26-533

David Bronner, President of the United States
v.
Mark Crosby

ON THE WRIT OF CERTIORARI FROM THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petition for a writ of certiorari is **GRANTED** and argument is limited to the following questions:

I. May the President fire Federal Reserve Board Chair Crosby without cause?
II. May a federal court prevent a person's removal from public office, either through relief at equity or at law?

Before BARTON, SUN, and IM, *Circuit Judges.*

Factual Background and Procedural History

The Federal Reserve System comprises the Board of Governors ("the Board") and 12 regional Federal Reserve Banks ("Regional Reserve Banks"). The importance of the Federal Reserve System, or the "Fed," as it is colloquially called, to the modern economy can hardly be overstated. The Fed sets a baseline interest rate ("federal funds rate") which influences how much consumers pay on loans or are paid by savings accounts. It also conducts "open market operations."

Open market operations involve buying and selling securities to adjust the amount of cash banks hold. When the Fed buys securities, it injects money into the banking system (lowering short-term rates and boosting lending). This sometimes softens economic difficulties at the risk of increasing inflation. When the Fed sells securities, it pulls money out (raising rates and slowing lending), which tends to reduce inflation.

The Fed often reduces rates and increases money available for lending to soften negative economic news. Conversely, when inflation increases, it often increases rates and slows the growth of the money supply.

The Federal Reserve Act charges the Fed with the duty of promoting "maximum employment, stable prices, and moderate long-term interest rates." 12 U.S.C. § 225a. The Fed also plays a role in bank regulation.

Stress testing

Banks do not carry reserves to pay all deposits immediately upon demand. *It's A Wonderful Life* depicts the situation in a well-known story. As George Bailey explains to a man trying to withdraw his money during a run on his bank:

> [Y]ou're thinking of this place all wrong. As if I had the money back in a safe. The money's not here. Your money's in Joe's house right next to yours. And in the Kennedy house, and Mrs. Macklin's house, and a hundred others. Why, you're lending them the money to build, and then, they're going to pay it back to you as best they can. Now what are you going to do? Foreclose on them?[1]

When an economic recession strikes, banks with insufficient capital can be at risk of insolvency. Thus, the Fed is required by law to annually analyze whether certain covered banks have the capital to "absorb losses as a result of adverse economic conditions." 12 U.S.C. § 5365(i)(1)(A). To allow the Fed to perform this duty, covered banks are required to annually provide the Fed a capital plan and detailed portfolio data, including projected revenues, losses, and capital levels for slightly more than the coming two years. 12 C.F.R. § 225.8(e).

Using this data, the Fed generates two projections for each firm. The first projection is a baseline scenario. The other is a "severely adverse" scenario involving a deep economic downturn. The outcome of these projections affects the bank's "stress-capital buffer" (SCB). If the bank does not have sufficient assets to meet the SCB, the Fed "penalizes" the bank by restricting dividends, share buybacks, and bonus payouts.

Federal Reserve's Legal Framework

The Federal Reserve Board is composed of seven members, each appointed to 14-year terms by the President, "unless sooner removed for cause by the President." 12 U.S.C. § 241, 242. The President

[1] Reserve requirements differ from capital requirements but serve an illustrative purpose.

designates one board member as Chair for a four-year term with the advice and consent of the Senate. 12 U.S.C. § 242. The terms are staggered such that each presidential term will see at least one vacancy of the Fed Chair. The Fed Chair oversees the Federal Reserve Board's operations. The long terms and for-cause removal protections largely insulate the Board from political pressure. It is further insulated from political pressure because it funds operations primarily from interest on its securities portfolio, not annual appropriations from Congress.

The original makeup of the Federal Reserve Board in 1913 included the Secretary of the Treasury and the Comptroller of the Currency, alongside five presidential appointees serving ten-year terms. In 1935, Congress reorganized the institution into the present seven-member Board of Governors with 14-year terms and for-cause removal protection. During World War II, the executive branch and Treasury imposed a wartime peg on interest rates; this ended in 1951.

Before the Federal Reserve, there were the First and Second Banks of the United States. These were public–private corporations: the federal government held roughly one-fifth of the capital. Private investors held the rest. Both were governed by a 25-member board, some appointed by the President with Senate confirmation, others appointed by shareholders of constituent banks. Despite private ownership, both institutions served federal purposes as the government's fiscal agent. For example, they held Treasury deposits. Each bank was chartered in the beginning for only 20-years. It was up to Congress to renew the charter and continue their operation.

Today, 12 Regional Reserve Banks operate under the purview of the Board. These Regional Reserve Banks are corporations with private attributes: their shares are held by private member banks and their boards are elected by private shareholders. But the Federal Reserve Board of Governors may remove Regional Reserve Bank officers or directors for cause and even suspend or liquidate a Regional Reserve Bank.

The Chair's Removal

President Bronner campaigned on overhauling financial regulation. His victory may have been fueled by the collapse of Fairfax Bank, a major financial institution. A subsequent congressional investigation into Fairfax's collapse concluded that the Fed's "severely adverse" scenario had consistently underestimated exposure to the commercial real estate market. That exposure was ultimately the trigger for Fairfax's collapse. Nonetheless, the Chair of the Board of Governors of the Federal Reserve System, Mark Crosby, testified before the Senate Banking Committee that the stress testing framework was "fundamentally sound." He said Fairfax's failure was attributable to the bank's own risk management, not the Fed's stress testing methodology. Several committee members from both parties expressed their skepticism about Crosby's conclusion.

Shortly after taking office, President Bronner made a social media post addressed to Crosby: "Congress is RIDICULOUS if they think I can't control who works for me. You're FIRED! The courts better not get in my way!" The post was followed a few hours later by a formal letter.

Markets reacted sharply. The Dow Jones Industrial Average fell over 1,100 points the next day. The yield on 10-year Treasury bonds spiked 45 basis points, indicating uncertainty over the future of U.S. monetary policy. The dollar dropped nearly 3% against the euro and the yen. The Bank of England and the European Central Bank issued a "joint statement of utmost concern" for the Fed's independence.

Crosby immediately filed suit against President Bronner, requesting an order enjoining his removal. Crosby argued that he could only be removed "for cause." The district court granted the injunction. From this injunction President Bronner now appeals.

Majority opinion

OLIVER T. IM, *Circuit Judge:*

This appeal presents two questions fundamental to our constitutional structure. First, where are the limits of the President's removal power? Second, when the President acts beyond her constitutional authority, what power does the judiciary have to uphold the rule of law? At stake is the independence of the Federal Reserve: an institution Congress deliberately designed to be a nonpartisan body of experts, shielded from short-term political pressures to ensure the nation's economic stability. When President Bronner fired Crosby without cause, he defied a specific statutory command enacted by Congress. We hold that Congress's for-cause removal protections are valid exercise of its authority and the President's action is unlawful.

We further hold that courts must possess the power not only to *declare* an unlawful removal invalid, but to *order* that declaration be enforced through injunctive relief. A declaration without an enforceable remedy is no declaration at all.

I. The President may not remove the Fed Chair without cause.

Article II of our Constitution vests the President with the executive power. And it is true that the President does generally have the power to hire and fire those who would work underneath her.

But this power is not unlimited. *Humphrey's Executor v. United States* established that Congress may limit the President's power to fire—the "removal power." 295 U.S. 602, 632 (1935). Humphrey's Executor was a case brought by a member of the Federal Trade Commission ("FTC") for wrongful removal (or rather, by his estate, because Humphrey had died). The Court agreed that the removal was wrongful, holding that Congress had lawfully insulated the Commissioners from removal.

A. The Fed is not a single-headed agency, but a multimember board like the FTC in *Humphrey's Executor*.

The Federal Reserve Board, like the FTC in *Humphrey's Executor*, is a nonpartisan multimember body of experts. As the Court noted, "[the FTC] is to be nonpartisan, and it must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly *quasi*-judicial and *quasi*-legislative." *Humphrey's Executor,* 295 U. S. at 624. And "its members are called upon to exercise the trained judgment of a body of experts appointed by law and informed by experience." *Id*.

The analogy to the Federal Reserve is strong. Each chair of the Board of Governors serves four years. 12 U.S.C. § 242. Each President will get to appoint at least one chair if the President serves a full term. Staggered 14-year terms reflect Congress's intent to insulate critical economic policy decisions from short-term political pressures. And it functions as an expert multimember body, setting monetary policy for the entire nation. Each member of the Board is highly trained in economics and finance. The Federal Reserve Board's structure—a collegial body with a tradition of nonpartisanship—fits squarely within the paradigm of *Humphrey's Executor*.

And these analogies matter. The Supreme Court has recently made much of the distinction between multimember boards and single-headed agencies. It struck down, for example, the Consumer Financial Protection Bureau director's removal protection, but the opinion and at least one concurrence suggested that the CFPB could be converted into a multimember agency to preserve those protections. *See e.g. Seila Law LLC v. CFPB*, 591 U. S. 197 (2020) (Roberts, C.J., concurring).

B. Insulating the Fed chair does not infringe on the executive's power.

As our dissenting colleague notes, the Supreme Court has seemed increasingly friendly to a more unitary theory of the executive

branch. But the theory of a unitary executive is not law. *Humphrey's Executor* is law. The question is not whether the executive can do what he wants. The question is whether the removal protections "impede the President's ability to perform his constitutional duty." *Morrison v. Olson,* 487 U.S. 654, 691 (1988). And the Fed's core functions can be seen as a delegation of Congress' legislative powers to "regulate the Value [of money]." *See* U.S. CONST. art. I, § 8.

Indeed, *Morrison* demonstrates that restrictions on removal can be consistent with Article II. *Id*., at 693. The Court upheld an independent counsel's tenure protection, recognizing that the removal constraint was justified by the need for some independence in that role and did not unduly hinder the President's ability to carry out his duties. A close analogy can be drawn to the need to insulate the monetary policy and financial regulation from short-run political pressures. These concerns justify similar protections for the Federal Reserve Board.

When prudential concerns dictate, the Supreme Court has even gone so far as to infer for-cause protection for members of an adjudicatory commission despite the statute's silence. *See Wiener v. United States*, 357 U.S. 349, 356 (1958). The stability of our economy qualifies as such a prudential concern.

Finally, the statutory for-cause standard here still leaves the removal decision in the President's hands—it merely guards against arbitrary or politically motivated dismissals. There is no suggestion that Congress's for-cause provision for the Fed was an attempt to aggrandize legislative power. Rather, it was a prudent measure to ensure the Fed's impartial governance and direction of the American economy.

II. The trial court correctly prohibited Crosby's dismissal.

Crosby was unlawfully stripped of his office. Mere financial compensation would fail to repair the broader harm inflicted upon the Federal Reserve's independence and the nation's economic stability. An injunction is not only appropriate, it is necessary to maintain the

rule of law. To deny this remedy would render constitutional protections meaningless precisely when they matter most.

A. Where there is a right, there must be a remedy.

The "very essence of civil liberty," this Court declared more than two centuries ago, is the "right of every individual to claim the protection of the laws whenever he receives an injury." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). In Latin: *ubi jus ibi remedium*.

Here, Congress has granted a legal right to Crosby: for-cause removal protection. Flouting the law, the President has fired him without cause. Crosby must have a remedy. The dissent says that the trial court should have only awarded backpay. It argues that an injunction—an order requiring the President to reinstate Crosby—is beyond the power of the judiciary.

But Congress did not create this removal protection because it wanted Crosby to be able to afford his mortgage payment next month. It created the right because it was gravely concerned about the Fed's independence and insulation from political pressures. Backpay does not redress this injury. More is required.

B. Reinstatement is necessary.

Courts are not always shy to order the President to cease unlawful action. Perhaps the most well-known case on executive power is relevant again today: *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). In *Youngstown*, the Supreme Court held that President Truman unlawfully seized steel mills. But the Court didn't just declare the action unlawful. It put a stop to the nationalization by affirming the district court's injunction.

Youngstown didn't tell Truman how to negotiate labor disputes. It simply ordered the President to stop the unlawful act. Likewise, enjoining Crosby's removal doesn't make the judiciary a manager of the Fed. But it would stop an unlawful act, and it is the only remedy that will.

C. Abiding by a for-cause removal protection is a ministerial duty and an injunction or a writ of mandamus is therefore appropriate.

Generally, it is true that we do not have the power to enter an injunction to "enjoin the President in the performance of his official duties." *See Mississippi v. Johnson*, 71 U.S. 475 (1867). But for purely "ministerial duties,"—those prescribed duties that do not require discretion or personal judgment—the judiciary does have that power.

Take, as an example, *Kendall v. United States ex rel. Stokes*, 37 U.S. 524 (1838). In *Kendall*, the Supreme Court upheld an order requiring the Postmaster General to pay a claim for which Congress had specifically provided. The law imposed a "precise, definite, and specific act" with no room for the officer's discretion. Thus, it was ministerial in the same way as was the duty in *Marbury*—and therefore the Court could order the Postmaster to pay the claim.

Similarly, Section 242 doesn't ask the President to balance complex policy factors; it commands that a Fed Governor not be removed absent cause. Enforcing that duty by restoring Crosby is analogous to enforcing the duty in *Kendall* to pay a contractor's award. It's a one-time act of compliance with a legal rule. Abiding by a for-cause removal statute is a duty which is "ministerial and not discretionary, for the President is bound to abide by the requirements of duly enacted and otherwise constitutional statutes." *Swan v. Clinton*, 100 F.3d 973 (D.C. Cir. 1996).

Thus, an injunction is an available remedy here. But even if it is not, mandamus would be appropriate. The Supreme Court has held that mandamus may issue when (1) the party seeking issuance of the writ has "no other adequate means" to attain the relief he desires, (2) the petitioner satisfies the burden of showing that the right to issuance of the writ is "clear and indisputable", and (3) the issuing court, in the exercise of its discretion, is satisfied that the writ is "appropriate under the circumstances." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004). Each element is satisfied here. First, as discussed above, backpay cannot adequately redress the injury to the Fed's independence. Second, Crosby's right is clear and indisputable: 12

U.S.C. § 242 expressly provides for-cause removal protection. Third, issuance is appropriate because the President has acted in defiance of a specific statutory command.

The dissent resorts to citing a case from 1888 to argue that courts of equity[2] did not historically have power to reinstate a public official. *See below* at 12 (*citing In re: Sawyer,* 124 U.S. 200, 212 (1888)). This is true. But the same paragraph remarks courts of law *did* have remedies to address wrongfully removed public officials. *See In re: Sawyer*, 124 U.S. 200, 212 (1888). Our judiciary has combined the courts of law and equity. We therefore have both the power and responsibility to act.

The dissent closes by saying that "[c]ourts must know when to speak, and the time to speak is not now." But if not now, when? When the President acts against Congress's will, his power is at its lowest ebb. *See Youngstown*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). Moreover, the sky does not immediately fall if the executive chooses to ignore our judgment. This would not be the first court order that falls on deaf ears.

The lower court acted properly when it enjoined Crosby's removal. We therefore affirm.

[2] Courts of equity descend from the King's Council in medieval England. At the King's Council, a person could petition the King directly for a remedy, even when no law could help them. Courts of law could generally only offer monetary damages as a remedy for a wrong. They could not force the return of a unique item or prevent future harm. The King's Council filled this gap, and grew into a system called the Court of Chancery, which was the court of equity. Our judiciary now derives its authority from this tradition.

Dissent

TYLER L. BARTON, *Circuit Judge*, dissenting:

The majority is correct that these cases pose fundamental questions about the structure of our government. But my colleagues' position renders the Fed unaccountable to the will of the people. Our history and tradition dictate that the incredible power exercised by the Federal Reserve Board Chair may not be distributed away from the executive: the Framers did not create a fourth branch of government.

Furthermore, by ordering reinstatement, the majority invites a constitutional crisis, issuing an order it cannot hope to enforce and gambling the judiciary's institutional legitimacy on a political showdown with the executive branch.

I. The President may remove the Fed Chair without cause.

Article II of the Constitution grants the President the executive power. Accordingly, when the People elect a President, that election comes with a mandate: to govern according to the principles upon which the President was elected.

A. The executive power includes the power to remove officers.

This power has long been understood to include broad authority to supervise and remove executive officers. *See e.g., Myers v. United States*, 272 U.S. 52, 119 (1926) (invalidating a law limiting the President's ability to remove a postmaster); *see also Bowsher v. Synar*, 478 U.S. 714, 726 (1986) (holding that removal of executive officers is exclusively a power to be exercised by the executive). After all, how may a President enact her agenda if she is stuck with officers who do not share her principles?

Thus, the general rule is that Congress may not usurp the President's power to remove her executive officers, however it may

attempt to do so. In *Free Enterprise Fund v. PCAOB*, for example, the Court considered a dual-layer removal restriction where Congress said that members of the Public Company Accounting Oversight Board could only be fired for cause by the SEC, which itself enjoyed for-cause protections. 561 U.S. 477, 495 (2010). This dual insulation was held unlawful. *Id*. Just 10 years later, *Free Enterprise Fund's* holding was expanded to strike nearly any removal protection for any single-headed agency. *See Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2192 (2020).

B. *Humphrey's Executor* is the exception that proves the rule.

The majority urges us to expand the exceptions to this general rule on prudential grounds. But that would obliterate the rule itself. The limited exceptions the Supreme Court has recognized have been effectively confined to their facts. *Humphrey's Executor v. United States*, 295 U.S. 602, 632 (1935), for example, involved for-cause protections for members of the Federal Trade Commission in 1935. The FTC in 1935 did not exert executive power the way the Fed does today. No one questions that Congress may create protections for quasi-judicial or quasi-legislative positions. And the FTC in 1935 operated as a quasi-judicial body in a way that the Fed does not.

The other exception the majority points to, *Morrison v. Olson*, acknowledged that the removal protection was permissible only because it did not impermissibly interfere with the President's core functions. 487 U.S. 654, 691–93 (1988).

But the operations of the Fed are core executive functions. The Fed not only directs monetary policy but administers federal regulations affecting financial institutions holding a majority of our citizens' savings and investments. Congress cannot insulate the administration of such law from accountability to the President.

The majority urges us to enforce the will expressed by the elected legislative branch in creating removal protections. But Congress has many means by which it can enforce its will. If it disagrees with how the law is being applied, *it may change the law.* The majority thinks we need to use the full weight of the judiciary's power to protect the legislative enactment. We do not. This is an

inter-branch dispute with which we need not be involved. Congress has the power of the purse. It has the power to instruct the President to administer the law in a certain way by passing new law. Congress does not need our help.

The trajectory of our jurisprudence—from *Myers* to *Seila Law*—confirms that insulation from accountability to the executive is disfavored. I would hold that, insofar as 12 U.S.C. § 242 purports to bar the President from removing a Fed Board member (including the Chair), it cannot be enforced to frustrate the President's Article II authority.

Accordingly, I would hold that the President's dismissal of Crosby was lawful.

II. Even if the removal was wrongful, the trial court lacked the authority to enjoin the removal.

Even if the President lacked authority to remove Crosby without cause, the district court's decision to enjoin his dismissal is a dangerous judicial overreach. Our courts have never possessed the power to directly reinstate public officials removed by the executive branch. By claiming this authority now, the majority disrupts the separation of powers, inviting courts into a domain reserved exclusively for political accountability and presidential discretion.

A. Injunctive relief is not and has never been available to stop removal of a public officer.

Our power to issue injunctions is limited to what was historically available to "courts of equity," a historical term dating back centuries. *See Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). But the majority can point to no case demonstrating that reinstatement was a remedy historically available in courts of equity. Therefore, no such power exists.

Moreover, not only can the majority not point to a historical example of the relief it seeks, we have evidence that reinstatement was

not historically an available remedy. As the Supreme Court declared in 1888: "[i]t is . . . well settled that a court of equity has no jurisdiction over the appointment and removal of public officers." *In re Sawyer*, 124 U.S. 200, 212 (1888).

B. The only lawful remedy is backpay, not an injunction or mandamus.

Rather, the proper remedy for unlawful removal is a suit for monetary damages, not injunctive relief. Indeed, "the District Court's grant of injunctive relief against the President himself is extraordinary, and should have raised judicial eyebrows." *Franklin v. Massachusetts*, 505 U.S. 788 (1992). "It is a commentary upon the level to which judicial understanding-indeed, even judicial awareness-of the doctrine of separation of powers has fallen, that the District Court entered this order against the President without blinking an eye." *See id*., at 826 (Scalia, J. concurring). District Court judges—important, but small cogs in a big machine—should not be quick to make orders to the President regarding her core executive functions.

The plaintiffs in *Humphrey's Executor* and *Wiener* properly sought and received backpay, not reinstatement. This reflects a long-standing constitutional balance: an officer unlawfully deprived of his position is made whole financially, but the President's constitutional authority to select and control those who wield executive power on his behalf remains inviolate. This careful balance has thus far enabled our nation to avoid a debilitating constitutional crisis.

Mandamus doesn't work either. It is a "drastic and extraordinary remedy reserved for really extraordinary causes." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004). And nothing about this case is clear cut. The removal power is contested and the scope of *Humphrey's Executor* is fuzzy at best. Meanwhile, an order for backpay remains available to make Crosby whole. Courts should not reach for extraordinary remedies when ordinary ones suffice.

C. The majority invites a constitutional crisis brought on by judicial overreach.

Even if our precedents were not so clear, the majority does not provide a persuasive answer to the most important question: what if the President simply ignores our order? The judiciary does not employ men with guns whose purpose it is to carry out our orders.

What is to stop the President from ordering the U.S. Marshals to stop Crosby from entering his office? Answer: nothing, aside from a piece of paper. If this order is flouted, the facade of our authority will have broken. The majority seems content to gamble the entire weight of judicial authority on one case. But the President has already said he does not believe we have the power to stop him from firing Crosby. Inviting this constitutional conflict is imprudent at best and disastrous to our institution at worst.

Even *Cheney* recognized that courts "must afford Presidential confidentiality the greatest possible protection" and be mindful of "the paramount necessity of protecting the Executive Branch from vexatious litigation that might distract it from the energetic performance of its constitutional duties." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 369 (2004). If such caution is warranted for discovery, how much more so for an order purporting to dictate who may serve as the President's subordinate?

And this is the teaching of *Mississippi v. Johnson*, 71 U.S. 475 (1867). An attempt by courts to direct or restrain the President's executive functions "might be justly characterized . . . as an absurd and excessive extravagance." *Id.* at 499 (internal quotations omitted). Extravagance, in this archaic sense, means that the judiciary may be metaphorically writing a check it cannot cash.

Courts must know when to speak, and the time to speak is not now. I respectfully dissent.

Appendix 1 - Table of Authorities

A. Cases Common to Both Issues

Myers v. United States, 272 U.S. 52 (1926)
Humphrey's Ex'r v. United States, 295 U.S. 602 (1935)
Wiener v. United States, 357 U.S. 349 (1958)

B. Issue 1 – Presidential Removal Power

Bowsher v. Synar, 478 U.S. 714 (1986)
Morrison v. Olson, 487 U.S. 654 (1988)
Free Enter. Fund v. PCAOB, 561 U.S. 477 (2010)
Seila Law LLC v. CFPB, 591 U. S. 197 (2020)
Collins v. Yellen, 594 U.S. ___, 141 S. Ct. 1761 (2021)**
Aditya Bamzai and Aaron Nielson, Article II and the Federal Reserve, 109 Cornell L. Rev. 843 (2024)**
Lisa Bressman and Robert Thompson, The Future of Agency Independence, 63 Vand. L. Rev. 599 (2010)**

C. Issue 2 – Remedy for Wrongful Removal

Marbury v. Madison, 5 U.S. 137 (1803)
Kendall v. United States ex rel. Stokes, 37 U.S. 524 (1838)
Mississippi v. Johnson, 71 U.S. 475 (1867)
In re Sawyer, 124 U.S. 200 (1888)
Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)
National Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C. Cir. 1974)**
Franklin v. Massachusetts, 505 U.S. 788 (1992)
Swan v. Clinton, 100 F.3d 973 (D.C. Cir. 1996)
Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999)
Cheney v. U.S. Dist. Ct. for D.C., 542 U.S. 367 (2004)
Trump v. CASA, Inc., 606 U.S. ___ (2025)**

*(Authorities with an ** may only be cited after the practice tournament. Students may read them at any time.)*

Appendix 2 - 12 U.S.C. § 242

The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank, except that this restriction shall not apply to a member who has served the full term for which he was appointed. Upon the expiration of the term of any appointive member of the Federal Reserve Board in office on August 23, 1935, the President shall fix the term of the successor to such member at not to exceed fourteen years, as designated by the President at the time of nomination, but in such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, 1 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of 4 years, and 2 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairmen of the Board, each for a term of 4 years, 1 of whom shall serve in the absence of the Chairman, as provided in section 244 of this title, and 1 of whom shall be designated Vice Chairman for Supervision. The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms. The Chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall within fifteen days after notice of appointment make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified. Any person appointed as a member of the Board after August 23, 1935, shall not be eligible for reappointment as such member after he shall have served a full term of fourteen years.

Appendix 3 - 12 U.S.C. § 5365

(i) Stress tests

(1) By the Board of Governors

(A) Annual tests required

The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) Test parameters and consequences

The Board of Governors—

(i) shall provide for at least 2 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) By the company

(A) Requirement

A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct periodic stress tests. All other financial companies that have total consolidated assets of more than $250,000,000,000 and are regulated

by a primary Federal financial regulatory agency shall conduct periodic stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) Report

A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) Regulations

Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term "stress test" for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 2 different sets of conditions, including baseline and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

Other relevant matter

Provided for context, not to be cited unless subcited in an authority listed in the Appendix.

Issue 1

- *Trump v. Wilcox*, 605 U.S. ___ (2025)
- Aditya Bamzai & Peter M. Shane, The Removal Question: A Timeline and Summary of the Legal Arguments, 78 STANFORD L. REV. 64 (2025).
- Graham Steele, *Agency Independence and the Federal Reserve's Regulatory Functions*, Yale J. on Reg.: Notice & Comment (June 28, 2025).
- Brian Galle & Aziz Z. Huq, *The Constitutional Money Problem*, 92 U. Chi. L. Rev. 333 (2025).

Issue 2

- *Sampson v. Murray*, 415 U.S. 61 (1974).
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