

No. 25-767

In the Supreme Court of the United States

DAREN K. MARGOLIN,

Petitioner,

v.

NATIONAL ASSOCIATION OF IMMIGRATION JUDGES,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

**BRIEF OF U.S. SENATORS TED BUDD, TED
CRUZ, MIKE LEE, AND ERIC SCHMITT AS *AMICI
CURIAE* IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Amici are United States Senators Ted Budd of North Carolina, Ted Cruz of Texas, Mike Lee of Utah, and Eric Schmitt of Missouri. As lawmakers in Congress, *amici* have an interest in federal courts respecting the separation of powers and giving full effect to the laws that Congress enacts. As relevant here, *amici* and their colleagues expect that courts will apply laws like the Civil Service Reform Act faithfully as written. *Amici* file this brief to defend Congress's prerogative, which the Fourth Circuit's decision undermines.

¹ In accordance with Rule 37.2, all counsel of record received timely notification of *amici*'s intent to file this brief. No party's counsel authored any part of this brief and nobody other than *amici* and their counsel made any monetary contribution intended to fund its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

It is the role of Congress, not the courts, to decide whether to amend a statute. The Fourth Circuit ignored that elementary principle of constitutional law. To decide this case, all the Fourth Circuit needed to do was interpret the Civil Service Reform Act (CSRA). Instead, the court added an unwritten exception to the CSRA and remanded this case for a federal district court to decide whether the exception applies. That approach cannot be squared with the separation of powers.

This case concerns constitutional challenges to a federal personnel policy that requires immigration judges to seek preapproval before accepting public speaking engagements or publishing certain writings. Some immigration judges balked at this policy, arguing that it infringes their free speech rights. Congress enacted the CSRA in part to provide a mechanism to review these sorts of intra-executive branch disputes.

Under the CSRA, federal employees must bring their challenges to personnel practices through a carefully constructed scheme of review: First, the Office of Special Counsel (OSC) assesses the claim. If OSC finds it is meritorious, the office passes it along to the Merit Systems Protection Board (MSPB). The MSPB, an executive branch agency that adjudicates disputes involving federal personnel actions, then reviews the claim. After these agencies have completed their proceedings, the employee can petition for review in the Federal Circuit and, if need be, this Court.

Instead of going through this process, the immigration judges (represented by Respondent National Association of Immigration Judges) went straight to federal district court with a First Amendment challenge to the preapproval policy. The District Court dismissed the suit, holding (consistent with this Court’s precedent) that the CSRA embodies a congressional choice to strip the courts of jurisdiction to hear such claims in the first instance, routing them instead to the OSC and MSPB.

On appeal, the Fourth Circuit agreed with the District Court’s rationale. Yet the Fourth Circuit found a way to allow the suit to continue. Reasoning that President Trump has undermined the integrity of the CSRA’s review scheme by removing OSC and MSPB officials, overseeing an MSPB that lacked a quorum, and arguing against agency independence in litigation, the Fourth Circuit remanded for the District Court to determine whether the congressionally crafted review scheme was still “functional.” App. 19a. If it is not, the panel explained, then the District Court could disregard the CSRA and allow Respondent to bring its claims directly in federal court.

To state the obvious: This is not the role of a court. Congress enacts and amends laws, and courts interpret and apply them. That division of authority is central to our constitutional order. It makes practical sense, too. Congress has numerous ways to assess presidential administration of statutory programs and to put the executive back on the right track when necessary. The judicial branch, in contrast, is limited to resolution of cases and controversies. And yet, the Fourth Circuit saw fit to

arrogate legislative power in this case, asserting judicial authority to amend the CSRA’s scheme of review by adding an exception nowhere stated in the statutory text. Moreover, the court’s understanding of the CSRA—and the import of agency independence—is riddled with errors. Summary reversal is appropriate.

ARGUMENT

I. The Fourth Circuit’s Ruling Intrudes on Congress’s Prerogative.

Congress does not need the Fourth Circuit’s help to do its job. Part of that job is updating statutes whenever necessary based on new developments. Indeed, amending federal statutes is just one way Congress can respond to the President’s administration of the civil service laws. Courts cannot compete. When the Fourth Circuit remanded for an inquiry into whether the CSRA’s review scheme remains “functional,” App. 19a, it encroached on a core element of Congress’s power.

A. Article I Vests Congress—Not the Courts—with Legislative Power.

The Constitution reflects a division of authority between Congress and the courts. Whereas “[a]ll legislative Powers” granted to the federal government in Article I are “vested in a Congress of the United States,” U.S. Const. art. I, § 1, the “judicial Power” is assigned exclusively to the federal courts, U.S. Const. art. III, § 1.

That division was as careful as it was innovative. See, e.g., Nathan S. Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121

Yale L.J. 1672, 1717 (2012) (explaining the novelty of the Constitution’s separation of legislative and judicial power). The Founders designed Congress and the federal courts for different roles, and the features that make each branch fit for its own work make it unsuitable for the work of the other. For instance, regular elections—every two years for Members of the House of Representatives and every six years for Senators—keep Congress “dependent on the society” and therefore responsive to its “many parts, interests, and classes.” The Federalist No. 51, at 324 (James Madison) (Clinton Rossiter ed., 1961); *see* U.S. Const art. I, § 2, cl. 1; U.S. Const art. I, § 3, cl. 1; *see also* U.S. Const. amend. XVII. The judiciary, by contrast, was intentionally insulated from political influence by means of life tenure and salary protection, which preserve an “independent spirit” that is “essential to the faithful performance” of the judicial role. The Federalist No. 78, at 469 (Alexander Hamilton) (Clinton Rossiter ed., 1961). The same responsiveness to public opinion that makes Congress fit to legislate renders it unfit to decide cases and controversies; conversely, the same protection from political influence that equips federal judges to render judgment according to law makes them unsuitable as legislators. And so on with the other attributes by which the Constitution distinguishes Congress and the courts.

It is thus vital that Congress and the judiciary each remain within their own sphere. Unfortunately, the Fourth Circuit here violated that foundational principle.

1. It Is Congress’s Job to Monitor and Respond to Executive Branch Implementation of the Law.

Lawmaking consists of not only enacting new legislation but also revising *existing* legislation whenever necessary. Any number of factors can, and do, prompt Congress to revise existing law. For example, high-profile misconduct in a given sector may prompt a tightening of industry standards. *See, e.g.*, Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745. By the same token, shifting economic winds might necessitate a reduction in industry regulation. *See, e.g.*, Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705. Technological development is also a powerful motivator for legislative activity, prompting Congress to recalibrate outdated legal frameworks. *See, e.g.*, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

This Court has long recognized that revising the law is the job of Congress rather than the federal judiciary. That recognition undergirds doctrines like the presumption against implied repeals, which teaches that “an implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute.” *Carcieri v. Salazar*, 555 U.S. 379, 395 (2009) (cleaned up). The presumption against implied repeals leaves it to Congress to say when a later statute displaces an earlier one, except in those few cases in which it is evident from the later enactment itself that Congress has chosen to do away with the earlier statute. This Court is quite right to acknowledge that revising statutory law in response

to changes like legislative enactments falls to Congress.

How the executive branch administers the law is one important factor that Members of Congress consider in exercising their authority to change existing law. Indeed, one of Members' core responsibilities is to monitor how the President implements federal law and to respond as necessary. In doing so, they take the long view, considering how presidents over the decades have administered the statutes at issue. Members of Congress do not act in response to every change in executive implementation. But when it determines that the executive's administration of the law *does* warrant a response, Congress has a variety of tools at its disposal.

Statutory Amendment. When “a statute needs repair, there’s a constitutionally prescribed way to do it. It’s called legislation.” *Perry v. MSPB*, 582 U.S. 420, 441 (2017) (Gorsuch, J., dissenting). Statutory amendment can be a highly effective tool to respond to executive administration of an existing statute, and it’s one Congress uses frequently. *See, e.g.*, One Big Beautiful Bill Act, Pub. L. No. 119-21, § 82001, 139 Stat. 72, 337–48 (2025) (amending Higher Education Act of 1965 in response to President Biden’s student loan forgiveness plans); USA Freedom Act, Pub. L. No. 114-23, 129 Stat. 268 (2015) (limiting bulk collection of Americans’ information by the federal government).

Oversight and Public Hearings. This Court has long affirmed that the “power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.” *Trump v. Mazars USA, LLP*, 591 U.S. 848, 862 (2020) (quoting

McGrain v. Daugherty, 273 U.S. 135, 161 (1927)). That power “encompasses inquiries into the administration of existing laws.” *Id.* So when Members of Congress suspect that the executive has misapplied the law, they can issue subpoenas, publish reports, and hold hearings to uncover—and shine light on—that issue. *See, e.g.*, Staff of H. Comm. on Oversight & Gov’t Reform, 113th Cong., Rep. on Lois Lerner’s Involvement in the IRS Targeting of Tax-Exempt Organizations (Mar. 11, 2014), <https://perma.cc/EA55-J3EG>. Evidence shows that “more oversight by Congress prevents an agency from straying beyond the bounds of its legislative mandate.” Steven J. Menashi & Daniel Z. Epstein, *Congressional Incentives and the Administrative State*, 17 N.Y.U. J.L. & Liberty 172, 189 (2024).

Appropriations. The Constitution provides that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art I, § 9, cl. 7. Inspired by 17th and 18th Century fiscal clashes between the English Parliament and Crown, *see Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass’n of Am., Ltd.*, 601 U.S. 416, 453–58 (2024) (Alito, J., dissenting), the Appropriations Clause confers on Congress its “most complete and effectual weapon” for reining in executive power, *The Federalist* No. 58, at 359 (James Madison) (Clinton Rossiter ed., 1961); *see also Biden v. Nebraska*, 600 U.S. 477, 505 (2023) (“Among Congress’s most important authorities is its control of the purse.”). Thus, if a President pursues initiatives inconsistent with congressional intent, Congress can wield its “power over the purse” to stop him. *The Federalist* No. 58, at 359 (James Madison) (Clinton

Rossiter ed., 1961); *see, e.g.*, William J. Baer, *Where to From Here: Reflection on the Recent Saga of the Federal Trade Commission*, 39 Okla. L. Rev. 51, 54 (1986) (detailing how congressional appropriations policy helped to stem the tide of overregulation by the Federal Trade Commission in the late 1970s and early 1980s).

Appointments. Congress also plays a key role in the appointment of executive branch officials. *See* U.S. Const. art II, § 2 (requiring the Senate’s “Advice and Consent” for presidential appointments). Thus, if Senators conclude that a personnel decision of the President would undermine the efficacy of a statutory scheme or otherwise impede the faithful execution of the law, they could refuse to confirm the President’s nominee.

Impeachment. Finally, the Constitution endows Congress with the power to impeach and remove executive branch officials. *See* U.S. Const. art I, § 2, cl. 5; U.S. Const. art I, § 3, cl. 6. Although it wields the impeachment power sparingly, Congress has employed this important tool when executive branch officials violate the law. *See, e.g.*, 4 Cong. Rec. 1255 (1876) (impeaching Secretary of War William W. Belknap).

In short, among Congress’s weightiest responsibilities is the duty to respond to changing circumstances—including executive implementation of federal statutes. The Constitution equips Congress well to undertake that duty, which it has often discharged throughout the Nation’s history. To do so, Members of Congress employ a variety of tools, none of which is all-purpose: each comes with costs and benefits, and Members choose among them carefully

to ensure that the executive faithfully upholds the law.

2. The Judiciary Is Ill-Suited to Update the Law in Response to Executive Action.

The courts, by contrast, lack the authority and capability to update the law in response to changes in executive administration. The Constitution does not vest the judiciary with the power of law revision, and even if courts had such authority, they would still lack the tools and institutional capacity to perform the task effectively.

To start, the Constitution does not confer power on the courts to update the law in response to changing circumstances, including changes in executive administration. *Cf.* James T. Barry III, Comment, *The Council of Revision and the Limits of Judicial Power*, 56 U. Chi. L. Rev. 235, 235 (1989) (describing the Framers’ rejection of a “Council of Revision” that “would have vested the federal veto power in an institution composed of the President and several members of the federal judiciary,” thereby “illustrat[ing] how the Framers ... chose instead a judiciary that took no part in the creation of laws”). Courts only resolve “Cases” and “Controversies.” U.S. Const. art. III, § 2. To do that job, they must ascertain and apply the law that governs the dispute before them. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). “But it is not the Judiciary’s role to update the law.” *Arizona v. Navajo Nation*, 599 U.S. 555, 566 (2023). That is squarely the responsibility of Congress.

Moreover, courts are not institutionally competent to determine when deficiencies in executive

administration require changes to existing legislation. Courts' insulation from the public means they are poorly equipped to understand the real-world effects of the executive's administration, and their lack of democratic accountability means they do not adequately channel the people's policy preferences. Further, courts lack the anti-faction protections that, per *Federalist* 10, tend to make federal legislation reflect the interests and views of the nation as a whole rather than of various blocs. See *The Federalist* No. 10 (James Madison) (Clinton Rossiter ed., 1961). And courts lack the wide array of differentiated instruments available to Congress for remedying executive maladministration. Of course, if administration of a statutory program violates the law in a way that inflicts a legally cognizable injury, courts can issue appropriate relief to the parties before them. See *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (“[F]ederal courts do not exercise general oversight of the Executive Branch; they resolve cases and controversies consistent with the authority Congress has given them.”). But courts are poorly situated to attempt the political remedies, such as amending statutory law, that Congress may employ.

B. The Fourth Circuit Usurped Congress's Legislative Authority.

This case should have been straightforward. In the CSRA, Congress “established a comprehensive system for reviewing personnel action taken against federal employees.” *United States v. Fausto*, 484 U.S. 439, 455 (1988). The District Court dismissed this suit on that basis, concluding “that Congress intended the CSRA scheme to preclude district court

jurisdiction” over a claim like the one brought by Respondent. App. 124a.

The Fourth Circuit panel (Harris, Heytens, Berner, JJ.) agreed with the District Court’s rationale. App. 2a. Yet the panel went a step further—unnecessarily igniting a separation-of-powers firestorm in the process. In the end, the Fourth Circuit somehow found itself remanding for a determination whether a statute passed by Congress and signed into law by the President remains “functional.” App. 19a. The very notion of a judge conducting such an inquiry is a reminder of why the Framers separated power in the way they did.

1. The Panel Turned an Ordinary CSRA Case into a Separation-of-Powers Mess.

The federal government employs millions of civil servants.² To promote the efficiency of the federal workforce, the government must undertake a variety of personnel actions—*e.g.*, setting personnel policies, enforcing internal standards, and firing employees when appropriate. Of course, an affected employee may want to challenge such a personnel action. And in enacting the CSRA, Congress provided an avenue for bringing such a challenge.

Under the CSRA, an employee can file a complaint with the Office of Special Counsel (OSC), which can refer such a complaint to the Merit Systems Protection Board (MSPB) if the Special Counsel believes that the complaint warrants the MSPB’s review. Depending on how this process plays out, the employee can petition for review in the U.S. Court of

² See *Workforce Size & Composition*, Off. of Personnel Mgmt. (last updated Jan. 21, 2026), <https://perma.cc/CF6W-8UXK>.

Appeals for the Federal Circuit after the agencies have taken an initial look. Congress made a policy choice when enacting this statutory scheme, striking a balance between the importance of judicial review of unlawful actions and the potential for unwarranted judicial intrusion into federal personnel management.

This case exemplifies the dilemma that the CSRA seeks to address. Concerned about “ensur[ing] that [the Executive Office for Immigration Review’s] messaging is consistent across official engagements,” the executive branch instituted a policy that required immigration judges, who are employed by the Department of Justice, to clear certain written work and speaking engagements ahead of time. App. 75a. Respondent, which represents immigration judges, challenged the policy. App. 72a–73a. The CSRA channels these sorts of challenges to the OSC and the MSPB, allowing the executive branch to address the federal employees’ concerns internally before opening up an interbranch process. And then, if the dispute does proceed to federal court, the CSRA ensures that it goes to the Federal Circuit—a specialized tribunal with a specific expertise in federal civil service issues.

So, when Respondent attempted to jump the track and sue in federal district court instead, the District Court dismissed the suit for lack of jurisdiction. App. 73a. Respondent appealed to the Fourth Circuit, arguing that although the CSRA channels most employment-related claims to the MSPB, its claim—“a simple pre-enforcement challenge to a far-reaching prior restraint”—is exempt from the scheme. Resp. C.A. Br. 13. For its part, the Fourth Circuit agreed with the District Court, concluding that the CSRA requires the OSC and MSPB to review such claims in

the first instance. Had the Fourth Circuit stopped there and affirmed the District Court’s dismissal, this case would be unremarkable.

The Fourth Circuit, however, went further. Even though Respondent accepted that the CSRA applied, the Fourth Circuit took it upon itself to ask whether the President’s actions have rendered the statute’s OSC-and-MSPB scheme of review non-“functional.” Purporting to apply *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), the panel determined that the District Court must “further examin[e]” whether Congress intended “to preclude district-court jurisdiction” because, in the panel’s view, “[t]he CSRA’s adjudicatory scheme was predicated on the existence of a functioning and independent MSPB and Special Counsel.” App. 11a. The panel’s decision recounts the President’s removals of Special Counsel Hampton Dellinger and multiple MSPB members, and it takes note of the Government’s litigating positions in several cases involving agency independence. App. 14a–15a. Then, after proceeding from the premise that the CSRA “requires a strong and independent” MSPB and OSC, the panel attacked the strawman that it had built. App. 2a. The panel concluded that the President’s personnel decisions “raise serious questions as to whether the CSRA’s adjudicatory scheme continues to function as intended.” App. 15a. Accordingly, the panel remanded to the District Court to determine “whether the CSRA continues to provide a functional adjudicatory scheme.” App. 19a. The Fourth Circuit denied en banc rehearing over the dissent of six judges. *See* App. 33a–34a, 48a–68a (Quattlebaum, J., dissenting from denial of rehearing en banc).

2. The Fourth Circuit’s Decision Flouts the Constitution’s Separation of Powers.

The Constitution does not empower district courts to conduct factual inquiries into the continued functionality of statutes. Under our Constitution, Congress—not the courts—must decide whether to amend a statute in light of how the President is administering that statute. That is with good reason. Because Members of Congress are elected by the American people, Congress is best suited to express the people’s views regarding the executive branch’s administration of the CSRA and their embrace or rejection of it. And Congress’s assessment of the CSRA’s administration will come far closer to representing the views of the people as a whole than any judicial panel ever could. If the American people believe the CSRA needs to be amended, then they can signal as much at the ballot box and at any time in between as Members continuously ask for and receive input from constituents.

Federal personnel policy has long been a controversial subject—arguably the catalyst of President James Garfield’s tragic assassination by a disgruntled office seeker in 1881. *See* C.W. Goodyear, *President Garfield: From Radical to Unifier* 456 (2023).³ A movement to reform the civil service laws reached a fever pitch in the aftermath of the assassination, resulting in Congress enacting the Pendleton Civil Service Reform Act of 1883 after

³ To be sure, a Garfield biographer suggests that the President’s assassin was not truly a committed advocate of patronage but rather “a lost soul who, with little left to live for, commit[ted] an atrocity simply for the sake of attention and notoriety.” *Id.* at 458.

robust deliberation and debate. See Ari Hoogenboom, *Outlawing the Spoils: A History of the Civil Service Reform Movement 1865-1883*, at 236–53 (1968). The “Act was designed to end the ‘spoils system,’ in which newly elected politicians would quickly replace subordinate officials with political allies.” Aneil Kovvali & Joshua C. Macey, *Private Profits and Public Business*, 103 *Tex. L. Rev.* 711, 766 n.203 (2025).

This area of policy has remained a subject of sustained public attention in the ensuing years, demanding weighty policy choices. Americans want an efficient, effective government that serves the people and is responsive to them. At the same time, federal employees have pushed for workplace protections and labor rights. “The job of resolving how best to weigh [these] competing costs and benefits belongs to the people’s elected representatives, not unelected judges charged with applying the law as they find it.” *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 369 (2025).

Congress rebalanced these costs and benefits when it enacted the CSRA in 1978, alongside the Inspector General Act, partly “[i]n response to the Watergate Scandal.” Stephen Coleman Tily, Note, *National Security Whistleblowing vs. Dodd-Frank Whistleblowing*, 80 *Brook. L. Rev.* 1191, 1197 (2015). The law established that a “significant change in duties, responsibilities, or working conditions” in violation of a “law, rule, or regulation implementing, or directly concerning, the merit system principles” would be a “prohibited personnel practice.” 5 U.S.C. § 2302(a)(1), (2)(xii), and (b)(12). One such principle is that the government must give all employees “fair

and equitable treatment ... with proper regard for their privacy and constitutional rights.” *Id.* § 2301(b)(2). But instead of authorizing direct review of allegedly prohibited personnel practices in court, Congress established federal agencies—OSC and the MSPB—to hear challenges in the first instance before an aggrieved employee could take his complaint to the judicial branch. *Id.* §§ 1204, 1211. And even after that, the employee would need to go specifically to the U.S. Court of Appeals for the Federal Circuit—a specialized court. *See id.* § 7703(b)(1)(A). This statutory approach balances the needs of federal employees with the sensitivities of involving another branch of government (*i.e.*, the judiciary) in an intra-executive branch dispute, all the while promoting the efficiency of the federal service.

As the enactment of the CSRA shows, when executive branch actions require a change to the law, Congress is willing and able to make it. When Congress does so, it is far better than any court could be at channeling the people’s policy judgments. Moreover, Congress possesses a robust set of factfinding tools—such as hearings and subpoenas—to identify problems with presidential administration, and it has unique access to the people’s views about how that administration is playing out on the ground. That is in contrast to courts, which are limited to the evidentiary record in a given dispute. By bringing together the people’s views on such a complex and divisive topic as civil service reform, Members of Congress can arrive at solutions that appeal to the American people as a whole.

3. This Case Demonstrates Why the Framers Designed the Constitution the Way They Did.

The Fourth Circuit’s decision suffers from many flaws that illustrate why the Constitution looks to Congress, rather than the judiciary, for statutory amendments. Two problems with the decision merit special attention. *First*, the Fourth Circuit took issue with the MSPB’s lack of quorum. But Congress, not the courts, is best equipped to assess the significance of the MSPB’s occasional lack of a quorum, and Congress has tools to encourage the President to appoint board members. *Second*, the Fourth Circuit panel expressed concern regarding the President’s removal of certain officials and the Government’s positions in litigation. But the CSRA’s text does not show that its review scheme hinges on agency independence—and only Congress itself has authority to change that.

The Fourth Circuit opined that “[i]n addition to providing a functioning adjudicatory process, the CSRA was designed to protect the independence of the agencies reviewing federal employees’ claims.” App. 15a. Thus, the court took “judicial notice of matters of public record” that bore on the “independence” of the OSC and MSPB. App. 14a. In particular, the court took “notice that during the pendency of this case, the President removed the Special Counsel and two members of the MSPB such that it currently lacks a quorum.” App. 14a–15a (citation omitted). The court seemed to assume that for the CSRA to have an “adjudicatory scheme [that] continues to function as intended,” the OSC and MSPB must be (1) formally

independent, (2) treated as such by the President, and (3) have a quorum. App. 15a. That is incorrect.

Beginning with the quorum issue, the fact that the MSPB happened not to have a quorum during certain periods in this litigation is unremarkable. As the Government’s petition points out, “[t]he MSPB lacked a quorum between January 7, 2017, and March 3, 2022; between March 28 and April 7, 2025; and between April 9 and October 28, 2025.” Pet. 28. Of course, the mere fact that the MSPB occasionally lacks a quorum does not *ipso facto* render the CSRA’s review scheme ineffective. Nor does a history of failure to have a quorum mean the agency will lack a quorum in the future. It is for Congress, rather than the courts, to decide whether the absence of an MSPB quorum is sufficiently frequent and damaging to render the CSRA’s system of review ineffective, whether such failures are likely to continue into the future, and what remedies (if any) are justified to encourage the maintenance of an MSPB quorum. The MSPB’s occasional lack of a quorum does not authorize courts to toss out Congress’s choice in the CSRA to strip the courts of jurisdiction to hear claims like those at issue here in the first instance.

Moving on to the President’s removals of OSC and MSPB officials, the Fourth Circuit’s decision rests on the premise that the CSRA’s adjudicatory scheme depends on OSC and MSPB independence. But that premise is mistaken. True, the CSRA conferred statutory removal protections on the head of the OSC and the members of the MSPB. *See* 5 U.S.C. §§ 1202(d), 1211(b). But if those officials were in fact

removable at will,⁴ then the CSRA’s adjudicatory scheme still would vindicate the executive branch’s interest in having the first opportunity to review complaints about federal personnel practices before another branch of government gets involved. Moreover, presidential control of the internal review process does not necessarily mean that the process will be abused—in fact, this Court has instructed that “in the absence of clear evidence to the contrary, courts presume that [public officials] have properly discharged their official duties.” *United States v. Chem. Found.*, 272 U.S. 1, 14–15 (1926).

The broader point is that the question how the President’s assertion of removal authority over the OSC and MSPB members advances or impedes Congress’s various goals in enacting the CSRA is squarely within Congress’s wheelhouse. For the reasons already given, courts are poorly equipped to make that policy judgment.

To be sure, in some cases—namely those in which a statutory provision has been held unconstitutional—courts must inquire whether the provision is severable from the remainder of the statute. But in doing so, courts must be guided by Congress. *See Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 685 (1987); *Nat’l Treas. Emps. Union v. United States*, 990 F.2d 1271, 1278 (D.C. Cir. 1993), *aff’d in*

⁴ *Cf. Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025) (staying a district court order that enjoined the President’s removal of an MSPB member but reserving judgment on whether the statutory removal protections at issue are constitutional); *Trump v. Slaughter*, 146 S. Ct. 18 (2025) (staying lower-court order that had reinstated a Federal Trade Commission official based on similar statutory removal restrictions).

part, rev'd in part, 513 U.S. 454 (1995) (“Whether an unconstitutional provision is severable ‘is largely a question of legislative intent, but the presumption is in favor of severability.’” (quoting *Regan v. Time, Inc.*, 468 U.S. 641, 653 (1984))). Under this Court’s cases, courts are not to exercise their own policy judgment about what the law *should* look like without the stricken provision; rather, they are to give effect to the balance of the statute that Congress has enacted, absent a clear indication that Congress would not have enacted it without the stricken provision. The Fourth Circuit did not purport to conduct a severability analysis of the sort prescribed by this Court. Had it done so, the outcome would have been clear: the removal protections at issue are not integral to the CSRA’s scheme, which must therefore be given effect.

II. Summary Reversal Is Warranted to Safeguard the Legislative Process.

If left unaddressed, the decision below will destabilize the legislative process. If other courts embrace the reasoning adopted by the Fourth Circuit here—that a court is free to dispense with various statutory provisions when it disagrees with the executive branch’s administration of the statute—then Congress will have to change its approach to legislating in important ways. Even if this practice remains confined within the Fourth Circuit’s borders, it will inject considerable uncertainty into lawmaking.

For the most part, Members of Congress legislate on the understanding that courts will enforce the statutes they enact as written. After all, this Court has made clear that courts must “interpre[t] [statutory] language according to its ‘ordinary,

contemporary, common meaning.” *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022) (citation omitted). Members are aware of the limited circumstances in which courts deviate from ordinary meaning. Judges, for instance, require a clear statement of congressional intent to give a statute retroactive effect, *see Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994), to apply a statute extraterritorially, *see RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 335 (2016), or to abrogate state sovereign immunity, *see Fin. Oversight & Mgmt. Bd. for P.R. v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 346 (2023). Although these “dice-loading rules” are disfavored, Antonin Scalia, *A Matter of Interpretation* 28 (1997), courts nonetheless employ them in significant part because Congress “legislates against” their longstanding backdrop. *Bond v. United States*, 572 U.S. 844, 857 (2014) (citation and quotation marks omitted). With the exception of these and other long-settled canons of construction, Members of Congress deliberate and negotiate with the expectation that courts will give effect to the ordinary meaning of the statutes they enact—notwithstanding any post-enactment social, economic, or political developments.

The Fourth Circuit’s ruling upends those settled expectations. By embracing the notion that courts can tinker with statutes in response to changes in the executive branch’s administration of them, the decision below will require Congress to be much more explicit about its intent to leave statutory provisions in effect notwithstanding future changes in the way statutes are administered. The Fourth Circuit “effectively impose[s] a ‘clarity tax’ on Congress by

demanding that it speak unequivocally if it wants to accomplish certain ends.” *Biden*, 600 U.S. at 508 (Barrett, J., concurring) (quoting John F. Manning, *Clear Statement Rules and the Constitution*, 110 Colum. L. Rev. 399, 403 (2010)). If allowed to stand, this reasoning will make the difficult task of legislation even more challenging, risking future mismatches between the original public meaning of a statute and the meaning ascribed to the statute by courts.

As Judge Wilkinson opined in the en banc proceedings in this case, “only the Supreme Court can bring an effective halt” to these “seeds of real mischief.” *Nat’l Ass’n of Immigr. Judges v. Owen*, 160 F.4th 100, 103 (4th Cir. 2025) (Wilkinson, J., concurring in the denial of rehearing en banc). This Court summarily reverses lower court decisions that clearly flout established legal principles. *See, e.g., City of Tahlequah v. Bond*, 595 U.S. 9, 13 (2021). Indeed, earlier this term, the Court summarily reversed the Fourth Circuit for exceeding the proper bounds of the judicial role. *See Clark v. Sweeney*, No. 25-52, 2025 WL 3260170, at *2 (U.S. Nov. 24, 2025). It should do so again here.

CONCLUSION

For the foregoing reasons, and the reasons stated in the government’s petition for certiorari, this Court should summarily reverse the Fourth Circuit’s decision.

Respectfully submitted,

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