NO. 24-316

IN THE
Supreme Court of the United States

ROBERT F. KENNEDY, JR., SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,

Petitioners,

v.

BRAIDWOOD MANAGEMENT, INC., ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF CHRISTIAN EMPLOYERS ALLIANCE AS AMICUS CURIAE SUPPORTING RESPONDENTS

JAMES A. CAMPBELL
DANIEL J. GRABOWSKI
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176

ERIN M. HAWLEY
Counsel of Record
JOHN J. BURSCH
MATTHEW S. BOWMAN
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001
(202) 393-8690
ehawley@ADFlegal.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

INTEREST OF AMICUS CURIAE[1]

On the surface, this case is about whether members of the U.S. Preventive Service Task Force are principal or inferior officers. But at bottom, this case is about power. It is about whether officers of the United States, principal or inferior alike, can wield executive power independent from the President and so from the people.

Amicus Christian Employers Alliance and its members have felt firsthand agencies wielding executive power without political accountability. CEA is a nonprofit that advances the freedom of Christian employers to conduct their businesses consistent with their religious beliefs. Twice in two years, it has sued the Equal Employment Opportunity Commission for unilaterally trying to broaden federal statutes.

In one case, CEA successfully challenged the EEOC's expansion of Title VII to require employers to provide healthcare coverage for gender transitions. *Christian Emps. All.* v. *EEOC*, 719 F. Supp. 3d 912, 928 (D.N.D. 2024). In the other, CEA is challenging the EEOC's application of Title VII and the Pregnant Workers Fairness Act. This time, the EEOC forced employers to use employees' self-selected pronouns and to allow males in female-only private spaces. See Compl. at 6–14, *Christian Emps. All.* v. *EEOC*, No. 1:25-cv-7 (D.N.D. filed Jan. 15, 2025). Plus, it required

[1] No counsel for a party authored this brief in whole or in part. And no person other than amicus and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

employers to facilitate employees' abortions and to stop speaking their pro-life beliefs. *Id.* at 18–20.

As those lawsuits show, the EEOC has wielded executive power to make monumental policy decisions on hotly contested issues. Gender transitions, pronoun use, female-only restrooms, abortion—the list goes on. And as a so-called independent agency, the EEOC has done so without political accountability to the President or the people. That's a problem. It violates the separation of powers and Article II's vesting of all executive power in the President. Indeed, that is one of CEA's claims in its ongoing case against the EEOC. Compl. at 42–43, *Christian Emps. All.*, No. 1:25-cv-7.

CEA has an interest here in the Court clarifying that independent agencies wielding executive power are unconstitutional. It has an interest in the Court saying that Task Force members—whether principal or inferior officers—cannot be independent. They cannot exercise executive power without direct or indirect supervision from the President. They must be accountable to him who in turn is accountable to all of us. That's our system. For executive power, the buck stops with the President.

SUMMARY OF THE ARGUMENT

Under the Affordable Care Act, Task Force members make binding recommendations for preventive medical services that health-insurance plans must cover without imposing any cost sharing on patients. The ACA expressly makes both the members and their recommendations "independent and, to the extent practicable, not subject to political pressure." 42

U.S.C. 299b-4(a)(6). And it specifies that the Task Force as a whole is "independent." 42 U.S.C. 299b-4(a)(1). The Fifth Circuit below held that independence made the Task Force members principal officers. As such, they were unconstitutionally appointed. And the court declined to sever any offending provision.

Even if the Fifth Circuit erred in finding Task Force members principal officers or no provisions severable, it correctly interpreted Sections 299b-4(a)(1) and (6) as making the members free from supervision. And that freedom is unconstitutional.

Article II vests all executive power in the President. That means he must be able to control, directly or indirectly, officers exercising executive power. Both text and history support exactly that. And the Court has already all but held as much. True, older precedents suggest a looser view of accountability. But the Court has cabined those precedents to their facts. And the time has come for the Court to finally overrule them. Yet even if it doesn't, those cases cannot save the Task Force's independence here. It fits under no existing exception. So the general rule applies: independent agencies wielding executive power are unconstitutional.

For good reason—they have enormous policy-making authority with zero political accountability. Just look at the EEOC. In recent years, it has forced policy choices on employers ranging from covering gender transitions to facilitating abortion. And it has done so without concern for employers' rights. It should face political accountability for those policy choices.

If the President cannot supervise officers in such agencies, then the people cannot hold anyone

accountable for their actions. And our Nation is the worse for it.

ARGUMENT

The lower court's holding that Task Force members are independent or free from supervision is spot on. And that means, no matter whether the members are principal or inferior officers, Sections 299b-4(a)(1) and (6) are unconstitutional.

I. The court below correctly held that Task Force members are independent.

Section 299b-4(a) establishes the Task Force. Right off the bat, its independence is clear: the Director of the Agency for Healthcare Research and Quality "shall convene an *independent* Preventive Services Task Force." 42 U.S.C. 299b-4(a)(1) (emphasis added). The statute then lays out the Task Force's duties, which include making recommendations for preventive services and reviewing existing recommendations. 42 U.S.C. 299b-4(a)(2). At the same time, the statute specifies the separate role of the agency: to "provide ongoing administrative, research, and technical support for the operations of the Task Force," such as disseminating its recommendations. 42 U.S.C. 299b-4(a)(3). Subsection (6) goes on to remove all doubt that the Task Force operates independently. Entitled "Independence," it provides that "members of the Task Force" and "any recommendations made by" them, "shall be independent and, to the extent practicable, not subject to political pressure." 42 U.S.C. 299b-4(a)(6).

The court below correctly held that the statutory scheme contemplates "complete autonomy" for Task Force recommendations. *Braidwood Mgmt., Inc.*, v. *Becerra*, 104 F.4th 930, 944 (5th Cir. 2024). It held that Section 299b-4(a)(6) "is a clear and express directive from Congress that the Task Force be free from any supervision." *Ibid.* Indeed, the court rejected the Government's argument that the independent requirement simply meant that the Task Force must make unbiased decisions. *Id.* at 945 n.59. Given the juxtaposition of the no-political-pressure requirement, the "most natural reading" of the independence requirement "is one that connotes freedom from outside control." *Ibid.*

A. The Fifth Circuit's reading tracks the plain language.

The court below got it right: independence here means free from outside control. Consider two reasons for that—the same two the lower court relied on.

First, the juxtaposition of "independent" with not being "subject to political pressure" suggests but one meaning. Section 299b-4(a)(6) says that Task Force members and their recommendations must be "independent and, to the extent practicable, not subject to political pressure." Independence is expressly linked with not being subject to political pressure. So the former's meaning logically relates to the latter. Indeed, the two appear in the same sentence of the same subsection, entitled "Independence." See *Florida Dep't of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) (explaining a section heading is a tool to resolve "doubt about the meaning of a statute" (citation omitted)). And that implies that independence is the

key concept that not being subject to political pressure builds on. Yet at the same time, the two requirements must have distinct meanings. See *Ysleta del Sur Pueblo* v. *Texas*, 596 U.S. 685, 698–99 (2022) (explaining "effect is given to all provisions, so that no part will be inoperative or superfluous" (citation omitted)).

How to square all that? Simple: the word "independent" here means free from outside control. That is the primary requirement to which not being "subject to political pressure" is part. Not only are the members and their recommendations to be free from outside control, but they should not even be influenced by political pressure. Of course, some political influence may well happen, as with any government agency. That explains the to-the-extent-practicable qualifier. But Congress provided that the Task Force should both be free from outside control and generally free from outside influence.

If "independent" here merely meant unbiased, there would not be the same relationship between "independent and, to the extent practicable, not subject to political pressure." 42 U.S.C. 299b-4(a)(6). The requirements would not be connected with "independent" being the key concept that freedom from political pressure builds on. In other words, the "most natural reading of 'independent' in § 299b-4(a)(6), given its juxtaposition to the additional requirement that the Task Force not be 'subject to political pressure,' is one that connotes freedom from outside control." *Braidwood Mgmt.*, 104 F.4th at 945 n.59.

Second, the statute as a whole informs the meaning of "independent." See *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 275 (2023) (reading

"the words Congress enacted 'in their context and with a view to their place in the overall statutory scheme'" (citation omitted)). The statutory framework repeatedly sets the Task Force and its operations apart from executive control. Section 299b-4(a) makes the Task Force as a whole, all its members, and their recommendations independent. The agency director is to convene an "independent" Task Force. 42 U.S.C. 299b-4(a)(1). And all the members *and* their recommendations "shall be independent." 42 U.S.C. 299b-4(a)(6). Far from including a one-off phrase suggesting the Task Force should make unbiased recommendations, Congress stressed independence for all aspects of the Task Force: the whole, the members, and the recommendations. If the intent was just to ensure that members make unbiased recommendations, that's overkill.

Plus, Congress did not grant a supervising role to the Agency for Healthcare Research and Quality—the agency within which the Task Force sits. Congress detailed the Task Force's duties to include making recommendations for preventive services and reviewing existing recommendations. 42 U.S.C. 299b-4(a)(2). But the agency may only "provide ongoing administrative, research, and technical support for the operations of the Task Force." 42 U.S.C. 299b-4(a)(3). That could include disseminating recommendations. But it does not include overseeing them. In other words, the agency supports. It does not supervise.

That means the text of the statute as a whole shows that "independent" in Section 299b-4(a)(1) and (6) means free from outside control. As the court below put it: "The statutory scheme, insofar as it concerns recommendations from the Task Force,

contemplates complete autonomy." *Braidwood Mgmt.*, 104 F.4th at 944.

B. The Government's arguments cannot change the plain language.

Nothing the Government says changes the meaning of "independent" in Section 299b-4(a)(1) and (6). First, the Government argues that Section 299b-4(a) has nothing to do with the Task Force's relationship with the Department of Health and Human Services. Gov't Br. 31. But that makes no sense. Section 299b-4(a) *creates* the Task Force within the Agency for Healthcare Research and Quality, which in turn sits within the Public Health Service—a part of HHS. And the statute expressly discusses the relationship between that agency and the Task Force, providing limited support but no oversight. 42 U.S.C. 299b-4(a)(3).

Second, the Government argues that the better reading of "independent" is being free from influence. Gov't Br. 32. But that would reduce "independent" in Section 299b-4(a)(6) to the same meaning as "not subject to political pressure." Independent would be "inoperative or superfluous." *Ysleta del Sur Pueblo*, 596 U.S. at 699 (citation omitted). So that can't be right.

Third, the Government argues that the text focuses only on individual members and their recommendations, suggesting those recommendations need to be adopted by someone else. Gov't Br. 32. But that ignores that the whole Task Force is also independent. See 42 U.S.C. 299b-4(a)(1). And it ignores that, before the ACA changed things, the Task Force's recommendations were just that: recommendations without legal force. See 42 U.S.C. 300gg-13(a)(1). So

the later change to the recommendations' operative effect cannot inform the meaning of "independent."

Fourth, the Government argues that the background statutory context supports its reading, focusing on powers of the HHS Secretary. Gov't Br. 33. But that ignores the more specific statutory text and context of Section 299b-4(a), which make all aspects of the Task Force independent and afford only a limited support role for the agency. It also fails to address the juxtaposition with the no-political-pressure requirement. Both of those interpretive tools trump anything the more general statutory context suggests.

Fifth, the Government argues that Congress has long vested officers with independent decision-making authority without making them free from any control. Gov't Br. 33. Even if true, at best, past congressional practice cuts both ways. There is just as long a congressional practice of trying to make independent agencies. That practice predates the Court's decision in *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935). And again, Congress did not just make the individual members and their recommendations independent. It made clear that the whole Task Force is independent. 42 U.S.C. 299b-4(a)(1).

Sixth, the Government argues that being free from outside control conflicts with the lower court's holding that the Secretary can remove Task Force members at will. Gov't Br. 34. At last, the Government may be onto something. But its point doesn't cut against the plain meaning of independence. It cuts against the lower court's at-will-removal holding. To be sure, this Court generally presumes at-will removal unless Congress says otherwise. *Collins* v. *Yellen*, 594 U.S. 220,

248 (2021). But making the Task Force, its members, and their recommendations independent and free from political pressure, to the extent practicable, necessarily suggests some limit on the removal power.

Congress expressly made the Task Force and its recommendations free from outside control and political pressure. Yet at-will removal is "the most direct method" of control, and its threat the most direct method of political pressure. *Seila Law LLC* v. *Consumer Fin. Prot. Bureau*, 591 U.S. 197, 225 (2020). At-will removal "carries with it the inherent power to direct and supervise." *Free Enter. Fund* v. *Public Co. Acct. Oversight Bd.*, 537 F.3d 667, 707 (D.C. Cir. 2008) (Kavanaugh, J., dissenting). So at-will removal and the ordinary meaning of "independent" and "not subject to political pressure" in Section 299b-4(a) are incompatible. See *Seila Law*, 591 U.S. at 230 ("Neither *amicus* nor the House explains how the CFPB would be 'independent' if its head were required to implement the President's policies upon pain of removal."). And Congress's express statements trump a judicial presumption of at-will removal.

Finally, the Government invokes the to-the-extent-practicable qualifier and the canon of constitutional avoidance. But grammatically, the former does not modify "independent" in Section 299b-4(a)(6)—and it cannot possibly modify "independent" in Section 299b-4(a)(1). And the latter has no purchase here. The canon "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." *Jennings* v. *Rodriquez*, 583 U.S. 281, 296 (2018) (citation omitted). Applying an ordinary textual

analysis yields just one plausible construction: "independent" here means free from outside control.

II. Independent officers and agencies violate the separation of powers.

Because the Task Force is an independent entity, free from presidential control, it matters not whether its members are principal or inferior officers. Either way, the Task Force is unconstitutional. Text, history, and case law all support that conclusion.

A. Article II's text requires the President to control exercises of executive power.

Start with the text. Article II places executive power in the President: "The executive Power shall be vested in a President of the United States of America." U.S. Const. Art. II, § 1. And it allows for no exceptions. The "'executive Power'—all of it—is 'vested in a President.'" *Seila Law*, 591 U.S. at 203 (citation omitted). And he alone must "take Care that the Laws be faithfully executed." U.S. Const. Art. II, § 3.

Of course, that job is too big for one person. So the President relies on "subordinate officers" for help. *Seila Law*, 591 U.S. at 204. But those officers are just that: subordinate. They cannot wield executive power apart from the President. He must be able to "supervise" those "who wield executive power on his behalf." *Ibid.*; see also *PHH Corp.* v. *Consumer Fin. Prot. Bureau*, 881 F.3d 75, 164 (D.C. Cir. 2018) (Kavanaugh, J., dissenting) ("To carry out the executive power and be accountable for the exercise of that power, the President must be able to supervise and direct those subordinate officers.").

To be sure, the text of Article II does not necessarily require direct control over all officers wielding executive power. For example, the President could directly supervise a principal officer who in turn supervises an inferior officer. But the key is that the inferior officer's exercise of executive power is traceable to the President who has final say. Lesser "officers must remain accountable to the President." *Seila Law*, 591 U.S. at 213. The President must directly or indirectly "by chain of command" control all officers wielding his executive power. *Morrison* v. *Olson*, 487 U.S. 654, 721 (1988) (Scalia, J., dissenting). Under Article II's plain language, the "buck stops with the President." *Free Enter. Fund* v. *Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 493 (2010).

Otherwise, the "entire 'executive Power'" would not belong "to the President alone." *Seila Law*, 591 U.S. at 213. And he would be unable to ensure the laws are faithfully executed. "The President cannot 'take Care that the Laws be faithfully executed' if he cannot oversee the faithfulness of the officers who execute them." *Free Enter. Fund*, 561 U.S. at 484. Article II's text allows for no other reading.

B. History confirms text.

Turn to history. It repeatedly confirms that the President must be able to control officers wielding executive power. Two points in particular drive home the historical consensus: the views of the Framers and Congress's decision in 1789 not to statutorily limit the President's removal authority.

First, the Framers "thought it necessary to secure the authority of the Executive so that he could carry

out his unique responsibilities." *Seila Law*, 591 U.S. at 223. The "weakness of the executive" needed to "be fortified." *Ibid.* (quoting The Federalist No. 51, at 350 (J. Madison)). So the Framers "deemed an energetic executive essential"—one not bogged "down with the 'habitual feebleness and dilatoriness' that comes with a 'diversity of views and opinions.'" *Id.* at 223–24 (citation omitted). Instead, the executive would have "the '[d]ecision, activity, secrecy, and dispatch' that 'characterise the proceedings of one man.'" *Id.* at 224 (alteration in original) (citation omitted).

For that system to work, lesser officers wielding executive authority had to remain "subject to the ongoing supervision and control of the elected President." *Seila Law*, 591 U.S. at 224. The executive officials were to "assist the supreme Magistrate in discharging the duties of his trust." *Id.* at 213 (quoting 30 Writings of George Washington 334 (J. Fitzpatrick ed. 1939)). They could not wield executive power apart from the President: "'the lowest officers, the middle grade, and the highest' all 'depend, as they ought, on the President, and the President on the community.'" *Id.* at 224 (quoting 1 Annals of Cong. 499 (1789) (J. Madison)).

Indeed, the Framers expressly recognized that the President's executive power included supervising his subordinates. Madison was clear on that: if "any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws." *Seila Law*, 591 U.S. at 213 (citation omitted). And he was not alone. As Publius, Hamilton wrote that executive officers "ought to be considered as the assistants or deputies of the Chief Magistrate" who are "subject to his superintendence."

Aditya Bamzai & Saikrishna Bangalore Prakash, *The Executive Power of Removal*, 136 Harv. L. Rev. 1756, 1773 (2023) (quoting The Federalist No. 72, at 434). Likewise, William Maclaine "spoke of the Chief Executive being responsible for the orders he gave to revenue 'deputies.'" *Ibid.* (citation omitted). And even antifederalists agreed that one man could better "superintend the execution of laws with discernment and decision, with promptitude and uniformity"—implying the man would direct others under him. *Ibid.* (citation omitted). In short, the Framers widely believed that the President would oversee those exercising executive power.

Second, Congress's decision in 1789 not to include statutory language limiting removal supports that view. Congress debated the removal of executive officers "extensively" in the summer of 1789. *Free Enter. Fund*, 561 U.S. at 492. The House at first settled on including language in a bill saying that the President could remove the Secretary of Foreign Affairs. Bamzai & Prakash, *supra*, at 1774. But representatives worried that the "language might be misread as a legislative grant of removal authority when, in fact, a House majority believed that the President had a constitutional power to remove." *Ibid.* So the House changed the language to note that the President could remove without implying a Congressional grant of authority: "'Whenever the [officer] shall be removed by the President' . . . the chief clerk shall have custody of papers." *Ibid.* (citation omitted). And the Senate approved the bill after rejecting amendments to the removal language. *Ibid.*

As Madison later explained, the prevailing view tracked the Constitution's text and provided "the

requisite responsibility and harmony in the Executive Department." *Free Enter. Fund*, 561 U.S. at 492 (citation omitted). The view was that the "executive power included a power to oversee executive officers through removal; because that traditional executive power was not 'expressly taken away, it remained with the President.'" *Ibid.* (citation omitted). Again, the President could *oversee* through removal. Removal is a method—indeed, "the most direct method"—of control. *Seila Law*, 591 U.S. at 225. It follows that if Congress thought in 1789 that the President had power to remove executive officials, then it also thought he had power to control those officials.

That must be right. Officers logically "must fear and, in the performance of [their] functions, obey" only "the authority that can remove" them. *Seila Law*, 591 U.S. at 213–14 (alteration in original) (citation omitted). That's why the "removal power helps the President maintain a degree of control over the subordinates he needs to carry out his duties as the head of the Executive Branch." *Collins*, 594 U.S. at 252. So Congress's recognition in 1789 that the Constitution grants the President removal authority over executive officers reaffirms that he must have control over exercises of executive power.

C. This Court's case law tracks history and text.

Consider also the case law. It too supports that the President must have control over officers exercising executive power. *Free Enterprise Fund*, *Seila Law*, and *Collins* already hold that the President generally must have control through at-will removal. And the narrow exceptions to political accountability those

decisions left open cannot save the Task Force's independence.

Start from the top. In *Myers* v. *United States*, the Court expressly held that the President could control executive officers, including by removing them from office. 272 U.S. 52, 135 (1926). The Court explained that the "ordinary duties of officers prescribed by statute come under the general administrative control of the President by virtue of the general grant to him of the executive power." *Ibid.* The executive power entails "the general administrative control of those executing the laws, including the power of appointment and removal of executive officers." *Id.* at 164. And in reaching that conclusion, the Court "conducted an exhaustive examination of the First Congress's determination in 1789, the views of the Framers and their contemporaries, historical practice, and [the] precedents up until that point." *Seila Law*, 591 U.S. at 214.

Just nine years later, in *Humphrey's Executor*, however, the Court upheld a statute limiting the President's authority to remove commissioners of the Federal Trade Commission. 295 U.S. at 631–32. In the Court's view, the 1935 FTC was "an administrative body" that functioned "as a legislative or as a judicial aid." *Id.* at 628. It could not "be characterized as an arm or an eye of the executive." *Ibid.* So the Court invoked separation-of-powers principles to hold that a power of removal would amount to "coercive influence" over the independence of a commission "created by Congress as a means of carrying into operation legislative and judicial powers, and as an agency of the legislative and judicial departments." *Id.* at 630.

Similarly, in *Morrison*, the Court upheld certain removal restrictions. 487 U.S. at 691; see also *United States* v. *Perkins*, 116 U.S. 483, 485 (1886) (upholding tenure protections for a naval cadet). Over a vigorous dissent by Justice Scalia, the *Morrison* Court held that for-cause-removal protections were constitutional for certain inferior officers "with limited jurisdiction and tenure and lacking policymaking or significant administrative authority." 487 U.S. at 691.

Then in *Free Enterprise Fund*, the Court returned to a more historical view of the removal power. It held that multilevel removal protections were "contrary to Article II's vesting of the executive power in the President." *Free Enter. Fund*, 561 U.S. at 484. The Court began by noting that it had upheld only "limited restrictions on the President's removal power." *Id.* at 495. The Court refused to extend *Humphrey's Executor*, *Perkins*, or *Morrison* by allowing Congress to "shelter the bureaucracy behind *two* layers" of removal restrictions. *Id.* at 497 (emphasis added). If Congress could restrict the President's ability to remove a principal officer and restrict that officer's ability to remove an inferior officer, the President could not hold "his subordinates accountable for their conduct." *Id.* at 496. That would "subvert[] the President's ability to ensure that the laws are faithfully executed—as well as the public's ability to pass judgment on his efforts." *Id.* at 498.

In the same vein, the Court in *Seila Law* held that Congress could not create an independent agency run by a single officer removable only under certain criteria. 591 U.S. at 204. "Since 1789," the Court wrote, "the Constitution has been understood to empower the President to keep these officers accountable—by

removing them from office, if necessary." *Id.* at 215 (quoting *Free Enter. Fund*, 561 U.S. at 483). And it expressly cabined the "two exceptions to the President's unrestricted removal power." *Ibid.*

The Court clarified that the *Humphrey's Executor* exception depended on "the characteristics of the agency before the Court." *Id.* at 215. "Rightly or wrongly," the *Humphrey's Executor* Court had viewed the FTC in 1935 as "exercising 'no part of the executive power.'" *Ibid.* (citation omitted). So *Seila Law* read *Humphrey's Executor* narrowly as permitting "Congress to give for-cause removal protections to a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions and was said not to exercise any executive power." *Id.* at 216.

At the same time, the Court was quick to point out that the characterization of the FTC as non-executive was incorrect. *Seila Law*, 591 U.S. at 216 n.2. It went even so far as to reiterate that while agency actions may "take legislative and judicial forms, they are exercises of—indeed, under our constitutional structure they *must be* exercises of—the executive Power." *Ibid.* (internal quotation marks omitted) (quoting *City of Arlington* v. *FCC*, 569 U.S. 290, 304 n.4 (2013)).

The Court similarly cabined the *Morrison* exception for inferior officers. It made clear that exception applies only "for inferior officers with limited duties and no policymaking or administrative authority." *Seila Law*, 591 U.S. at 216 n.2.

Finally, in *Collins*, the Court reiterated that there are "compelling reasons not to extend" the two previously recognized limits on the President's removal

power. 594 U.S. at 251 (citation omitted). So the Court held unconstitutional a for-cause removal restriction for a single-director-led agency. *Ibid.* It didn't matter that the President could remove the director for disobeying an order. *Id.* at 256. The situation went beyond the existing exceptions. And "the Constitution prohibits even 'modest restrictions' on the President's power to remove the head of an agency with a single top officer." *Ibid.* (quoting *Seila Law*, 591 U.S. at 228).

In short, this Court's case law tracks the text of Article II and relevant history making clear that the President must have control over officials exercising executive power. That control is ensured by his ability to remove officers at will, subject to the two strictly cabined exceptions.

D. The current exceptions to presidential control cannot save the Task Force.

Make no mistake, the Court should overrule *Humphrey's Executor*, *Perkins*, and *Morrison*. Those decisions are deeply flawed, and stare decisis principles cannot save them. Yet this probably isn't the case to do so because no party has asked for it.[2] Still, even leaving the exceptions in place, they cannot justify the Task Force's independence.

The *Humphrey's Executor* exception for principal officers applies only to multimember expert agencies not wielding substantial executive power. *Seila Law*,

---

[2] Braidwood Management even disclaims the independence issue. Resp. Br. 20 n.17. Yet that should not dissuade the Court from discussing it. The Task Force's statutorily required independence is blatant. And that constitutional problem exists no matter whether its members are principal or inferior officers.

591 U.S. at 218. Even if Task Force members are principal officers, the Task Force falls outside the exception because it wields substantial executive power.

The executive part is a given: the Task Force must wield that kind of power. *Seila Law*, 591 U.S. at 216 n.2. And the extent of that power is plain: it is substantial. The Task Force makes binding recommendations that health-insurance plans must cover without imposing any cost sharing on patients. 42 U.S.C. 300gg-13(a)(1). In the Government's words, that constitutes "a key part of the ACA that provides healthcare protections for millions of Americans." Pet. 28. No doubt, the Task Force "can deeply impact the lives of millions of Americans." *Collins*, 594 U.S. at 255. *Humphrey's Executor* cannot justify its independence.

Neither can *Morrison*. That exception applies only to inferior officers with limited duties that do not include policymaking or administrative authority. *Seila Law*, 591 U.S. at 218. Here, even if Task Force members are inferior officers, they have policymaking authority. Again, the Task Force issues binding recommendations that affect millions of Americans. With no supervision, it selects what preventive medical services health-insurance plans must cover without imposing cost sharing on patients. That's policymaking authority.

At bottom, neither existing exception justifies the Task Force's independence from presidential control. The default rule applies: the President must have control over exercises of his executive power.

III. Independent agencies make significant policy decisions without accountability.

In our democratic system, vesting the executive power in the President was no accident. Unlike agency officials, the President is elected. That's why his control of such officials "is essential to subject Executive Branch actions to a degree of electoral accountability." *Collins*, 594 U.S. at 252. Indeed, the President is "the most democratic and politically accountable official in Government," being elected by the entire Nation. *Seila Law*, 591 U.S. at 224. And the "solitary nature of the Executive Branch" offers "a single object for the jealousy and watchfulness of the people." *Ibid.* (citation omitted). Our system depends on the people holding the President accountable for executive action. But they cannot do so for independent agencies. And that's a problem.

Independent agencies "wield considerable executive power without Presidential oversight." *Seila Law*, 591 U.S. at 240 (Thomas, J., concurring in part). They "possess extraordinary authority over vast swaths of American economic and social life." *PHH Corp.*, 881 F.3d at 170 (Kavanaugh, J., dissenting). And that authority can—and often does—include making far-reaching policy decisions that infringe on individual liberty.

Take the EEOC for example. In the past few years, it has wielded unchecked executive power to force controversial policy choices on employers. And those policy choices have continually undermined individual rights. The EEOC has required employers to provide healthcare coverage for gender transitions without an exception for sincerely held religious beliefs.

Christian Emps. All., 719 F. Supp. 3d at 928. It has made employers use employees' self-selected pronouns without regard to employers' free-speech or religious-liberty rights. See Compl. at 6–14, *Christian Emps. All.*, No. 1:25-cv-7. It has forced employers to allow males in female-only private spaces without considering females' privacy rights. *Ibid.* And it has mandated that employers facilitate employees' abortions, going so far as to stop employers from speaking their pro-life beliefs. *Id.* at 18–20.

Each of those is a significant policy decision over which there is substantial dispute. Each has resulted in the loss of constitutional or statutory rights. And each requires presidential oversight to comply with Article II. Yet under one reading of 42 U.S.C. 2000e-4(a), the President can remove EEOC commissioners only for cause. If that's right, the President cannot hold the commissioners accountable for their actions. Nor can the people hold him accountable for the EEOC's actions. To be sure, individuals can sue to try to vindicate their rights, as CEA has done for its members. But that time-consuming and costly process is no substitute for the ballot box. And it fails to provide the same measure of accountability for agency action.

If an executive official oversteps, he must answer to the President, up to the point of losing his job. The President's dependence on the people provides agency accountability when it's dependent on him. And agencies need that accountability. As things stand, independent agencies make controversial policy choices without regard to individuals' constitutional and statutory rights—because they can.

* * *

That's not how our system is supposed to work. Officers wielding executive power are accountable to the President, and he is accountable to us. The buck stops with him—not with an unelected group of bureaucrats. Sections 299b-4(a)(1) and (6) defy that Article II mandate. And the Court should say so. Agencies cannot wield executive power independent of the President.

CONCLUSION

The Court should hold that Sections 299b-4(a)(1) and (6) are unconstitutional.

Respectfully submitted,

JAMES A. CAMPBELL
DANIEL J. GRABOWSKI
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176

ERIN M. HAWLEY
Counsel of Record
JOHN J. BURSCH
MATTHEW S. BOWMAN
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001
(202) 393-8690
ehawley@ADFlegal.org

MARCH 2025