of certain candidates and parties and against others. This would create the perception, if not the reality, that elections are not free and fair. This is why Congress made the judgment that the agencies that oversee federal elections must be bipartisan and independent.

B. Relatedly, independence plays a critical role for agencies that promote the integrity of the merit-based civil service. The federal government is the nation's largest employer, employing close to three million people. BLS, *Databases, Tables & Calculators by Subject*, https://perma.cc/2PRF-SB4H (last visited Nov. 13, 2025). The federal workforce serves the American public in innumerable ways, including by protecting public health and safety, safeguarding national security and law enforcement, administering benefits and social programs, responding to emergencies and disasters, and maintaining infrastructure and scientific advancement. Merit principles for governmental service, and protection of those principles, ensure that the federal government effectively serves the American public. Conversely, patronage or unfair treatment and poor working

conditions for federal employees could have significant adverse consequences to the American public including poor service delivery, delayed emergency responses, and compromises to public safety.

In the 1970s, widespread recognition of the need for reforms to the federal civil service led Congress to enact the Civil Service Reform Act of 1978 (CSRA), Pub. L. No. 95-454, 92 Stat. 1111. Congress explained that reforms were necessary to protect the public good: "The public has a right to an efficient and effective Government, which is responsive to their needs as perceived by elected officials. At the same time, the public has a right to a Government which is impartially administered." S. Rep. No. 95-969, at 4 (1978).

In the CSRA, Congress accordingly set forth a set of nine merit system principles, including that recruitment and advancement in federal employment should be open and fair and based on ability, knowledge, and skills; employees and applicants for employment should be treated fairly and equitably "without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights"; "[e]mployees should be … protected against arbitrary action, personal favoritism, or coercion for partisan political purposes"; and "employees shall be protected … against reprisal for the lawful disclosure of information which the employees reasonably believe evidences," "violation[s] of any law, rule or regulation," "gross waste of funds, an abuse of authority, or … substantial and specific danger[s] to public health or safety." 5 U.S.C. § 2301(b)(9). These

principles and others are reflected in the prohibited personnel principles set forth at § 2302(b).

To enforce these principles, the CSRA established two independent, multimember adjudicatory agencies: the Merit Systems Protection Board (MSPB), charged with resolving disputes between federal employers and employees, and the Federal Labor Relations Authority (FLRA), responsible for resolving federal labor-management disputes. Congress structured these agencies to be independent and impartial, which was particularly significant given that the executive branch serves as the employer/management party in disputes before both agencies. Absent independence and impartiality, the agencies' effectiveness in adhering to merit system principles would be undermined, to the detriment of the public good.

The MSPB's history illustrates that risk. The MSPB's primary responsibility is to adjudicate appeals by federal employees against agency employment actions alleged to be prohibited practices—including, and of particular importance, improper partisan and political interference in federal employment. *Id.* §§ 1204(a)(1), 7701(a); *see also* MSPB, *How to File an Appeal*, https://perma.cc/DX79-LNKA (last visited Nov. 13, 2025) ("One of the MSPB's primary statutory functions is to protect Federal merit systems against partisan political and other prohibited personnel practices by adjudicating employee appeals over which the Board has been given jurisdiction.").

Prior to the CSRA, agency employment actions had been adjudicated by the Civil Service Commission (CSC). "[I]n studying the merit abuses which were found to be prevalent in past administrations" under

the CSC, Congress concluded that "the current Civil Service Commission was not adequately carrying out its role as protector of the merit system." 124 Cong. Rec. S27547 (Aug. 24, 1978) (statement of Sen. Jim Sasser).

Because of the MSPB's adjudicatory role, Congress created it as an independent, impartial, and bipartisan agency. The MSPB consists of three members, appointed by the President and confirmed by the Senate, to six-year staggered terms. 5 U.S.C. § 1201. The members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board." *Id.* Not more than two members can be from the same political party and the President can remove a member "only for inefficiency, neglect of duty, or malfeasance in office." *Id.* §§ 1201, 1202(d). The accompanying Senate report explained how the structure was designed to ensure the Board's independence and why independence was important: "As a result of this structure, the Board should be insulated from the kind of political pressures that have led to violations of merit principles in the past. [T]he Board … will exercise statutory responsibilities independent of any Presidential directives." S. Rep. No. 95-969, at 7. Moreover, the Report endorsed a comment by the Executive Director of the President's Personnel Management Study that called an "independent and strong Merit Board 'the cornerstone' of civil service reform." *Id.*

Discarding the principles of independence and impartiality would gravely undermine the MSPB and harm the public good. For example, the MSPB adjudicates whistleblower appeal cases. Whistleblowing serves the public good by exposing misconduct, protecting taxpayer dollars, and

safeguarding public health and safety. *Id.* at 30; GAO, GAO-19-432, *Whistleblowers: Key Practices for Congress to Consider When Receiving and Referring Information* 1 (2019). If the Board is not insulated from political pressures, whistleblowers would likely be discouraged from coming forward. The MSPB also adjudicates claims alleging politically motivated employment decisions. A politically compromised MSPB could effectively result in the return of a political patronage system of federal employment, which was characterized by "[n]ot only incompetence, but also graft, corruption and outright theft." CSC, Off. of Pub. Affs., *Biography of an Ideal: A History of the Federal Civil Service* 16 (rev. ed. 1974). More generally, an adjudicatory process where the Executive Branch serves as both a party and the adjudicator will likely not be—and will certainly not be perceived to be—fair and impartial.[4]

The FLRA provides a similar example. Where the MSPB adjudicates disputes between the federal government and its employees, the Federal Labor Relations Authority adjudicates labor-management relations in the federal government. Like the MSPB, the FLRA was created by the CSRA, in the portion of

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[4] A related problem that unfettered removal can create is loss of agency quorum. For example, when President Trump removed Cathy Harris a member of the MSPB earlier this year, the Board lost quorum for several months, shortly after the MSPB had largely reduced a backlog of cases from a previous period where the agency lacked quorum. *Harris v. Bessent*, 775 F. Supp. 3d 164, 171 (D.D.C. 2025). It disserves the public interest to have backlogged MSPB cases involving allegations of "targeting of federal employees based on political affiliation; retaliation against whistleblowers reporting violations of law, waste, fraud and abuse; discrimination; and USERRA violations." *Id.* at 187.

the CSRA known as the Federal Service Labor-Management Relations Statute (FSLMRS). Pub. L. No. 95-454, 92 Stat. at 1191-1218, codified at 5 U.S.C. §§ 7101-35. The FLRA "adjudicates negotiability disputes, unfair labor practice complaints, bargaining unit issues, arbitration exceptions, and conflicts over the conduct of representational elections." *ATF v. FLRA*, 464 U.S. 89, 93 (1983).

Because the federal government is a party in these labor-management disputes, Congress structured the FLRA so that it would be independent and impartial. The FLRA is multimember and bipartisan, and members serve five-year staggered terms. 5 U.S.C. § 7104(a), (c); Pub. L. No. 95-454, § 7104, 92 Stat. at 1196. Members of the FLRA (1) are appointed by the President with the advice and consent of the Senate and (2) may only be removed after "notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office." 5 U.S.C. § 7104(b).

Congress established the FLRA as "independent and bipartisan" to "replace[]the Federal Labor Relations Council, which had been criticized as 'defective' because its members 'come exclusively from the ranks of management.'" *DOD v. FLRA*, 659 F.2d 1140, 1145 (D.C. Cir. 1981). As Representative William Lacy Clay, Sr., who played a key role in the CSRA's enactment, stated:

> One of the central elements of a fair labor relations program is effective, impartial administration. Title VII provides for the creation of an independent and neutral Federal labor relations authority to administer the Federal labor management program …. Currently the Federal labor-

> management program is administered by the Federal Labor Relations Council which is composed of three administration officials, … none of whom can be considered neutral.

124 Cong. Rec. H25721 (Aug. 11, 1978) (statement of Rep. William Ford); *see also* S. Rep. No. 95-969, at 7-8 ("Consolidating responsibility in FLRA should eliminate what is perceived by Federal employee unions and others as a conflict of interest in the existing Council. … [The bill] will assure impartial adjudication of labor-management cases by providing for a new Board whose members are selected independently—nominated by the President and confirmed by the Senate."). Congress viewed the limitations on the President's ability to remove members of the FLRA as critical to the agency's independence and impartiality: "Impartiality is guaranteed by protecting authority members from unwarranted 'Saturday night' removals." 124 Cong. Rec. H25721-22.[5]

In numerous contexts, disputes within the FLRA's jurisdiction involving inadequate staffing and working conditions for federal employees can have direct consequences for public safety and welfare. Federal employees are often called upon to respond to natural disasters, protect the public from disease, and provide security inspections. Understaffing and unreasonable workhours for employees who ensure public safety such as air traffic controllers and federal firefighters could harm public safety. Similarly, the FLRA can resolve disputes over working conditions

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[5] "Saturday night removals" of course referred to President Nixon's demand that the Attorney General fire special prosecutor Archibald Cox, resulting in the resignations of the Attorney General and the Deputy Attorney General.

and staffing for the inspectors of the Food Safety and Inspection Service of the USDA, which ensures the safety of meat, poultry, and egg products.

Congress determined that an independent MSPB and FLRA were essential to ensuring a nonpartisan, stable, and efficient federal civil service and, ultimately, to protecting public safety and welfare. That judgment was manifestly reasonable—indeed, correct. *See CSC v. Nat'l Ass'n of Letter Carriers, AFL-CIO*, 413 U.S. 548, 557 (1973) ("[T]he judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service.")

III. REMOVAL PROTECTIONS PROMOTE ECONOMIC STABILITY AND CONFIDENCE IN THE MARKETS

"In the financial realm, 'independent agencies have remained the bedrock of the institutional framework governing U.S. markets.'" *Seila Law LLC v. CFPB*, 591 U.S. 197, 276 (2020) (Kagan, J., concurring in part) (quoting Stavros Gadinis, *From Independence to Politics in Financial Regulation*, 101 Cal. L. Rev. 327, 331 (2013)). Several independent agencies that uphold the nation's economic infrastructure likewise depend for their effectiveness on consistency and impartiality. The independence of the Federal Reserve, for example, "stops a President trying to win a second term from manipulating interest rates." *Id.* at 283 (Kagan, J., concurring in part). The government's brief (at 29-30) purports to bypass that concern in regard to the Federal Reserve Board by asserting that the Federal Reserve is historically anomalous. But the Federal Reserve is not the only independent agency that affects monetary

policy and depends on consistency and independence to promote economic stability and investor confidence.

Congress created the National Credit Union Administration (NCUA) in 1970 as a "credit union supervisory body on a par with the agencies which supervise and regulate banks," like "the Federal Reserve Board." 116 Cong. Rec. S2417 (Feb 4, 1970) (statement of Sen. John Sparkman). NCUA insures deposits at credit unions (as the FDIC does for banks). It also "protects the members who own credit unions, and charters and regulates federal credit unions." NCUA, *Mission and Values*, https://perma.cc/5SFN-3ZAP (last visited Nov. 13, 2025). Like the Federal Reserve, NCUA initiates administrative proceedings, issues cease-and-desist orders, and can remove credit-union officers for breaches of fiduciary duty. *See* 12 U.S.C. § 1786.

In 1978, Congress also created the National Credit Union Central Liquidity Facility and placed it under NCUA's control. *Id.* § 1795. "[I]n the same way that the Federal Reserve System discount window provided access to loans for banks," the Central Liquidity Facility provides loans to credit unions. NCUA, *Central Liquidity Facility*, https://perma.cc/W3F4-PDGT (last visited Nov. 13, 2025). As a result, NCUA contributes to control over the money supply by deciding if and when to lend to credit unions.

When Congress created NCUA, it was led by a single Administrator. President Ford removed the Administrator without cause in 1976. Two years later, relying on *Humphrey's Executor*, Congress restructured NCUA, replacing the single Administrator with a Board of three members, each appointed with advice and consent of the Senate to six-year terms. *See Swan v. Clinton*, 100 F.3d 973, 975

(D.C. Cir. 1996). No more than two members of NCUA's Board can come from the same political party. 12 U.S.C. § 1752a(b)(1). Congress made these changes in part "to strengthen NCUA's status as an independent agency." *Harper v. Bessent*, No. 25-cv-1294, 2025 WL 2049207, at *4 (D.D.C. July 22, 2025) (quoting *Swan*, 100 F.3d at 982).

Without independence and consistent leadership, NCUA risks becoming a political tool—allowing Presidents to use removal or the threat of removal of NCUA Board Members as a means to direct the agency's actions. That power could be deployed to circumvent the Federal Reserve's independence. A President who could not direct the Federal Reserve to lower interest rates could, for example, direct NCUA to aggressively lend to credit unions. Or the President could require NCUA to lower the amount of money that credit unions must keep in reserve. These actions would increase the money supply, which could lower the interest rate. Carving out the Federal Reserve would not stop monetary policy from shifting with political tides or whims.

Likewise, agencies that regulate financial markets require independence so that investors know regulation is in service of an effective and efficient market, not the result of short-term political interests.

The Securities and Exchange Commission regulates markets "to protect interstate commerce, the national credit, [and] the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions." 15 U.S.C. § 78b. The SEC is governed by a board of five commissioners, each appointed for five-year terms. *Id.* § 78d(a). No more than three

members can come from the same political party. *Id.* And each is forbidden to "participate, directly or indirectly, in any stock-market operations or transactions" that are regulated by the SEC. *Id.*

As one former commissioner put it, the SEC's independence means that commissioners "make our decisions based on an impartial assessment of the law and the facts and what we believe will further our mission—and never in response to political pressure, lobbying, or even public clamor." Mary Jo White, Chair, SEC, The Importance of Independence, 14th Annual A.A. Sommer, Jr. Corporate Securities and Financial Law Lecture at Fordham Law School (Oct. 3, 2013), https://perma.cc/RU8C-L6MG. Because of the SEC's independence, investors can be confident that regulators act to protect the integrity of financial markets.

If, on the other hand, the SEC could not maintain its independence, investors will rightly suspect that each new administration could dramatically change market risk by making volatile changes. For example, an administration could remove any commissioner unwilling to make an immediate 180-degree change on policies about enforcement against businesses in favored industries. And an administration could require novel and extensive disclosures by businesses in disfavored industries. In such a world, SEC enforcement actions and disclosure requirements—core powers for ensuring the integrity and stability of the markets—could be used to reward political allies and punish opponents. Confidence in the SEC and the integrity of American financial markets, once lost, may be impossible to recover, and investors will prefer to invest their funds in foreign countries where enforcement decisions are not subject to a cloud of political interference. Such a result could

dramatically undermine the fundamental role that the nation's financial markets have had in promoting a robust economy.

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The Court's decisions on the validity of removal protections have focused on the agency's history and structure and whether its functions are legislative, judicial, or executive. But the analysis should also consider the agency's role in maintaining public safety and infrastructure and the extent to which independence is necessary for the agency to perform those vital functions. To do otherwise would in many cases jeopardize public safety and infrastructure, the structural integrity of government, and economic stability.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted.

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