2026 Supplement: Modern Administrative Law

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Preface
2026 Supplement to: James R. May, Modern Administrative Law

This supplement summarizes the most significant developments in administrative law since publication of James R. May, *Modern Administrative Law*. The last three years have proven extraordinary for the field: the Supreme Court has overruled *Chevron* deference after forty years (*Loper Bright Enterprises v. Raimondo*), reworked the accrual rule governing statute-of-limitations challenges to agency rules (*Corner Post, Inc. v. Board of Governors of the Federal Reserve System*), extended the Seventh Amendment jury-trial right into SEC and other in-house enforcement actions (*SEC v. Jarkesy*), eased the path to Article III standing for businesses challenging the regulation of others (*Diamond Alternative Energy, LLC v. EPA*), applied a reinvigorated major questions doctrine to strike down the President's IEEPA tariffs (*Learning Resources, Inc. v. Trump*), and, in the most recent and consequential trio of cases, dismantled for-cause removal protections for independent agency heads while carving out a narrow exception for the Federal Reserve (*Trump v. Wilcox*, *Trump v. Slaughter*, and *Trump v. Cook*).

Two of these decisions, *Learning Resources* and *Loper Bright*, are foundational to the future shape of administrative law; the *Slaughter*/*Cook* pair resolves (and partly reopens) decades of uncertainty over the presidential removal power first raised by *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Each case summary below is keyed to a specific insertion point in the casebook, with the relevant printed page number and its position relative to the nearest chapter landmark (typically the REVIEW QUESTIONS AND COMMENTS section closing the relevant discussion). We hope you find this supplement useful in updating your course materials and welcome any feedback james.may@washburn.edu.

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Table of Contents

Preface 2
Table of Cases 4
Learning Resources, Inc. v. Trump 4
The Removal Power, 2025–26: From Wilcox to Slaughter and Cook 18
    Trump v. Wilcox 18
    Trump v. Slaughter 22
    Trump v. Cook 29
SEC v. Jarkesy 40
Diamond Alternative Energy, LLC v. EPA 52
Corner Post, Inc. v. Board of Governors of the Federal Reserve System 62
Loper Bright Enterprises v. Raimondo 78
    Note: Loper Bright Applied — Lesko v. United States 92

Table of Cases

Case Name	Casebook Page Number
Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026), Supreme Court of the United States	76
Trump v. Wilcox, 145 S. Ct. 1415 (2025), Supreme Court of the United States (stay order)	130
Trump v. Slaughter, 609 U.S. ___ (2026), Supreme Court of the United States	130
Trump v. Cook, 609 U.S. ___ (2026), Supreme Court of the United States	130
SEC v. Jarkesy, 603 U.S. 109 (2024), Supreme Court of the United States	193
Diamond Alternative Energy, LLC v. EPA, 606 U.S. ___ (2025), Supreme Court of the United States	272
Corner Post, Inc. v. Board of Governors of the Federal Reserve System, 603 U.S. 799 (2024), Supreme Court of the United States	333
Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), Supreme Court of the United States	340
Lesko v. United States, 161 F.4th 1352 (Fed. Cir. 2025) (en banc) (note following *Loper Bright*)	340

Insert at p. 76, after REVIEW QUESTIONS AND COMMENTS following Biden v. Nebraska, at the close of Part III (Major Questions Doctrine) and immediately before Chapter 3 begins

***Learning Resources, Inc. v. Trump*, 607 U. S. 229 (2026)**, Supreme Court of the United States

CHIEF JUSTICE ROBERTS announced the judgment of the Court and delivered the opinion of the Court, except as to Parts II–A–2 and III. We decide whether the International Emergency Economic Powers Act (IEEPA) authorizes the President to impose tariffs.

I

Shortly after taking office, President Trump sought to address two foreign threats. The first was the influx of illegal drugs from Canada, Mexico, and China. *** The second was "large and persistent" trade deficits. *** He invoked his authority under IEEPA to respond. Enacted in 1977, IEEPA gives the President economic tools to address significant foreign threats. When acting under IEEPA, the President must identify an "unusual and extraordinary threat" to American national security, foreign policy, or the economy, originating primarily "outside the United States." 50 U. S. C. §1701(a). And he must "declare[ ] a national emergency" under the National Emergencies Act. He may then, "by means of instructions, licenses, or otherwise," take the following actions to "deal with" the threat: "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest." §§1701(a), 1702(a)(1)(B). President Trump declared a national emergency as to both the drug trafficking and the trade deficits. He then imposed tariffs to deal with each threat. As to the drug trafficking tariffs, the President imposed a 25% duty on most Canadian and Mexican imports and a 10% duty on most Chinese imports. As to the trade deficit (or "reciprocal") tariffs, the President imposed a duty "on all imports from all trading partners" of at least 10%. Dozens of nations faced higher rates. Since imposing each set of tariffs, the President has issued several increases, reductions, and other modifications, bringing the total effective tariff rate on most Chinese goods to 145%. ***

Petitioners in Learning Resources and respondents in V.O.S. Selections filed suit, alleging that IEEPA does not authorize the reciprocal or drug trafficking tariffs. *** The District Court denied that motion and granted the plaintiffs' motion for a preliminary injunction, concluding that IEEPA did not grant the President the power to impose tariffs. In the V.O.S. Selections case, the CIT granted the plaintiffs' motion for summary judgment. The Federal Circuit, sitting *en banc*, affirmed in relevant part. *** On the merits, it agreed with the CIT that IEEPA's grant of authority to "regulate . . . importation" did not authorize the challenged tariffs, which "are unbounded in scope, amount, and duration." *** We granted the motion and petitions and consolidated the cases.

II

Based on two words separated by 16 others in Section 1702(a)(1)(B) of IEEPA—"regulate" and "importation"—the President asserts the independent power to impose tariffs on imports from any country, of any product, at any rate, for any amount of time. Those words cannot bear such weight.

A

Article I, Section 8, of the Constitution sets forth the powers of the Legislative Branch. The first Clause of that provision specifies that "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises." It is no accident that this power appears first. The power to tax was, Alexander Hamilton explained, "the most important of the authorities proposed to be conferred upon the Union." The Federalist No. 33, pp. 202–203. It is both a "power to destroy," *McCulloch v. Maryland*, 4 Wheat. 316, 431 (1819), and a power "necessary to the existence and prosperity of a nation"—"the one great power upon which the whole national fabric is based." *Nicol v. Ames*, 173 U. S. 509, 515 (1899).

The power to impose tariffs is "very clear[ly] . . . a branch of the taxing power." *Gibbons v. Ogden*, 9 Wheat. 1, 201 (1824). "A tariff," after all, "is a tax levied on imported goods and services." And tariffs "raise[ ] revenue," *West Lynn Creamery, Inc. v. Healy*, 512 U. S. 186, 193 (1994)—the defining feature of a tax. Recognizing the taxing power's unique importance, and having just fought a revolution motivated in large part by "taxation without representation," the Framers gave Congress "alone . . . access to the pockets of the people." The Federalist No. 48, at 310 (J. Madison). They required "All Bills for raising Revenue [to] originate in the House of Representatives." U. S. Const., Art. I, §7, cl. 1. They did not vest any part of the taxing power in the Executive Branch. The Government thus concedes, as it must, that the President enjoys no inherent authority to impose tariffs during peacetime. And it does not defend the challenged tariffs as an exercise of the President's warmaking powers. The Government instead relies exclusively on IEEPA. It reads the words "regulate" and "importation" to effect a sweeping delegation of Congress's power to set tariff policy—authorizing the President to impose tariffs of unlimited amount and duration, on any product from any country.

We have long expressed "reluctan[ce] to read into ambiguous statutory text" extraordinary delegations of Congress's powers. *West Virginia v. EPA*, 597 U. S. 697, 723 (2022). In *Biden v. Nebraska*, 600 U. S. 477 (2023), for example, we declined to read authorization to "waive or modify" statutory or regulatory provisions applicable to financial assistance programs as a delegation of power to cancel $430 billion in student loan debt. In *West Virginia v. EPA*, we declined to read authorization to determine the "best system of emission reduction" as a delegation of power to force a nationwide transition away from the use of coal. And in *National Federation of Independent Business v. OSHA*, 595 U. S. 109 (2022), we declined to read authorization to ensure "safe and healthful working conditions" as a delegation of power to impose a vaccine mandate on 84 million Americans. *** We have described several of these cases as "major questions" cases. In each, the Government claimed broad, expansive power on an uncertain statutory basis. And in each, the statutory text might "[a]s a matter of definitional possibilities" have been read to delegate the asserted power. But "context" counseled "skepticism." That context included not just other language within the statute, but "constitutional structure" and "common sense." "[B]oth separation of powers principles and a practical understanding of legislative intent" suggested Congress would not have delegated "highly consequential power" through ambiguous language. These considerations apply with particular force where, as here, the purported delegation involves the core congressional power of the purse.

What common sense suggests, congressional practice confirms. When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits. Congress has consistently used words like "duty" in statutes delegating authority to impose tariffs. *** It has capped the amount and duration of tariffs. *** And it has conditioned exercise of the tariff power on demanding procedural prerequisites. *** Against this backdrop of clear and limited delegations, the Government reads IEEPA to give the President power to unilaterally impose unbounded tariffs. On this reading, moreover, the President is unconstrained by the significant procedural limitations in other tariff statutes and free to issue a dizzying array of modifications at will. All it takes to unlock that extraordinary power is a Presidential declaration of emergency, which the Government asserts is unreviewable. And the only way of restraining the exercise of that power is a veto-proof majority in Congress. That view, if credited, would "represent[ ] a 'transformative expansion'" of the President's authority over tariff policy, and indeed—as demonstrated by the exercise of that authority in this case—over the broader economy as well. It is also telling that in IEEPA's "half century of existence," no President has invoked the statute to impose any tariffs—let alone tariffs of this magnitude and scope. *** The "'lack of historical precedent'" for the IEEPA tariffs, "coupled with the breadth of authority" that the President now claims, "is a 'telling indication'" that the tariffs extend beyond the President's "legitimate reach." *** These stakes dwarf those of other major questions cases. As in those cases, "a reasonable interpreter would [not] expect" Congress to "pawn[ ]" such a "big-time policy call[ ] . . . off to another branch."

The Government and the principal dissent attempt to avoid application of the major questions doctrine on several grounds. None is convincing. The Government argues first that the doctrine should not apply to emergency statutes. But this argument is nearly identical to one it already advanced in Nebraska. We rejected that argument in Nebraska, and we reject it here as well. "Emergency powers," after all, "tend to kindle emergencies." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 650 (1952) (Jackson, J., concurring). The Government's and the principal dissent's proposed foreign affairs exception fares no better. As the Government admits, the President and Congress do not "enjoy concurrent constitutional authority" to impose tariffs during peacetime. The Framers gave that power to "Congress alone"—notwithstanding the obvious foreign affairs implications of tariffs. *Merritt v. Welsh*, 104 U. S. 694, 700 (1882). The central thrust of the Government's and the principal dissent's proposed exceptions appears to be that ambiguous delegations in statutes addressing "the most major of major questions" should necessarily be construed broadly. But it simply does not follow from the fact that a statute deals with major problems that it should be read to delegate all major powers for which there may be a "colorable textual basis." There is no major questions exception to the major questions doctrine. Accordingly, the President must "point to clear congressional authorization" to justify his extraordinary assertion of the power to impose tariffs. He cannot.

B

To begin, IEEPA authorizes the President to "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit . . .

importation or exportation." Absent from this lengthy list of powers is any mention of tariffs or duties. It stands to reason that had Congress intended to convey the distinct and extraordinary power to impose tariffs, it would have done so expressly—as it consistently has in other tariff statutes. The power to "regulate . . . importation" does not fill that void. "Regulate," as that term is ordinarily used, means to "fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws." This definition captures much of what a government does on a day-to-day basis. But the facial breadth of "regulate" places in stark relief what the term is not usually thought to include: taxation. The U. S. Code is replete with statutes granting the Executive the authority to "regulate" someone or something. Yet the Government cannot identify any statute in which the power to regulate includes the power to tax. We are therefore skeptical that in IEEPA—and IEEPA alone—Congress hid a delegation of its birth-right power to tax within the quotidian power to "regulate." Taxes, to be sure, may accomplish regulatory ends. But it does not follow that the power to regulate something includes the power to tax it as a means of regulation. When Congress addresses both the power to regulate and the power to tax, it does so separately and expressly. That Congress did not grant those authorities separately here is strong evidence that "regulate" in IEEPA does not include taxation.

A contrary reading would render IEEPA partly unconstitutional. IEEPA authorizes the President to "regulate . . . importation or exportation." But taxing exports is expressly forbidden by the Constitution. Art. I, §9, cl. 5. The "neighboring words" with which "regulate" "is associated" also suggest that Congress did not intend for "regulate" to include the revenue-raising power. "Regulate" is one of nine verbs listed in §1702(a)(1)(B). Each authorizes a distinct action a President might take in sanctioning foreign actors or controlling domestic actors engaged in foreign commerce—blocking imports, for example, or prohibiting transactions. None of IEEPA's authorities includes the distinct and extraordinary power to raise revenue. And the fact that no President has ever found such power in IEEPA is strong evidence that it does not exist.

The Government, echoed point-for-point by the principal dissent, marshals several arguments in response. First, it contends that IEEPA confers the power to impose tariffs because early commentators and this Court's cases discuss tariffs in the context of the Constitution's Commerce Clause. But that answers the wrong question. The question is not whether tariffs can ever be a means of regulating commerce. It is instead whether Congress, when conferring the power to "regulate . . . importation," gave the President the power to impose tariffs at his sole discretion. And Congress's pattern of usage is most relevant to answering that question. That pattern is plain: When Congress grants the power to impose tariffs, it does so clearly and with careful constraints. It did neither here. The Government raises another contextual argument: because "regulate" "lies between" two "poles" in IEEPA—"compel" on the affirmative end and "prohibit" on the negative end—the term naturally includes the "less extreme, more flexible" tool of tariffs. But tariffs, as discussed above, are different in kind, not degree, from the other authorities in IEEPA. They are instead "very clear[ly] . . . a branch of the taxing power" and fall outside the spectrum entirely. Finding no support in the statute the President invoked, the Government turns to one he did not: IEEPA's predecessor, TWEA. In 1975, the Court of Customs and Patent Appeals held that the authority to "regulate . . . importation" in TWEA authorized President Nixon to impose limited tariffs. *United States v. Yoshida Int'l, Inc.*, 526 F. 2d 560, 572, 577–578. This argument cannot bear the weight the Government places on it. A single, expressly limited opinion from a specialized intermediate appellate court does not clear the hurdle required to conclude Congress incorporated a judicial definition into legislation. The Government has another historical argument based on this Court's wartime precedents. But insofar as the Government relies on our wartime cases themselves, they are facially inapposite: all agree that the President has no inherent peacetime authority to impose tariffs. Finally, the Government invokes *Dames & Moore v. Regan*, 453 U. S. 654 (1981), but that case offers no support; it was exceedingly narrow, did not address the President's power to "regulate," and did not involve tariffs at all.

III

The President asserts the extraordinary power to unilaterally impose tariffs of unlimited amount, duration, and scope. In light of the breadth, history, and constitutional context of that asserted authority, he must identify clear congressional authorization to exercise it. IEEPA's grant of authority to "regulate . . . importation" falls short. IEEPA contains no reference to tariffs or duties. The Government points to no statute in which Congress used the word "regulate" to authorize taxation. And until now no President has read IEEPA to confer such power. We claim no special competence in matters of economics or foreign affairs. We claim only, as we must, the limited role assigned to us by Article III of the Constitution. Fulfilling that role, we hold that IEEPA does not authorize the President to impose tariffs.

The judgment of the United States Court of Appeals for the Federal Circuit in case No. 25–250 is affirmed. The judgment of the United States District Court for the District of Columbia in case No. 24–1287 is vacated, and the case is remanded with instructions to dismiss for lack of jurisdiction. It is so ordered.

JUSTICE GORSUCH, concurring.

The President claims that Congress delegated to him an extraordinary power in the International Emergency Economic Powers Act (IEEPA)—the power to impose tariffs on practically any products he wants, from any countries he chooses, in any amounts he selects. Applying the major questions doctrine, the principal opinion rejects that argument. I join in full. The Constitution lodges the Nation's lawmaking powers in Congress alone, and the major questions doctrine safeguards that assignment against executive encroachment. Under the doctrine's terms, the President must identify clear statutory authority for the extraordinary delegated power he claims. And, as the principal opinion explains, that is a standard he cannot meet.

Whatever else might be said about Congress's work in IEEPA, it did not clearly surrender to the President the sweeping tariff power he seeks to wield. Not everyone sees it this way. Past critics of the major questions doctrine insist they can reach the same result by employing only routine tools of statutory interpretation. Meanwhile, one colleague who joins the principal opinion in full suggests the major questions doctrine is nothing more than routine statutory interpretation. Still others who have joined major questions decisions in the past dissent from today's application of the doctrine. Finally, seeking to sidestep the major questions doctrine altogether, one colleague submits that Congress may hand over to the President most of its powers, including the tariff power, without limit. Each camp warrants a visit.

I

Start with the critics. In the past, they have criticized the major questions doctrine for two main reasons: as a novelty without basis in law, and as rooted in an "anti-administrative-state stance." Today, the critics proceed differently. They join a section of the principal opinion that applies the major questions doctrine. And rather than critique the doctrine, they say only that it is "unnecessary" in this case "because ordinary principles of statutory interpretation lead to the same result." *** As we have seen, many of our major questions cases have found broad or general terms in significant statutes insufficient to support a claim to an extraordinary or unusual power. And here, the word "regulate" is broad as can be—so broad that it could be read to "captur[e] much of what a government does." Ultimately, the central question in any major questions case remains whether the executive branch's claim to an extraordinary power is supported by clear statutory authority. And, as the principal opinion explains at length, many additional clues confirm that the President cannot meet that standard in this case.

II

Turn now to the second camp. JUSTICE BARRETT has suggested that the major questions doctrine might be reconceived—not as a "substantive canon designed to enforce Article I's Vesting Clause," but as a "commonsense principl[e] of communication" that counsels "skepticism" when executive officials claim extraordinary powers derived from Congress. It is a thoughtful effort, but I harbor doubts. Commonsense principles of communication do not explain many of our major questions cases—this one included. And if common sense really does go so far as to embrace a rule counseling "skepticism" of claims by executive officials that Congress has granted them extraordinary powers, that is common sense in name only. The reason for such skepticism must be Article I, a "substantive" source "external" to any statute. ***

III

That brings us to the third camp. My dissenting colleagues have defended the major questions doctrine in the past, and they do so again today. They agree that the doctrine is grounded in the Constitution, and that it requires us to deviate from "routine" statutory interpretation principles. But, my colleagues say, IEEPA provides the clear statement needed to sustain the President's tariffs. Alternatively, they submit, we shouldn't apply the major questions doctrine to any statute, like IEEPA, that implicates "foreign affairs."

My dissenting colleagues begin by taking the major questions doctrine as they find it. They accept that the President's challenged actions are "of major economic and political significance," and that he must identify "clear" congressional authorization to sustain those actions. Still, the dissent maintains, IEEPA clearly grants the President the tariff power he asserts, consulting four clues we have sometimes employed in our major questions cases. *** But to my eyes, the dissent engages in a little grade inflation when applying them. First, is the President seeking to exercise an "unheralded" or "newfound" power based on a "long-extant" statute? The dissent insists that is not the case here because President Nixon imposed a 10 percent tariff on most imports in 1971 and defended that action under TWEA. But in the 85 years of TWEA's existence with the "regulate . . . importation" language (and the 49 years of IEEPA's), that is the only time either statute has been invoked to impose tariffs. A single time, and one never tested in this Court. That is pretty strong evidence the President here seeks to "deploy an old statute" in a novel way. Second, how has the executive branch interpreted IEEPA in the past? The fact that no President until now has invoked

IEEPA to impose a duty—even one percent on one product from one country—is telling. Third, is there a "mismatch" between the action the executive official seeks to take and his expertise? On this one, I agree with the dissent: if tariffs fall in any executive official's "wheelhouse," it's the President's. Fourth, is the President "relying on oblique, elliptical, or cryptic language"? The dissent says no. But our cases also caution against reading extraordinary powers into "broad or general" statutory language—and "regulate" is about as broad as language gets. As I see it, three of the four clues the dissent relies on cut against it.

If the President's claim fails under our usual major questions test, the dissent says we should carve out an exception to it for cases touching on "foreign affairs." On this score, I share a limited point of agreement with the dissent. Like the nondelegation doctrine, the major questions doctrine protects Article I's Vesting Clause and, for that reason, does not apply where the President is exercising only his own inherent Article II powers. ***

IV

That leaves one final camp to consider. JUSTICE THOMAS suggests that Congress may hand over most of its constitutionally vested powers to the President completely and forever—that the only powers Congress may not delegate are those that involve "rules setting the conditions for deprivations of life, liberty, or property." From this rule, it follows that Congress may give all its tariff powers to the President because "[i]mporting is a matter of privilege." It's a sweeping theory, and one that presents difficulties of its own. First, I do not see how JUSTICE THOMAS's theory resolves all separation-of-powers concerns in this case. Even if Congress can delegate its tariff powers to the President as completely as JUSTICE THOMAS suggests, the question remains whether Congress has given the President the tariff authority he claims in this case. Put another way, JUSTICE THOMAS's nondelegation solution does not automatically solve the major questions problem. Second, even when it comes to the nondelegation doctrine, JUSTICE THOMAS's theory raises many questions. On his telling, the doctrine applies only to Congress's true legislative powers, which he says include only those touching on life, liberty, or property—so that all "other kinds of power[s]" enumerated in Article I, §8, including the powers to borrow and spend money, declare war, and regulate foreign trade, may be delegated at will. But what do we make of the Constitution's text? Section 1 of Article I vests "[a]ll legislative Powers herein granted" in Congress and no one else. Section 8 proceeds to list those powers in detail and without differentiation. Neither provision speaks of some divide between true legislative powers touching on life, liberty, or property and other kinds of power that may be given away and possibly lost forever to the President. ***

JUSTICE BARRETT, concurring.

As the principal opinion demonstrates, the most natural reading of the International Emergency Economic Powers Act does not encompass the power to impose tariffs. I write only to address JUSTICE GORSUCH's concurrence regarding the major questions doctrine. To the extent that JUSTICE GORSUCH attacks the view that "common sense" alone can explain all our major questions decisions, he takes down a straw man. I have never espoused that view. Rather, as I explained in my concurrence in *Biden v. Nebraska*, 600 U. S. 477, 507 (2023), the major questions doctrine "situates text in context" and is therefore best understood as an ordinary application of textualism. Textualists—like all those who use language to communicate—do not interpret words in a vacuum. Instead, we use context, including "[b]ackground legal conventions," "common sense," and "constitutional structure," to ascertain a text's "most natural meaning." Part of this context is Article I of the Constitution, which vests Congress with "[a]ll legislative Powers." Because Article I grants all legislative powers to Congress, the reasonable interpreter would expect Congress "to make the big-time policy calls itself, rather than pawning them off to another branch."

To the extent that JUSTICE GORSUCH also thinks that background legal conventions and constitutional structure inform the most natural reading of a statute, then we may not be very far apart. Our only disagreement may be over the level of clarity required before a particular interpretation can be deemed the most natural one. I understand JUSTICE GORSUCH to require Congress always to speak precisely to any major power that it intends to give away. As I have said before, I think that other, "less obvious" clues can do the trick. I do not see any such clues here; in fact, as the Court explains, the clues we have point in the opposite direction. *** At times, though, JUSTICE GORSUCH suggests that the purpose of the major questions doctrine is something other than to ascertain the most natural reading of a statute—that it serves to prevent "highly resourceful members of the executive branch" from "assum[ing] new power for themselves" because "men are not angels." But if the Constitution permits Congress to give the Executive a particular power, who are we to get in the way? Does the Judiciary really protect the Constitution by impeding the constitutional action of another branch? If JUSTICE GORSUCH thinks that we should forgo the most natural reading of a statute because it is preferable for Congress, rather than the President, to make big decisions, that way lies "a lot of trouble" for the textualist. Strong-form substantive canons—canons instructing a judge to adopt "an inferior-but-tenable reading"—veer beyond interpretation and into policymaking. And while the policy may be desirable or even constitutionally inspired, judges should hesitate to impose disciplining rules on Congress. JUSTICE GORSUCH proposes to do something new. The innovation is in significant tension with textualism, so I do not support the project.

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join, concurring in part and concurring in the judgment.

The Court holds today that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs. I agree with that conclusion, as I do with the bulk of the principal opinion's reasoning. But because I think the ordinary tools of statutory interpretation amply support today's result, I do not join the part of that opinion invoking the so-called major-questions doctrine. The demand is for a clear statement—something more explicit or specific than the statutory basis that would ordinarily suffice to support executive action. I objected, in the principal cases cited, to the demand for a special brand of legislative clarity. In my view, the Court used its clear-authorization rule in those cases to negate expansive delegations Congress had approved. I explained there that the proper way to interpret a delegation provision is through the standard rules of statutory construction: reading text in context, examining a delegation provision's language, assessing its place in the broader statutory scheme, and applying a "modicum of common sense" about how Congress typically delegates.

This case presents more nearly the opposite situation: the use of a clear-statement rule here is unnecessary because ordinary principles of statutory interpretation lead to the same result. It is not just that the Government's arguments fail to satisfy an especially strict test; it is that they fail to satisfy the normal one. The crucial provision of IEEPA, when viewed in light of the broader statutory scheme and with a practical awareness of how Congress delegates tariff authority, does not give the President the power he wants. Most important, IEEPA's key phrase—the one the Government relies on—says nothing about imposing tariffs or taxes. That text authorizes the President, upon finding a foreign threat and declaring an emergency, to "regulate" the "importation" of foreign goods. And the meaning of "regulate," both in common parlance and as Congress uses the word, does not encompass taxing. Hundreds of provisions in the U. S. Code give agencies the authority to "regulate" one thing or another. Yet the Government cannot identify a single one that is understood to grant taxing power. When Congress wants to delegate that power, it uses a whole different vocabulary—terms like "duty," "tariff," or "surcharge," which do not appear in IEEPA. Congress still follows the path this Court long ago marked out, of treating the power to "regulate" trade as "entirely distinct" from the power to "levy taxes." So in granting only the former, IEEPA excludes the latter: The President has the ability to regulate, but not to impose taxes on, imports.

The surrounding statutory language confirms the point. "Regulate" is one of 9 verbs listed in IEEPA's delegation provision. Those verbs are followed by 11 objects, each describing a distinct sort of transaction involving foreign property. Combine the verbs and objects in all possible ways, and the statute authorizes 99 actions a President can take to address a foreign threat. And exactly none of the other 98 involves raising revenues. So when the phrase "regulate . . . importation" is invoked to impose quantity or quality limits on bringing foreign goods into the country—for example, by setting quotas or requiring quarantines—the phrase fits well with its 98 neighbors. But when that phrase is invoked to impose tariffs? Then it becomes the odd man out—the only one of 99 permission slips to involve "the core congressional power of the purse." Likewise, Congress's consistent practice in delegating tariff power refutes the Government's position. Title 19 of the U. S. Code includes multiple provisions granting the President authority to levy tariffs. But in each and every instance, Congress has not only used specific language, but also imposed tight restraints on the power given—capping the tariff's rate, or limiting its duration, or establishing strict procedural conditions. What Congress has never done in a tariff provision is what the Government claims it did here—conferred power on the President to impose a tariff of any amount, for any time, on only his own say-so. Nor has any President until now understood IEEPA to authorize imposing tariffs. Between 1977 and 2024, eight Presidents had the chance to make use of IEEPA's delegation of power. And all chose the same course: they invoked the statute's "regulate importation" provision for a variety of non-tariff purposes, but they looked elsewhere—to Title 19's provisions—for tariff authority. For all those reasons, straight-up statutory construction resolves this case for me; I need no major-questions thumb on the interpretive scales. IEEPA gives the President significant authority over transactions involving foreign property, including the importation of goods. But in that generous delegation, one power is conspicuously missing. Nothing in IEEPA's text, nor anything in its context, enables the President to unilaterally impose tariffs. And needless to say, without statutory authority, the President's tariffs cannot stand.

JUSTICE JACKSON, concurring in part and concurring in the judgment.

I agree with the Court's conclusion that the International Emergency Economic Powers Act (IEEPA) does not provide the President with the power to tariff. Three of my colleagues have reached this result via the major questions doctrine—a framing that asks, in essence, whether Congress "would likely have intended" to delegate the authority to tariff to the President through IEEPA. While probing Congress's intent is the right inquiry, my colleagues speculate needlessly. In my view, the Court can, and should, consult a statute's legislative history to determine what Congress actually intended the statute to do. As Congress undertakes the legislative process, congressional committees in the Senate and House often generate official reports that describe Congress's aims for the legislation, and there is evidence that lawmakers themselves pay more attention to these reports than a statute's text to understand its purpose and meaning. In the cases now before us, that evidence shows that Congress did not intend for IEEPA to authorize the Executive to impose tariffs. Instead, Congress intended to delegate to the President the power to freeze and control foreign property transactions.

Four pieces of the relevant legislative record support this conclusion. The first two are the House and Senate Reports that accompanied the 1941 amendment to IEEPA's predecessor statute, the Trading with the Enemy Act (TWEA). First enacted in 1917, TWEA authorized the President to control foreign property during wartime. Congress amended TWEA in 1941, adding the subsection that includes the "regulate . . . importation" language on which the President relies today. The Reports explained Congress's primary purpose for the 1941 amendment: shoring up the President's ability to control foreign-owned property by maintaining and strengthening the "existing system of foreign property control (commonly known as freezing control)." When Congress enacted IEEPA in 1977, it kept the "regulate . . . importation" language from TWEA. The other two relevant pieces of legislative history—the Senate and House Reports that accompanied IEEPA—demonstrate that Congress's intent regarding the scope of this statutory language remained the same. As the Senate Report explained, Congress's sole objective for the "regulate . . . importation" subsection was to grant the President the emergency authority "to control or freeze property transactions where a foreign interest is involved." The House Report likewise described IEEPA as empowering the President to "regulate or freeze any property in which any foreign country or a national thereof has any interest." With this evidence of Congress's objective, interpreting the text of IEEPA becomes an easy task. Each of the listed verbs provides a means by which the President can freeze or control foreign property transactions. Tariffs are different in kind. They are a tax on imports; a means of generating revenue from transactions between private parties. Because tariffs are not a means by which the President can freeze or control foreign assets, interpreting IEEPA to authorize tariffs would require the Court to override Congress's expressed purpose for including the "regulate . . . importation" language in the statute.

Like THE CHIEF JUSTICE's opinion, the principal dissent declines the help of legislative history. The dissent concludes that IEEPA and TWEA are "best understood" as authorizing tariffs, and that any other interpretation would "not make much sense." But why would it matter which interpretation we think is "best" when Congress has already told us? The legislative history here plainly establishes that Congress understood and intended IEEPA and TWEA to authorize a wholly different type of power: the power to freeze foreign-owned property. And the proper role of the Court is to give effect to Congress's intent, not our own instincts. When Congress tells us why it has included certain language in a statute, the limited role of the courts in our democratic system of government—as interpreters, not lawmakers—demands that we give effect to the will of the people.

JUSTICE THOMAS, dissenting.

I join JUSTICE KAVANAUGH's principal dissent in full. As he explains, the Court's decision today cannot be justified as a matter of statutory interpretation. Congress authorized the President to "regulate . . . importation." Throughout American history, the authority to "regulate importation" has been understood to include the authority to impose duties on imports. I write separately to explain why the statute at issue here is consistent with the separation of powers as an original matter. The Constitution's separation of powers forbids Congress from delegating core legislative power to the President. This principle, known as the nondelegation doctrine, is rooted in the Constitution's Legislative Vesting Clause and Due Process Clause. Both Clauses forbid Congress from delegating core legislative power, which is the power to make substantive rules setting the conditions for deprivations of life, liberty, or property. Neither Clause prohibits Congress from delegating other kinds of power. Because the Constitution assigns Congress many powers that do not implicate the nondelegation doctrine, Congress may delegate the exercise of many powers to the President. The power to impose duties on imports can be delegated. At the founding, that power was regarded as one of many powers over foreign commerce that could be delegated to the President. Power over foreign commerce was not within the core legislative power, and engaging in foreign commerce was regarded as a privilege rather than a right.

I

The Legislative Vesting Clause grants Congress alone the federal legislative power. "Legislative power" for purposes of the Vesting Clause means the power to make substantive rules setting the conditions for deprivations of life, liberty, or property. I have described this power as the "core legislative power" to distinguish it from other powers that the Constitution grants Congress. Core legislative power includes only the power to make "law" in the "Blackstonian sense of generally applicable rules of private conduct," the violation of which results in the deprivation of "core private rights"—the natural rights to life, liberty, and property. The nondelegation doctrine is also rooted in the Due Process Clause, which prohibits the Federal Government from depriving any person of "life, liberty, or property, without due process of law." ***

Neither the Legislative Vesting Clause nor the Due Process Clause forbids Congress from delegating its other powers. As this Court put it two centuries ago, although Congress cannot delegate powers that are "strictly and exclusively legislative," it can "certainly delegate" others. *Wayman v. Southard*, 10 Wheat. 1, 42–43 (1825). Congress also has many powers that are not subject to the nondelegation doctrine—including the powers to raise and support armies, to fix the standards of weights and measures, to grant copyrights, to dispose of federal property, and, as discussed below, to regulate foreign commerce. None of these powers involves setting the rules for the deprivation of core private rights. Blackstone called them "prerogative" powers, and sometimes "executive."

II

As a matter of original understanding, historical practice, and judicial precedent, the power to impose duties on imports is not within the core legislative power. Congress can therefore delegate the exercise of this power to the President.

Neither of the two constitutional foundations for the nondelegation doctrine forbids Congress from delegating to the President the power to impose duties on imports. The Legislative Vesting Clause provides no basis for applying the nondelegation doctrine to the power to impose duties on imports. "The 'power over external affairs [is] in origin and essential character different from that over internal affairs.'" Although internal affairs are governed by the domestic law of one sovereign, external affairs implicate the relationship between sovereigns, which is subject to the law of nations. The power to regulate external affairs was accordingly not viewed as within the core legislative power at the founding. Blackstone described powers over "intercourse with foreign nations" as "prerogative" powers naturally belonging to the King. The power to regulate external affairs included power over foreign commerce, and the power to impose duties on imports was a conventional method for governing foreign trade—historically understood as a "prerogative right" of the King. ***

Historical practice and precedent confirm that Congress can delegate the power to impose duties on imports. Since the 1790s, Congress has consistently delegated to the President power over foreign commerce, including the power to impose duties on imports. *** This Court has consistently upheld Congress's delegation of power over foreign commerce, including the power to impose duties on imports. The Court has long conveyed to Congress that it may "invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations." There is a "fundamental" difference, the Court has explained, between "foreign or external affairs" and "domestic or internal affairs." In *Marshall Field & Co. v. Clark*, 143 U. S. 649 (1892), the Court upheld Congress's delegation to the President of the power to impose duties on nations whose importation policies "he may deem to be reciprocally unequal and unreasonable." In J. W. Hampton, Jr., & *Co. v. United States*, 276 U. S. 394 (1928), the Court upheld a delegation to the President to impose duties as necessary up to statutorily limited rates to make them reciprocal. And in *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U. S. 548 (1976), the Court upheld a delegation of the power to impose a universal duty on imported oil.

III

Congress's delegation here was constitutional. The statute at issue in these cases, the International Emergency Economic Powers Act, delegates to the President a wide range of powers over foreign commerce, including the power to "regulate" foreign commerce, including "importation" of foreign property. IEEPA's delegation of power to impose duties on imports complies with the nondelegation doctrine. Congress delegated to the President a version of the same power that it has delegated to him in many statutes since the early days of the Republic, and it limited that delegation to foreign commerce. In delegating the power to impose duties on imports, it gave the President no core legislative power to make substantive rules setting the conditions for deprivations of life, liberty, or property. Its delegation therefore complied with the constitutional separation of powers and is consistent with centuries of practice and precedent. The principal opinion bases its decision on the major questions doctrine. In today's cases, neither the statutory text nor the Constitution provide a basis for ruling against the President. I respectfully dissent.

JUSTICE KAVANAUGH, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

Acting pursuant to his statutory authority to "regulate . . . importation" under the 1977 International Emergency Economic Powers Act, or IEEPA, the President has imposed tariffs on imports of foreign goods from various countries. The tariffs have generated vigorous policy debates. Those policy debates are not for the Federal Judiciary to resolve. Rather, the Judiciary's more limited role is to neutrally interpret and apply the law. The sole legal question here is whether, under IEEPA, tariffs are a means to "regulate . . . importation." Statutory text, history, and precedent demonstrate that the answer is clearly yes: Like quotas and embargoes, tariffs are a traditional and common tool to regulate importation.

Since early in U. S. history, Congress has regularly authorized the President to impose tariffs on imports of foreign goods. In accord with Judge Taranto's careful and persuasive opinion in the Federal Circuit, I would conclude that the President's power under IEEPA to "regulate . . . importation" encompasses tariffs. As a matter of ordinary meaning, including dictionary definitions and historical usage, the broad power to "regulate . . . importation" includes the traditional and common means to do so—in particular, quotas, embargoes, and tariffs. History and precedent confirm that conclusion. In 1971, President Nixon imposed 10 percent tariffs on almost all foreign imports, levied under IEEPA's predecessor statute, TWEA, which similarly authorized the President to "regulate . . . importation." The Nixon tariffs were upheld in court. In 1976, this Court unanimously ruled that a similarly worded statute authorizing the President to "adjust the imports" permitted President Ford to impose monetary exactions on foreign oil imports. See *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U. S. 548 (1976). For both the Nixon tariffs and the Ford tariffs upheld in Algonquin, the relevant statutory provisions did not specifically refer to "tariffs" or "duties," but instead more broadly authorized the President to "regulate . . . importation" or to "adjust the imports." Therefore, when IEEPA was enacted in 1977 in the wake of the Nixon and Ford tariffs and the Algonquin decision, Congress and the public plainly would have understood that the power to "regulate . . . importation" included tariffs.

Context and common sense buttress that interpretation. The plaintiffs and the Court acknowledge that IEEPA authorizes the President to impose quotas or embargoes on foreign imports—meaning that a President could completely block some or all imports. But they say that IEEPA does not authorize the President to employ the lesser power of tariffs, which simply condition imports on a payment. As they interpret the statute, the President could, for example, block all imports from China but cannot order even a $1 tariff on goods imported from China. That approach does not make much sense.

In my view, as I will explain, the major questions canon does not control here for two alternative and independent reasons. First, the statutory text, history, and precedent constitute "clear congressional authorization" for the President to impose tariffs under IEEPA. *** Throughout American history, Presidents have commonly imposed tariffs as a means to "regulate . . . importation." So tariffs were not an "unheralded" power when Congress enacted IEEPA in 1977 *** . Second, in any event, the Court has never before applied the major questions doctrine in the foreign affairs context, including foreign trade. *** Rather, as Justice Robert Jackson summarized and remains true, this Court has always recognized the " 'unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed.' " *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 636, n. 2 (1952) (concurring opinion) (quoting *United States v. Curtiss*-Wright Export Corp., 299 U. S. 304, 321–322 (1936)). In foreign affairs cases, courts read the statute as written and do not employ the major questions doctrine as a thumb on the scale against the President.

I begin as always with the statutory text. In 1941, a few days after Pearl Harbor, Congress first enacted the relevant language, "regulate . . . importation," in an amendment to TWEA. At the time of TWEA's amendment in 1941 and IEEPA's enactment in 1977, the ordinary dictionary meaning of "regulate" was to "control," to "adjust by rule," or to "subject to governing principles or laws." Imposing tariffs on imports is clearly a way of controlling imports, governing or directing imports according to rule, adjusting imports by rule, method, or established mode, or more generally subjecting imports to governing principles or laws. As Chief Justice Marshall explained, the "right to regulate commerce, even by the imposition of duties, was not controverted." *Gibbons v. Ogden*, 9 Wheat. 1, 202 (1824). So too Justice Story: The "power to regulate commerce includes the power of laying duties to countervail the regulations and restrictions of foreign nations." And James Madison likewise stated that it cannot "be inferred" that the "power to regulate trade does not involve a power to tax it." Marshall, Story, and Madison make for a formidable trio.

The Nixon tariffs did not fly below the radar. President Nixon announced the worldwide 10 percent tariffs in a primetime address to the Nation on August 15, 1971. The tariffs applied to almost all imports of foreign goods into the United States, and had no time limit. In 1975, the Court of Customs and Patent Appeals upheld the Nixon tariffs as a lawful exercise of the President's authority to "regulate . . . importation" under *TWEA. United States v. Yoshida Int'l, Inc.*, 526 F. 2d 560. The losing plaintiffs did not seek further review in this Court. Two years later in 1977, when Congress divided TWEA into two, Congress retained that same "regulate . . . importation" language in both laws. To sum up on the Nixon and Ford tariffs: When enacting IEEPA in 1977, Congress employed the exact language recently invoked by President Nixon to justify 10 percent worldwide tariffs. And IEEPA came fast on the heels of this Court's unanimous 1976 decision in Algonquin. If Congress in 1977 wanted to exclude tariffs from the President's IEEPA toolkit, either it would have not retained the phrase "regulate . . . importation," or it would otherwise have made clear in IEEPA that the power to impose tariffs was excluded. Congress did neither.

But critically, TWEA and IEEPA do not authorize the President to exercise some new substantive power. Rather, they authorize the President to exercise a commonly granted power—tariffs—more efficiently than under the many ordinary tariff statutes. Moreover, IEEPA is not a blank check. IEEPA contains its own limits, including the requirement that the tariffs deal with an unusual and extraordinary foreign threat, a default 1-year limit on emergencies, an enumerated list of exceptions, and comprehensive congressional reporting requirements. ***

In an ordinary statutory interpretation case, I am confident that a majority of this Court would flatly reject the plaintiffs' exceedingly weak statutory arguments and would hold that IEEPA's authorization for the President to "regulate . . . importation" during national emergencies includes the power to impose tariffs. Notably, the Court today does not claim that the phrase "regulate . . . importation" on its own excludes tariffs as a matter of ordinary statutory meaning. Only three Members of the Court do so via that route; THE CHIEF JUSTICE's opinion instead relies on the major questions doctrine.

Because the major questions doctrine demands "clear congressional authorization," this Court has repeatedly recognized that the doctrine is "distinct" from "routine statutory interpretation." The doctrine applies—and makes a meaningful difference—only in cases where the Executive's "reading of a statute" "would, under more ordinary circumstances, be upheld." The Court's cases have focused on four somewhat overlapping factors: whether the Executive is exercising an "unheralded" power based on a "long-extant" statute; the "agency's past interpretations of the relevant statute"; whether there is a "mismatch" between the power and the Executive's expertise; and whether the Executive relies on "oblique, elliptical, or cryptic language."

As I see it, those factors show that Congress clearly authorized tariffs in IEEPA when it empowered the President to "regulate . . . importation." *** First, unlike the OSHA vaccine mandate in NFIB or the greenhouse gas regulation in Utility Air, the President here is not exercising an "unheralded" or "newfound authority" based on a "long-extant" statute. Any citizen or Member of Congress who paid the least bit of attention in 1977 would have readily understood that the President's authority to "regulate . . . importation" encompassed the power to tariff. Second, the President is not interpreting the "regulate . . . importation" language in IEEPA differently from how past Presidents have interpreted it; no Presidential Administration since 1941 or since 1977 has interpreted the statute to exclude the power to impose tariffs. Third, there is no mismatch: the power to tariff falls squarely within the President's wheelhouse. Fourth, the President is not relying on oblique, elliptical, or cryptic language; this case does not involve "elephants in mouseholes." It instead involves an elephant (tariffs) in a statutory elephant hole (the power to "regulate . . . importation" to deal with foreign threats in national emergencies).

Second, there is an alternative and independent reason why the major questions doctrine does not apply here: This is a foreign affairs case. A plethora of statutes in the U. S. Code grant the Executive the power to act in foreign affairs. Yet this Court has never before applied the major questions doctrine—or anything resembling it—to a foreign affairs statute. I would not make this case the first. What is new and rather extraordinary is the approach embodied in THE CHIEF JUSTICE's opinion, which would extend the major questions doctrine into the foreign affairs realm for the first time. From the Founding, numerous foreign affairs statutes "authorizing action by the President in respect of subjects affecting foreign relations" either "leave the exercise of the power to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs." *United States v. Curtiss*-Wright Export Corp., 299 U. S. 304, 324 (1936). If the major questions doctrine is designed in part to protect nondelegation principles, but the nondelegation doctrine does not play a substantial role in foreign affairs cases, then it follows that courts should not employ the major questions doctrine to put a thumb on the scale against the President when interpreting foreign affairs statutes.

Finally, no Member of the Court today relies on the nondelegation doctrine, but the plaintiffs briefly raise such an argument. This Court has repeatedly rejected constitutional challenges to congressional delegations to the President in the foreign affairs area, including delegations of tariff authority. As Justice Robert Jackson noted, the "strict limitation upon congressional delegations of power to the President over internal affairs does not apply with respect to delegations of power in external affairs." ***

The overarching theme of the Court's opinion is that tariffs are not a clear means to "regulate . . . importation" and that Congress was therefore required to use the word "tariff," "duty," or the like in IEEPA in 1977 if it wanted to authorize tariffs on foreign imports. But that conclusion contravenes text, history, and precedent. To summarize: Algonquin in 1976 unanimously held the opposite. The Nixon and Ford tariffs were based on statutory provisions that did not use the word "tariff" or "duty." There is a long tradition of Presidents imposing tariffs as a means of regulating importation and commerce. Marshall, Story, and Madison stated that tariffs are a means of regulating foreign commerce. All of that and much more, in my view, overwhelmingly establish that IEEPA clearly authorizes the President to impose tariffs.

That said, with respect to tariffs in particular, the Court's decision might not prevent Presidents from imposing most if not all of these same sorts of tariffs under other statutory authorities. For example, Section 122 of the Trade Act of 1974 permits the President to impose a "temporary import surcharge" to "deal with large and serious United States balance-of-payments deficits." Section 201 of the Trade Act of 1974 provides that, if the International Trade Commission determines an article is being imported in such quantities that it is "a substantial cause of serious injury" to a domestic industry, the President may impose a "duty." Section 301 of the Trade Act of 1974 authorizes the President to "impose duties" if he determines that a foreign country's practice is "unjustifiable and burdens or restricts United States commerce." Section 338 of the Tariff Act of 1930 permits the President to impose tariffs when he finds that a foreign country burdens or disadvantages U.S. commerce. And Section 232 of the Trade Expansion Act of 1962 authorizes the President to "adjust the imports" of an article so that such imports will not threaten to impair the national security.

So the Court's decision is not likely to greatly restrict Presidential tariff authority going forward. But the Court's decision is likely to generate other serious practical consequences in the near term. One issue will be refunds—refunds of billions of dollars would have significant consequences for the U. S. Treasury, and that process is likely to be a "mess," as was acknowledged at oral argument. A second issue is the decision's effect on current trade deals, since IEEPA tariffs have helped facilitate trade deals worth trillions of dollars.

The tariffs at issue here may or may not be wise policy. But as a matter of text, history, and precedent, they are clearly lawful. I respectfully dissent.

***

Note: A Fractured Majority on the Major Questions Doctrine

Although the Court held that IEEPA does not authorize the President's tariffs, the major questions doctrine analysis in Chief Justice Roberts's opinion was joined only by Justices Gorsuch and Barrett, meaning a majority of the Court resolved this case on ordinary statutory-interpretation grounds without relying on the MQD framework from *West Virginia v. EPA*, 597 U.S. 697 (2022). *See generally Learning Resources, Inc. v. Trump*, 607 U.S. at ___ (2026). This splintering matters for how the case should be taught: it is not safe to describe *Learning Resources* as a straightforward MQD case in the way *West Virginia* or *Biden v. Nebraska* were. For a discussion of the vote breakdown and its doctrinal significance, see *The Tariff Case and the Major Questions Doctrine*, Regulatory Review (July 24, 2026).

Note: The Broader Tariff-Power Landscape

IEEPA is only one of several statutes Presidents have invoked to impose tariffs, and it helps to place *Learning Resources* within that larger landscape. Section 232 of the Trade Expansion Act of 1962, Section 301 of the Trade Act of 1974, and Section 122 of the same Act each authorize tariffs on different showings and with different procedural prerequisites and durations, none of which the Court's opinion had occasion to construe. For a concise, non-partisan overview comparing these authorities and situating IEEPA within them, see Cong. Rsch. Serv., R48435, *Congressional and Presidential Authority to Impose Import Tariffs* (2026).

REVIEW QUESTIONS AND COMMENTS

1. What two words in IEEPA does the Government rely on to justify the tariffs, and why does the Court say those words cannot bear the weight the Government places on them?
2. Why does the Court treat the power to tax as categorically different from the power to "regulate," even though a tariff can be used to accomplish a regulatory goal?
3. The Court says "[t]here is no major questions exception to the major questions doctrine." What foreign-affairs argument was the Government making, and why does the Court reject it?
4. Gorsuch, Barrett, and Kagan (joined by Sotomayor and Jackson) each stake out a different view of where the major questions doctrine comes from. What is each Justice's view?
5. Justice Kavanaugh's dissent points out that the majority's major-questions reasoning commands only three votes. Why does that matter for how confidently Learning Resources can be cited as a "major questions" precedent going forward?
6. How is *Learning Resources* similar to and different from *Biden v. Nebraska* and *West Virginia v. EPA*?

Insert at p. 130, after REVIEW QUESTIONS AND COMMENTS following Collins v. Yellen, at the close of the removal-power discussion in Chapter 3 and immediately before Part IV (Line-Item Veto)

The Removal Power, 2025–26: From Wilcox to Slaughter and Cook

The three cases below trace the rapid and largely successful campaign to dismantle *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and with it the for-cause removal protections enjoyed by most independent multimember agencies — followed by a narrow carve-out for the Federal Reserve.

Note: A Trio Decided on the Emergency Docket

All three removal-power cases below reached the Court on applications for a stay or for certiorari before judgment, not on plenary merits review after full briefing in the ordinary course. *Wilcox* was resolved on a *per curiam* order; *Cook* and *Slaughter* received full argument and opinions only because the Court elected to treat the stay applications as an occasion to resolve the merits outright. This procedural posture is itself contested: Justice Kagan's

Wilcox dissent and Justice Alito's *Cook* dissent both argue that the emergency docket is an inappropriate vehicle for overruling a 90-year-old precedent, while the majority defends full-dress treatment as necessary to avoid leaving "the public in limbo." *Cf. Wilcox*, 605 U.S. at ___ (Kagan, J., dissenting) ("Our emergency docket, while fit for some things, should not be used to overrule or revise existing law."); *Cook*, 609 U.S. at ___ (Alito, J., dissenting) (criticizing the Court for reaching "many complicated and novel legal questions on an underdeveloped record").

***Trump v. Wilcox*, 145 S. Ct. 1415 (2025)**, Supreme Court of the United States (stay order)

PER CURIAM.

The Government has applied for a stay of orders from the District Court for the District of Columbia enjoining the President's removal of a member of the National Labor Relations Board (NLRB) and a member of the Merit Systems Protection Board (MSPB), respectively. The President is prohibited by statute from removing these officers except for cause, and no qualifying cause was given. See 29 U. S. C. §153(a); 5 U. S. C. §1202(d).

The application for stay presented to THE CHIEF JUSTICE and by him referred to the Court is granted. Because the Constitution vests the executive power in the President, see Art. II, §1, cl. 1, he may remove without cause executive officers who exercise that power on his behalf, subject to narrow exceptions recognized by our precedents, see *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U. S. 197, 215–218 (2020). The stay reflects our judgment that the Government is likely to show that both the NLRB and MSPB exercise considerable executive power. But we do not ultimately decide in this posture whether the NLRB or MSPB falls within such a recognized exception; that question is better left for resolution after full briefing and argument. The stay also reflects our judgment that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty. *** A stay is appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation.

Finally, respondents Gwynne Wilcox and Cathy Harris contend that arguments in this case necessarily implicate the constitutionality of for-cause removal protections for members of the Federal Reserve's Board of Governors or other members of the Federal Open Market Committee. *** We disagree. The Federal Reserve is a uniquely structured, *quasi*-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States. See *Seila Law*, 591 U. S., at 222, n. 8.

*** The March 4, 2025, order of the United States District Court for the District of Columbia, No. 25–cv–412, ECF Doc. 39, and the March 6, 2025, order of the United States District Court for the District of Columbia, No. 25–cv–334, ECF Doc. 34, are stayed pending the disposition of the appeal in the United States Court of Appeals for the District of Columbia Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join, dissenting from the grant of the application for stay.

For 90 years, *Humphrey's Executor v. United States*, 295 U. S. 602 (1935), has stood as a precedent of this Court. And not just any precedent. Humphrey's undergirds a significant feature of American governance: bipartisan administrative bodies carrying out expertise-based functions with a measure of independence from presidential control. The two such agencies involved in this application are the National Labor Relations Board (NLRB) and Merit Systems Protection Board (MSPB). But there are many others—among them, the Federal Communications Commission (FCC), Federal Trade Commission (FTC), and Federal Reserve Board. Congress created them all, though at different times, out of one basic vision. It thought that in certain spheres of government, a group of knowledgeable people from both parties—none of whom a President could remove without cause—would make decisions likely to advance the long-term public good. And that congressional judgment, Humphrey's makes clear, creates no conflict with the Constitution. Rejecting a claim that the removal restriction enacted for the FTC interferes with "the executive power," the Humphrey's Court held that Congress has authority, in creating such "*quasi*-legislative or *quasi*-judicial" bodies, to "forbid their [members'] removal except for cause." *Id.*, at 626, 629. Indeed, that conclusion "cannot well be doubted." *Id.*, at 629; ***

The current President believes that Humphrey's should be either overruled or confined. *** And he has chosen to act on that belief—really, to take the law into his own hands. Not since the 1950s (or even before) has a President, without a legitimate reason, tried to remove an officer from a classic independent agency—a multi-member, bipartisan commission exercising regulatory power whose governing statute contains a for-cause provision. Yet now the President has discharged, concededly without cause, several such officers, including a member of the NLRB (Gwynne Wilcox) and a member of the MSPB (Cathy Harris). Today, this Court effectively blesses those deeds. I would not. Our Humphrey's decision remains good law, and it forecloses both the President's firings and the Court's decision to award emergency relief.

Our emergency docket, while fit for some things, should not be used to overrule or revise existing law. We consider emergency applications "on a short fuse without benefit of full briefing and oral argument"; and we resolve them without fully (or at all) stating our reasons. *** It is one thing to grant relief in that way when doing so vindicates established legal rights, which somehow the courts below have disregarded. It is a wholly different thing to skip the usual appellate process when issuing an order that itself changes the law. *** And nowhere is short-circuiting our deliberative process less appropriate than when the ruling requested would disrespect—by either overturning or narrowing—one of this Court's longstanding precedents, like our nearly century-old Humphrey's decision.

Under that decision, this case is easy, as the courts below found: The President has no legal right to relief. Congress, by statute, has protected members of the NLRB and MSPB (like Wilcox and Harris) from Presidential removal except for good cause. See 29 U. S. C. §153(a) (permitting removal only for "neglect of duty or malfeasance in office"); 5 U. S. C. §1202(d) (permitting removal only for "inefficiency, neglect of duty, or malfeasance in office"). And, again, Humphrey's instructs that Congress can do so without offending the Constitution. Just like the agency at issue there (the FTC), the NLRB and MSPB are multi-member bodies of experts, balanced along partisan lines, with "*quasi*-legislative or *quasi*-

judicial" (not "purely executive") functions. Humphrey's, 295 U. S., at 628, 631. *** So both fit securely within the ambit of Humphrey's—as no one in the history of either agency has ever doubted. That means to fire their members, the President—under existing law—needs good cause, which he admits he does not have. The only way out of that box is to upend Humphrey's.

For that reason, the majority's order granting the President's request for a stay is nothing short of extraordinary. That order consents to the President's (statutorily barred) removal of the NLRB and MSPB Commissioners, at least until we decide their suits on the merits. And so the order allows the President to overrule Humphrey's by fiat, again pending our eventual review. This Court often reminds other judges that if one of our precedents "has direct application in a case," they must follow it, even if they dislike it—"leaving to this Court the prerogative of overruling its own decisions." Rodriguez de *Quijas v. Shearson*/American Express, Inc., 490 U. S. 477, 484 (1989). In keeping with that directive, lower courts recently faced with challenges to independent agencies' removal provisions have uniformly rejected them based on Humphrey's. *** It should go without saying that the President must likewise follow existing precedent, however strong he thinks the arguments against it—unless and until he convinces us to reject what we previously held. Yet here the President fired the NLRB and MSPB Commissioners in the teeth of Humphrey's, betting that this Court would acquiesce. And the majority today obliges—without so much as mentioning Humphrey's.

The majority's explanation of its action unfolds in two parts, neither rising to the occasion.

The first gestures toward the merits, but in a most unusual and unedifying way. Our normal (invariable?) practice is to grant a stay pending appeal only when we decide the applicant is likely to succeed on the merits. *** But the majority's order purports not to reach that conclusion. According to the majority, the President may remove without cause officers exercising executive power, "subject to narrow exceptions recognized by our precedents." *Ante*, at 1. The majority will not say the name of the relevant precedent, but one of those "exceptions" of course comes from Humphrey's. *** The question thus becomes: Does Humphrey's protect the NLRB and MSPB Commissioners? Well, the majority says, those officers likely exercise "considerable executive power"; but whether they fall within "a recognized exception"—i.e., Humphrey's—is better left for the future. *Ante*, at 1. So the majority's order just restates the question this case raises—despite the need to give a preliminary answer before ordering relief. Unless . . . unless the majority thinks it has provided a hint. Maybe by saying that the Commissioners exercise "considerable" executive power, the majority is suggesting that they cannot fall within the Humphrey's "exception." But if that is what the majority means, then it has foretold a massive change in the law—reducing Humphrey's to nothing and depriving members of the NLRB, MSPB, and many other independent agencies of tenure protections. And it has done so on the emergency docket, with little time, scant briefing, and no argument.

The second part of the majority's explanation, focusing on what we typically call the balance of equities, in no way compensates for the first's failures. Here, the majority reasons that a stay is justified because the interests at stake are lopsided. "[T]he Government," it declares, "faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Ante*, at 1. But that statement misapprehends, on both sides, what this case involves.

On the latter side, the relevant interest is not the "wrongfully removed officer[s']," but rather Congress's and, more broadly, the public's. What matters, in other words, is not that Wilcox and Harris would love to keep serving in their nifty jobs. What matters instead is that Congress provided for them to serve their full terms, protected from a President's desire to substitute his political allies. *** Or differently put, the interest at stake is in maintaining Congress's idea of independent agencies: bodies of specialists balanced along partisan lines, which will make sound judgments precisely because not fully controlled by the White House. Even without Humphrey's, this Court would have to give respect, in balancing equities, to Congress's expression of that idea in legislation. *** And of course the Court is not without Humphrey's, which already approved the kind of removal restrictions at issue here. Given that decision—and the near-century of administrative practice that has followed—the majority has no excuse for so misidentifying the interest that cuts against unconstrained removal. It is, again, the interest in the NLRB, MSPB, and all their ilk working as Congress intended them to, on the view that a measure of independence would serve the public good.

And on the former side of the balance, the majority distorts and overstates the interest in preventing Wilcox and Harris from continuing in office. That interest, to begin with, is not "the Government[']s," *ante*, at 1, but only the President's. Congress, after all, is also part of the Government, and (as just noted) its equities lie in preserving the legislation it has enacted to limit removals. And as to the President's interest in firing Wilcox and Harris, the majority gives it more weight than it has borne in almost a century. Between Humphrey's and now, 14 different Presidents have lived with Congress's restrictions on firing members of independent agencies. No doubt many would have preferred it otherwise. But can it really be said, after all this time, that the President has a crying need to discharge independent agency members right away—before this Court (surely next Term) decides the fate of Humphrey's on the merits? The impatience to get on with things—to now hand the President the most unitary, meaning also the most subservient, administration since Herbert Hoover (and maybe ever)—must reveal how that eventual decision will go. In valuing so highly—in an emergency posture—the President's ability to fire without cause Wilcox and Harris and everyone like them, the majority all but declares Humphrey's itself the emergency.

Except apparently for the Federal Reserve. The majority closes today's order by stating, out of the blue, that it has no bearing on "the constitutionality of for-cause removal protections" for members of the Federal Reserve Board or Open Market Committee. *Ante*, at 2. I am glad to hear it, and do not doubt the majority's intention to avoid imperiling the Fed. But then, today's order poses a puzzle. For the Federal Reserve's independence rests on the same constitutional and analytic foundations as that of the NLRB, MSPB, FTC, FCC, and so on—which is to say it rests largely on Humphrey's. So the majority has to offer a different story: The Federal Reserve, it submits, is a "uniquely structured" entity with a "distinct historical tradition"—and it cites for that proposition footnote 8 of this Court's opinion in *Seila Law*. *Ante*, at 2 (citing 591 U. S., at 222, n. 8). But—sorry—footnote 8 provides no support. Its only relevant sentence rejects an argument made in the dissenting opinion "even assuming [that] financial institutions like the Second Bank and Federal Reserve can claim a special historical status." And so an assumption made to humor a dissent gets turned into some kind of holding. Because one way of making new law on the emergency docket (the deprecation of Humphrey's) turns out to require yet another (the creation of a bespoke

Federal Reserve exception). If the idea is to reassure the markets, a simpler—and more judicial—approach would have been to deny the President's application for a stay on the continued authority of Humphrey's.

"To avoid an arbitrary discretion in the courts," Hamilton wrote, "it is indispensable that they should be bound down by strict rules and precedents." Federalist No. 78, p. 529 (J. Cooke ed. 1961). Today's order, however, favors the President over our precedent; and it does so unrestrained by the rules of briefing and argument—and the passage of time—needed to discipline our decision-making. I would deny the President's application. I would do so based on the will of Congress, this Court's seminal decision approving independent agencies' for-cause protections, and the ensuing 90 years of this Nation's history. Respectfully, I dissent.

***

***Trump v. Slaughter*, 609 U. S. ___ (2026)**, Supreme Court of the United States

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Nearly 250 years ago, the Framers decided to vest "[t]he executive Power" in one person—"a President of the United States of America." Art. II, §1, cl. 1. The choice was not made lightly. Within living memory were the "long train of abuses and usurpations" of a King who reigned as "a Tyrant." Indeed, several delegates to the Constitutional Convention pushed for a multimember council instead of "unity in the Executive magistracy," which they feared would serve as "the foetus of monarchy." But unity won out. ***

I

When President Trump began his second term in January 2025, the FTC was led by two Republicans and three Democrats. On his first day in office, he designated a new Chair, replacing President Biden's pick. ***

That split came to an abrupt end in March, when President Trump fired the two remaining Democratic Commissioners, Rebecca Slaughter and Alvaro Bedoya. He did not assert that they were "inefficien[t]," "neglect[ed]" their "dut[ies]," or committed "malfeasance in office," as the statute required. §41. He instead told them that their "continued service on the FTC [was] inconsistent with [his] Administration's priorities" and that they were removed from office "pursuant to [his] authority under Article II of the Constitution."

II

A

The Constitution vests "[t]he executive Power" in a "President of the United States of America" and instructs that he "take Care that the Laws be faithfully executed." Art. II, §§1, 3. To vest "the whole executive power" in just one person was not to suggest that he could execute the laws alone and unaided. But it was to establish a hierarchy—a "Chief Magistrate" with whom the buck stops, and below him various "assistants or deputies" who "derive their offices from his appointment" and remain "subject to his superintendence." The Federalist No. 72 (A. Hamilton). To remain accountable to the President, those officers must be removable by the President.

This aspect of the President's role was confirmed in the Constitution's first year—and in the years that followed. That practice began in the First Congress. When it first met in 1789, one of its first and most pressing tasks was to establish the first executive departments—and with them the first "Heads of Departments." Art. II, §2, cl. 2. In doing so, it debated how those officers should be removed. *** The third group emerged victorious. They successfully convinced the House of Representatives to delete a clause in the draft bill that said that the Secretary of Foreign Affairs was "to be removable by the President," for such language would "ha[ve] the appearance of conferring the power upon him" when in fact it was his all along. What they favored instead—and what they got—was a new clause that assumed "the power of removal to be in the President," so as to "establish a legislative construction of the Constitution." The bill as amended passed the House, and then the Senate, a feat that was repeated first with laws establishing the Department of War and then again with the Treasury.

B

What text, history, and structure settle, our precedent confirms—the President may remove his subordinates at will. Twice in the 19th century, we reaffirmed what the First Congress had held. The text of the Constitution "is silent with respect to the power of removal from office," we noted in our first case on the subject. *Ex parte* Hennen, 13 Pet. 230, 258 (1839). But "it was very early adopted, as the practical construction of the Constitution," that the power "to remove, where the tenure of the office was not fixed by the Constitution," was "vested in the President alone."

While Myers was perhaps our best word on the subject, it was not our last. Just nine years after Myers, we handed down *Humphrey's Executor*, 295 U. S. 602. The case arose out of President Roosevelt's decision to fire one of President Hoover's appointees to the Federal Trade Commission, William Humphrey, two years into Humphrey's seven-year term. *** In later cases, although Humphrey's announced dividing line remained intact, more and more functions, we concluded, in fact fell on the executive side of that line—and thus within the President's exclusive control. "A lawsuit is the ultimate remedy for a breach of the law," we explained in 1976, "and it is to the President, and not to the Congress, that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.'" *Buckley v. Valeo*, 424 U. S. 1, 138 (*per curiam*).

Placing the power to administer laws in officers who enjoy "freedom from Presidential oversight (and protection)," in other words, does not deliver us to a promised land of technocratic governance—it often results only in an "increased subservience to congressional direction." Congress may well have relied on Humphrey's in taking more power for itself, but that is hardly one of the "legitimate" reliance interests that our precedents contemplate. No branch may rely on adverse possession to claim power that the Constitution vests elsewhere. "The diffusion of power carries with it a diffusion of accountability." Free Enterprise Fund, 561 U. S., at 497. When power is exercised well, the people know whom to thank; when power is exercised poorly, they know whom to blame—and whom to fire. That is the very premise of our system of government.

III

A

With these principles in mind, this is not a close case. The FTC's for-cause removal provision violates the separation of powers. In its present form, the FTC enforces and administers some 80 statutes, which cover almost every facet of our Nation's economy. The tasks it undertakes are "the very essence of 'execution' of the law"—precisely the President's constitutional role. Bowsher, 478 U. S., at 733. First, the FTC has the power to promulgate substantive rules that carry the force of law. In the consumer-protection realm, for instance, the FTC is tasked with giving content to the startlingly abstract idea of "acts or practices which are unfair or deceptive." 15 U. S. C. §57a(a)(1)(B). *** That "quintessentially executive" power may not be cleaved off from the Executive Branch. *Seila Law*, 591 U. S., at 219. The FTC unquestionably exercises executive power, and must therefore be controlled by the Chief Executive, in whom such power is vested. It follows, then, that Slaughter served as the President's subordinate at the FTC—and that the President was entitled to cut her tenure short.

B

Because the FTC's activities fall well within the heartland of executive power, we have no occasion today to define the bounds of what such power entails. As our precedents recognize, not all offices created by Congress necessarily come with executive or even sovereign power attached. *** To suggest otherwise would come as a surprise to, among other congressionally chartered entities, the Boy Scouts of America and the Society of American Florists and Ornamental Horticulturalists. ***

IV

Although she disagrees with our conclusion, Slaughter at least accepts many of our premises. She agrees, for instance, that officers with "purely executive functions," like the "postmaster in Myers," must be removable at will by the President. She agrees that "*Seila Law* is correct." And she agrees that "the Vesting Clause of Article II . . . establish[es] a general default presidential removal power." The dissent, on the other hand, sweeps the chess pieces off the board, rejecting not only Free Enterprise Fund and *Seila Law* but Myers and the Decision of 1789 as well. On its view, "there is no evidence that those who shaped or ratified the Constitution adopted the . . . general rule of at-will removal." ***

The judgment of the District Court is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORSUCH, concurring.

To fulfill his constitutional duty to ensure the laws are faithfully executed, the Court holds, the President must have the ability to remove principal officers who exercise executive power in his name. That includes those who run independent agencies like the Federal Trade Commission (FTC). With all this, I agree. But neither can I ignore the implications that follow. Today, independent agencies do not just exercise executive law-enforcement powers. Congress has also delegated to them vast legislative and judicial powers, effectively allowing these agencies to make laws and decide disputes under them. And, after today's decision, the President can effectively exercise all those powers too. It's a development that raises important questions, not least these: Would Congress have delegated so much power, including legislative and judicial power, to independent agencies had it known that the President would come to control them? How will Congress respond now—if realistically it can? And what, if anything, will this Court do about it?

I

Begin with how we got here. *** In the early 20th century, a group of scholars including Woodrow Wilson and James Landis came to the view that our "simple tripartite form of government" was "inadequa[te] . . . to deal with modern problems."

Influential as these ideas were, they met with some hard realities as they progressed from the academy into the halls of government. For an illustration, look no further than the FTC itself and the case at the center of today's dispute, *Humphrey's Executor v. United States*, 295 U. S. 602 (1935). Congress created the FTC in 1914 through legislation that by-then President Wilson signed into law. In establishing the agency, Congress endowed it with considerable power both to define and prosecute "unfair methods of competition." And in the same breath, Congress insulated the agency's leadership from democratic control, at least to a degree. ***

If the Wilsonian vision of agencies run by neutral experts began buckling under the weight of reality early on, another feature of the plan stuck. Those in charge of these new agencies often became very difficult to dislodge. When President Roosevelt fired Humphrey, he had good reason to think he stood on firm legal ground. As it turned out, the President's expectations proved misplaced. When Humphrey sued to challenge his dismissal, this Court brushed Myers aside, upheld Congress's removal restrictions, and declared Humphrey's firing unlawful even though he was in no position to reclaim his post.

Congress's newfound ability to insulate agencies from direct presidential control may have encouraged it to lean into the last essential pillar of Wilson's design too. In Humphrey's wake, Congress increasingly assigned broad powers to the agencies it created, including legislative and judicial powers. Before Humphrey's, delegating those sorts of authorities to an agency risked "merely increasing" the President's own power—he might remove agency heads and seek new ones who would do his bidding. But Humphrey's changed the equation, making independent agencies safe repositories for sweeping delegated power. Often, these agencies do all this with hardly any statutory guidance, based on broad grants of legislative authority. The FTC, for example, enjoys what the Court calls the "startlin[g]" power to define, outlaw, and prosecute any "acts or practices which are unfair or deceptive."

II

The Court's decision today may take aim at removal protections and, in that way, one part of Wilson's vision. But, as we have seen, other parts never fully materialized. It was never the case that neutral experts alone led the agencies Congress created. And it was never true that those agencies were entirely insulated from politics or even presidential influence. Nor can the demise of one more vestige of Wilson's ambitions come as a surprise. As the Court persuasively explains, Myers was right all along and so was President Roosevelt: Humphrey's did "violence to the basic theory of the American Constitution," which leaves no room for a "headless 'fourth branch.'"

If allowing so much legislative and judicial power to accumulate in the President's hands invites real risks, the question becomes: Who will address them? At first blush, the most natural answer might seem Congress. But now removal protections are a thing of the past, and the President enjoys direct control over independent and executive agencies alike. So even if entrusting legislative and judicial powers to insulated, independent agencies once seemed a good idea to some, it's simply not an option anymore. Now, we face only two ways forward: Let Presidents exercise all those powers or begin subjecting them to the Constitution's constraints.

* * *

The Court today takes a notable step back toward the Constitution. By recognizing that the President is entitled to remove a principal officer who exercises executive power in his name, the Court does much to vindicate what Franklin D. Roosevelt and James Madison both understood: Under our Constitution, executive power does not belong to a "headless 'fourth branch,'" but must be exercised through a "chain of dependence" running from "the lowest officers" to "the President," and from him to the American people. At the same time, it would be a grave mistake to think that step is enough on its own. The fact remains that Congress has endowed formerly independent agencies not just with executive authority, but with enormous legislative and judicial powers as well. And now the President enjoys control over all those powers too. From here, the only sure path is to finish the journey we start today and restore legislative and judicial powers to where they belong: in Congress and the courts. We have tolerated adventurous theories long enough. It is time to return, all the way, to the Constitution.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, dissenting.

For most of this Nation's history, Congress and the President together have decided that some Government functions should operate at a distance from partisan politics. Those include the management of nuclear energy; the security of the monetary supply; and the safety of American workplaces, consumer products, and chemical hazards. In these and many other areas, the wisdom of the centuries has taught that some decisions should depend not only on who is in office. ***

I

In 1914, Congress enacted the Federal Trade Commission Act, which established the FTC primarily to prevent "unfair methods of competition in commerce." Then, as today, the Commission included five Commissioners appointed by the President and confirmed by the Senate; no more than three Commissioners at a given time could be from the same political party; the Commissioners generally served staggered 7-year terms; and, central here, the Commissioners could be removed by the President only for "inefficiency, neglect of duty, or malfeasance in office." *** While the nomination of the President's choice to replace the Chair was pending before the Senate in March 2025, he fired the two remaining Democratic Commissioners, including Slaughter, leaving only the two Republican Commissioners. He did not identify any "inefficiency, neglect of duty, or malfeasance in office" on either removed Commissioner's part. Instead, he simply asserted that these Commissioners were removed pursuant to the President's "authority under Article II of the Constitution."

II

Six years ago, this Court announced that the President generally must be able to fire executive officials "at will" *** . *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U. S. 197, 204–205 (2020). In so holding, the Court recognized "two exceptions" to that "general rule" *** : one for inferior officers and one that allowed Congress to "create expert agencies led by a group of principal officers removable by the President only for good cause," *** . Today, the Court doubles back on the second exception for agencies like the FTC, and doubles down on its "general rule" that the President's removal power cannot be cabined in any way. Its decision is grievously wrong.

A

This case should have begun and ended with this Court's unanimous decision from almost a century ago: *Humphrey's Executor v. United States*, 295 U. S. 602. Humphrey's addressed the very statute at issue here, which allows the President to remove FTC Commissioners only "for inefficiency, neglect of duty, or malfeasance in office," and upheld its constitutionality against the very same challenge levied in this case. In reaching that conclusion, the Court focused on the FTC's "character." The FTC, the Court explained, is a "body of experts." *** In later decades, the Court reaffirmed Humphrey's rule that certain executive officers may enjoy for-cause protections. In *Morrison v. Olson*, 487 U. S. 654 (1988), Chief Justice Rehnquist, writing for a 7-to-1 Court, applied and expanded Humphrey's in a new context, approving removal protections for an independent counsel tasked with investigating allegations of crime by high executive officers.

Searching for a distinction, the Government (echoed by the majority) contends that Humphrey's should not control as to the present-day FTC because the FTC's powers have expanded over the years since Humphrey's was decided. The premise that the FTC has fundamentally changed, however, is untrue: Contrary to the Government's assertions, the FTC of 1935, like today's FTC, had the power to conduct investigations, make rules, and bring enforcement actions. *** Even if Humphrey's had never been decided, this longstanding practice, jointly undertaken by Congresses and Presidents, should be entitled to significant weight. For more than a century, the Nation has firmly rejected the majority's view and has recognized that Congress, not this Court, has primary say over whether multimember commissions like the FTC should have some insulation from direct Presidential control.

B

Ninety years of precedent and 140 years of consistent political practice should have been more than enough to resolve this case. They are not enough, however, for the majority. Instead, the majority disregards "a venerable and accepted tradition" after placing it "on the examining table" and "scrutiniz[ing] its conformity to" the majority's own "abstract" theory of unitary executive control. There is no need for this renewed analysis, but even if we must return to fundamentals, the majority remains deeply wrong. Beginning at the founding, there is no evidence that those who shaped or ratified the Constitution adopted the majority's general rule of at-will removal. Indeed, the Court has long noted that, for the most part, "[t]he Constitution is silent with respect to the power of removal from office, where the tenure is not fixed." The one exception, and only explicit removal power granted in the Constitution, is for impeachment—a power placed in Congress's hands, not the President's.

Starting where the majority starts, the debates of the First Congress over the removal process for early department heads (which culminated in the "Decision of 1789") in no way resolve the question presented here. To begin, the majority's own theory is inconsistent. If "[t]ext and structure" already "taught that the President had to be able to remove" all of his inferiors, then it is unclear what was left for the First Congress to "decide," much less spend days debating. *** That brings us to Myers, authored by former-President and then-Chief Justice Taft. If Myers is the "best" support for the majority's position, its theory is a castle built on sand. For one thing, as the majority admits, Myers did not address for-cause removal protection; the challenged statute instead required Senate consent to removal. Thus, despite the grand pretentions of the opinion, it decided no more than that the President could "remove a postmaster of the first class, without the advice and consent of the Senate."

The majority thus has very little support in text, history, or precedent. What it does have is a theory. As the majority sees things, "the buck stops" with the President, *** who holds all executive power and thus can be "blame[d]" or held "responsib[le]" for all executive conduct, *** . Yet the President cannot "execute the laws alone and unaided." *** To ensure that the President can carry out his job and remain responsible for all exercises of executive power, the majority says, his inferiors must "remain accountable to [him]." *** The only way for that accountability to exist, according to the majority, is for "those officers [to] be removable by the President" at will, for any reason or no reason at all. ***

III

Nothing in the text, history, or values of the Constitution shows that Humphrey's was wrong or that FTC Commissioners cannot enjoy for-cause removal protection. Yet even if the majority were right about all of that, it still would not be enough to justify today's destabilizing decision. The reason, of course, is *stare decisis*, which the majority all but disregards. Faithful "[a]dherence to precedent is a 'foundation stone of the rule of law.'" *Kisor v. Wilkie*, 588 U. S. 558, 586 (2019).

A

Begin with a consideration the majority all but ignores: the tremendous reliance interests engendered by Humphrey's. "*Stare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance upon a previous decision." *** Few cases implicate these concerns to a greater degree than Humphrey's. ***

*** The checks the political branches devised—bipartisan membership requirements, the multimember structure, lengthy fixed terms, and for-cause removal protections—struck an essential balance in this respect. ***

Today's decision profoundly undermines this reliance and, as a result, undercuts one side of the balance that the political branches struck. Put simply, today the majority reshapes our Government. Dozens of independent commissions are now likely to become purely executive agencies, shifting tremendous power over broad swaths of American life into the President's hands: the Federal Energy Regulatory Commission, with responsibility for managing the Nation's energy supply, *** the Consumer Product Safety Commission, which protects Americans against harms caused by dangerous goods, *** and the Merit Systems Protection Board (MSPB), charged with ensuring the integrity of the civil service. *** The list of agencies potentially modified by today's decision goes on.

B

The majority's assertion that Humphrey's has proved unworkable also blinks reality. As just shown, for over 90 years Congress has legislated, and the Government ably functioned, against the "commonly understood" rule that heads of certain multimember agencies can enjoy modest tenure protections from at-will Presidential removal. These agencies, in short, have become ubiquitous over the last century and a half. No other decisions of this Court, as to other agency structures, suggest any inability to police the bounds established by Humphrey's. In fact, they show the opposite. Morrison accepted and broadened Humphrey's functionalist approach, clarifying only that the exercise is not meant to "define rigid categories" of officials who exercise executive power or perform executive functions, "but to ensure that Congress does not interfere with the President's" constitutional duties.

The case for retaining Humphrey's becomes even stronger when compared against the majority's theory, which itself promises to unleash only chaos. With remarkable steadfastness, the majority simply refuses to explain where its theory leads or where it ends. *** Although declining to consider the consequences of its decision might make it easier for the majority to cast Humphrey's aside, it leaves courts, agencies, and Congress with little guidance, and many new questions, on how they are supposed to assess removal questions going forward. *** Perhaps most strikingly, the Court today also makes clear that, whatever the logic of its decision, there are some ad hoc historical exceptions to its totalizing view of Article II, at least for the Federal Reserve. *** For most agencies, the majority here says, removal protections like the FTC's make the President's job " 'impossible' " and so are unlawful. *** For agencies that follow in the "lineage" of the First and Second Banks of the United States, however, the Court recognizes that the Founders were acutely aware "of the calamities that could arise from even the 'suspicion' of political manipulation of monetary policy" and that they therefore "guaranteed [such agencies] independence from Presidential control." ***

C

Finally, the majority suggests that Humphrey's has been "undermined" by later cases. That is incorrect. Morrison did not "repudiat[e]" Humphrey's. It extended its holding to uphold removal protections for a distinct, inferior officer. The case that Morrison repudiated was Myers.

IV

Not two years ago, I wrote of a "disconcerting trend" in this Court's cases: "When it comes to the separation of powers, this Court tells the American public and its coordinate branches that it knows best." *SEC v. Jarkesy*, 603 U. S. 109, 201 (2024) (dissenting opinion). Matters that for centuries had been left to the political branches have been subordinated, one after another, to this recent Court's rigid theories of how Government should operate. In this case, the Court takes one of the oldest debates in American history and decides the six Justices in the majority, alone, ought to be the ones to settle it for all time. That decision does not just overrule precedent; it all but ignores the precedent that exists. It does not just hamstring the political branches' ability to respond to new challenges; it rewinds the clock nearly 150 years, holding that a common agency structure is, and always has been, forbidden. It is true that today's decision does not eliminate the FTC or the many other agencies whose structures are implicated by overruling Humphrey's. It is undeniable, however, that those agencies will be transformed in ways that those who created them never could have expected and actively sought to avoid, fundamentally recalibrating the balance of power in this country in the process. Will these transformations yield the benefits, sounding in responsiveness and accountability, that the majority touts? Or will they risk placing "in the hands of a bold and designing man, of high ambition, . . . an instrument of the worst oppression," which will "sacrific[e] every principle of independence to the will of the [President]"? Neither I, nor the majority, knows with certainty. That is exactly why the Constitution leaves these one, involving sensitive tradeoffs and difficult judgment calls, to those best positioned to make them, and then to be held accountable for doing so: the political branches. Today, the Court discards that democratic regime in favor of one that distorts the structure of Government to fit the majority's theory of unitary, total control. The result is a President who emerges with far greater power than ever before. It is a power, however, that neither the People, nor Congress, nor the Constitution bestowed upon him. In granting the President this unbridled authority, the Court upends its precedent, misconstrues our history, and sheds any pretense of judicial modesty. I respectfully dissent.

***

***Trump v. Cook*, 609 U. S. ___ (2026)**, Supreme Court of the United States

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Last August, for the first time in the Federal Reserve's 111-year history, the President attempted to fire one of its Governors. A few weeks later, a federal court issued an injunction to prevent him from doing so. We decide whether that order should remain in effect pending the conclusion of litigation over the attempted removal.

I

A

*** Like the directors of its three predecessors, however, the Federal Reserve's Governors do not serve at the President's pleasure—they instead serve staggered 14-year terms, and may be removed only "for cause." §242.

B

Lisa Cook was appointed to the Board of Governors in 2022, at first to complete only the final two years of Janet Yellen's unexpired term. A year later, however, President Biden nominated Cook to a full 14-year term, and the Senate again voted to confirm her. In the normal course, then, Cook's term on the Federal Reserve was set to expire in 2038. Over the course of one week in August 2025, however, the longevity of Cook's tenure was to be called into question. On August 20, the Federal Housing Finance Agency's Director, William Pulte, posted to social media a letter dated a week before. The letter was addressed to Attorney General Pamela Bondi, and it accused Cook of mortgage fraud. "According to mortgage documents obtained by" the Agency, it stated, "it appears" that Cook "falsified bank documents and property records to acquire more favorable loan terms" in 2021, by claiming two homes simultaneously as her principal residence. *** Less than 30 minutes later, President Trump posted to social media that "Cook must resign, now!!!" and linked to a news article about Pulte's letter. *** Three days after that, President Trump purported to fire Cook for cause. In a letter to Cook, he stated that he had "reason to believe" that she "may have made false statements on one or more mortgage agreements." *** "The American people must be able to have full confidence in the honesty of the members entrusted with setting policy and overseeing the Federal Reserve," he explained. *** But he lacked "such confidence in [Cook's] integrity," he continued, "[i]n light of [her] deceitful and potentially criminal conduct," which "[a]t a minimum" exhibited "gross negligence." *** He thus determined that "faithfully executing the law requires [Cook's] immediate removal from office." *** Cook promptly filed suit, seeking relief at law and at equity to allow her to stay in office. She alleged that the removal was not "for cause," as required by statute. And in any case, she alleged, the President had failed to comply with the statute's (and the Constitution's) requirement that she receive notice and some opportunity to respond to the charges against her before being fired. The District Court agreed, issuing a preliminary injunction to prevent her removal. *** The Court of Appeals declined to stay the injunction. *** The Government applied for a stay in this Court. We deferred the application pending oral argument. 606 U. S. 1062 (2025).

II

This case comes to us not directly on the merits but on the Government's application for a stay—an order preventing the District Court's ruling from going into effect pending appeal to the Court of Appeals and, if necessary, to this Court. The standards for such relief are well established: The applicant must show that it is likely to succeed on the merits of its appeal, that we would likely grant certiorari to review any decision to the contrary, that it will likely suffer irreparable harm in the interim, and that the balance of equities tip in its favor. See *Hollingsworth v. Perry*, 558 U. S. 183, 190 (2010) (*per curiam*); *Nken v. Holder*, 556 U. S. 418, 434 (2009). We start and stop with the first factor. In our view, the Government has not shown that it is likely to prevail on the various legal arguments advanced in its stay application. The Government raises three alternative arguments: that a removal for cause under the statute is not judicially reviewable; that even if the removal is reviewable, cause is a low bar satisfied by any concerns about a Governor's conduct, ability, fitness, or competence; and that even if the Government did not show cause to remove Cook, she is nevertheless not entitled to remain in office while litigation over the removal is pending. We disagree on all three points. To accept any one of those arguments would in effect transform the Federal Reserve's for-cause protection into at-will employment—an interpretive leap out of step with the statute Congress enacted and our Nation's tradition of central banking protected from political interference. We therefore deny the Government's application.

A

The Government (but not JUSTICE THOMAS) contends that the President's determination of "cause" is wholly unreviewable. "The statutory 'for cause' language at issue," the Government argues, "commits the determination of cause to" the President alone. Application 20. We see no such textual commitment. The statute provides that each member of the Board of Governors "shall hold office for a term of fourteen years . . . , unless sooner removed for cause by the President." 12 U. S. C. §242. Whether a Governor should be removed, it is true, is a decision only the President can make (short of impeachment). But that does not mean that he may make that decision for any reason, or no reason. Even when a statute "delegates discretionary authority" to the Executive Branch, we have explained, our role "is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits." *Loper Bright Enterprises v. Raimondo*, 603 U. S. 369, 395 (2024). *** With no support in Reagan, the Government turns to the common law, which (it says) forecloses all judicial review. The common law, however, appears to cut the other way. See State ex rel. *Hart v. Common Council of City of Duluth*, 53 Minn. 238, 244, 55 N. W. 118, 120 (1893) ("The sufficiency and reasonableness of the cause of removal are questions for the courts. . . . This has been the settled law ever since Bagg's Case, [11 Co. Rep. 93b, 77 Eng. Rep. 1271 (K. B. 1615) (Coke, C. J.)], and we are not aware of any respectable authority to the contrary."). *** We see no indication in the common law that the President should have a free hand.

B

Even if the President's determination is judicially reviewable, the Government (and JUSTICE THOMAS) contend, "cause" sets a very low bar—one that the President easily cleared. *** Cook, on the other hand, argues that "cause" sets a very high bar—one that the President failed to meet. *** We find neither explanation persuasive. Although neither the Government nor JUSTICE THOMAS say as much, both seem to acknowledge that Congress enacted this statute "against the backdrop of the common law," *Comcast Corp. v. National Assn. of African American*-Owned Media, 589 U. S. 327, 335 (2020), such that we must look to the common law to decipher what "cause" (a term of art) requires. *** Neither one of those cases, however, nor Black's itself, suggested that any reason would do. Contra, *post*, at 15 (THOMAS, J., dissenting). They instead emphasized that the cause identified must be "substantial, reasonable and just," Nichols, 6 Abb. N. Cas., at 480 (internal quotation marks omitted), a "disqualification" akin to "inefficiency" or "incompetency," Board of Street Comm'rs, 96 Md., at 239, 53 A., at 925. *** Having rejected both parties' positions, we need not fully demarcate the contours of "cause" today. For present purposes, it is sufficient to observe that any definition of "cause" in this context must reflect the Federal Reserve's unique historical status and role. *** Like its predecessors, the Federal Reserve operates at a deliberate remove from the ordinary political process. It sets its own budget, free of congressional control. §243. It consists in large part of privately owned (and operated) entities, namely, the regional banks. §222. And its policies are set not only by Governors, but also by representatives of the private regional banks. §263. *** Not only the fact of independence but also the appearance of independence is key to the Federal Reserve's design. That counsels a substantial threshold for "cause." It is true, of course, that "cause" cannot be reduced to a precise set of rules, and some close calls are inevitable. Whether "cause" for removal exists in any given situation will depend, at least in part, on the seriousness of the alleged misconduct, and the extent of any nexus that may exist to the Governor's professional duties. The key issue is whether "[t]he cause assigned" truly "impl[ies] an unfitness for the place"—or whether it simply represents an effort to secure a "more congenial" replacement. *In re* Nichols, 6 Abb. N. Cas., at 482. *** Without such constraints in place, any perceived or alleged misstep (past or present) could provide a ready pretext for a Governor's removal—a fact that he would surely know, and that would surely weigh on him as he decided what to say and how to vote. Nothing could be more corrosive of the independence that Congress sought to preserve.

C

Even if the determination of cause is judicially reviewable and the definition of cause imposes a substantial threshold, the Government (joined by JUSTICE THOMAS) contends that federal courts cannot grant a preliminary injunction ordering reinstatement during the pendency of litigation. *** The law does not require such a result. *** At least as a historical matter, as the Government and JUSTICE THOMAS explain, courts of equity would "not interfere by injunction to determine questions concerning the appointment of public officers or their title to office." Application 33 (quoting 2 J. High, Law of Injunctions §1312, p. 863 (2d ed. 1880) (High)); *post*, at 30 (THOMAS, J., dissenting) (same). But such courts "frequently recognize[d] and protect[ed] the possession of officers de facto, . . . pending a litigation" at law "to determine their title." 2 High §1315, at 866. Put another way, a court of equity would not and could not finally determine whether a plaintiff was validly removed—that was a question only a court of law could settle (again, historically) by quo warranto or mandamus. *** In the meantime, however, equity could ensure that "the actual incumbents of an office may be protected, pending a contest as to their title, from interference with their possession, and with the exercise of their functions," at least to the extent that they had a likely meritorious claim. 2 High, §1315, at 866. The District Court sought to do just that here. *** In sum, a court may order that a removed Governor remain in office during the pendency of litigation if the Governor is otherwise entitled to a preliminary injunction. Otherwise, a President could remove a Governor even while litigation over the removal was ongoing—and could do so for very lengthy periods of time without substantial cause for removal. That would significantly interfere with the independence of the Federal Reserve.

III

Having rejected the Government's view that the courts are to play no role in assessing the validity of a Governor's removal, we may decide this application on narrow grounds. No matter the precise definition of cause, or the scope of our review of any such determination, the President failed to afford Cook the procedural protections to which she was entitled by statute. Without such protections, she could not properly dispute the charges the President laid against her. We thus need not address Cook's constitutional due process argument, for the statute alone makes it unlikely that the Government will prevail on appeal as to the validity of the procedures used to fire Cook.

A

Under our precedents, Cook was entitled to notice and some opportunity to respond prior to her termination. *** When Congress created the Federal Reserve, it gave Governors a set term in office and permitted removal only "for cause." At that time, and indeed afterward, that form of tenure—a term of years limited only by removal "for cause"—carried with it a settled interpretation at common law, one that we had expressly adopted just a decade before. "[T]he rule," we explained in 1901, is that "notice and hearing are essential" before an officer's removal "where the term of office is for a fixed period." Reagan, 182 U. S., at 425. We said the same in 1903. See *Shurtleff v. United States*, 189 U. S. 311, 314. Reagan and Shurtleff established the baseline against which Congress legislated, and we must construe its work accordingly. *** Instead, all that is required is notice "to the officer of the charges made against him" and "an opportunity to be heard in his defense." F. Mechem, Law of Public Offices and Officers §454, p. 287 (1890) (Mechem). *** All that is required is "the right to support his allegations by argument however brief, and, if need be, by proof, however informal," before a final decision is made. *Londoner v. City and County of Denver*, 210 U. S. 373, 386 (1908). ***

B

*** With no support in Reagan and Shurtleff, JUSTICE THOMAS goes for broke. Once again far outflanking the Government, which "does not contest the constitutionality of the" statute, Application 2, n. 1, JUSTICE THOMAS declares the statute "unconstitutional," an infringement on the President's power to "remove his subordinates at will," *post*, at 24–25. We disagree, as did "the founders of our Government and framers of our Constitution" when they "were actively participating in public affairs." *Myers v. United States*, 272 U. S. 52, 175 (1926). They knew from experience (and Hamilton reminded them) of the calamities that could arise from even the "suspicion" of political manipulation of monetary policy. Report on a National Bank 331. So when they established the First Bank of the United States, they guaranteed its independence from Presidential control. Their successors did the same for the Second Bank. That enabled both banks to serve as the "great regulating wheel" of the early American financial system. Lomazoff 53. *** What matters is that the Federal Reserve remains "consistent with the principles that underpin" the First and Second Banks—namely, that monetary policy should not be subject to political interference. Rahimi, 602 U. S., at 692. In our view, the Federal Reserve maintains the "balance struck by the founding generation" under "modern circumstances." *Ibid.* *** In this extraordinary case, we have had the benefit of not only *amici* and oral argument but months of internal consultation and deliberation. We see no reason to leave the public in limbo, or to sow doubt as to the status of one of our Nation's (and the world's) most important financial institutions. Although we appreciate that others may see matters differently, we would not so quickly unsettle this "special arrangement sanctioned by history." *Consumer Financial Protection Bureau v. Community Financial Services Assn. of America, Ltd.*, 601 U. S. 416, 467, n. 16 (2024) (ALITO, J., dissenting).

C

As a last resort, the Government halfheartedly contends that Cook in fact received due process after all. *** That will not do. At minimum, Cook was entitled to some explanation of the evidence at issue, some avenue for a response, and a deadline by which a response would be due. *Cf. Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314–315 (1950). Because Cook did not receive such process, her removal was "erroneous and void" from the start, M. Throop, Law Relating to Public Officers §364, p. 360 (1892), a principle recognized succinctly by Lord Coke as early as 1615, see Bagg's Case, 11 Co. Rep., at 93b, 77 Eng. Rep., at 1272 ("A removal, without hearing the party removed, is bad."). *** Only after Cook has had the opportunity to respond to the charges made against her "by argument however brief, and, if need be, by proof, however informal," may a final decision be made. Londoner, 210 U. S., at 386. And only then can the courts assess the validity and sufficiency of such charges.

* * *

As the Government concedes, Congress limited the President's power to remove Governors for good reason—"[t]o preserve the independence of the Federal Reserve" and to continue the "long tradition" of "monetary policy . . . exercised independent of . . . executive influence." Tr. of Oral Arg. 48 (statement of the Solicitor General). Any change in that scheme must come from Congress, not the courts. That is why we cannot accept the Government's contentions in this case. To do so would allow the President to remove a member of the Federal Reserve at any time, for any reason, without any notice before, and without any judicial check after. That would turn for-cause protection into little more than at-will employment. To be clear, the ultimate question of whether the President can remove Cook for cause will depend in part on the underlying facts. In this opinion, we have not addressed the facts, as they have yet to be found or analyzed under the relevant legal standards. Rather, we have simply addressed the parties' arguments about the appropriate legal standards under which the facts must be evaluated. The application for a stay is denied.

It is so ordered.

JUSTICE KAVANAUGH, concurring.

I join the Court's opinion in full and write separately to emphasize two points. First, today's interim ruling does not decide whether the President may lawfully remove Governor Cook for cause. The ultimate decision about whether the President may remove Governor Cook for cause will largely depend on the facts regarding the Governor's actions. And those facts have yet to be determined. The Court's opinion today simply settles some of the legal and procedural ground rules under which (i) the Executive Branch may determine and assess the facts and (ii) courts may then "assess the validity and sufficiency" of any asserted grounds for removal. *Ante*, at 25. Second, in establishing some of those legal and procedural ground rules, the Court confirms the longstanding historical practice and understanding that the Federal Reserve is an independent agency whose Governors enjoy for-cause removal protection consistent with Article II of the Constitution. The Government itself expressly "acknowledge[d]" and did "not disput[e]" that point in this case, even as the Government simultaneously (and successfully) argued that the for-cause removal protections for most independent agencies violate Article II. *** I agree with the Court, moreover, that we should not leave open the question whether the Federal Reserve can remain an independent agency in the wake of Slaughter. After Slaughter, there is a clear choice: Either the Federal Reserve may remain independent (with the Governors removable for cause, not at will), or it may not. Leaving that question open would create significant uncertainty about whether the Court might soon eliminate the Federal Reserve's independence, and thereby expose the Federal Reserve to political influences and jeopardize the efficacy of U. S. monetary policy. Even temporary uncertainty about the status of the Federal Reserve could spark political upheaval, including confusion about whether the President could immediately remove multiple Governors at will, as well as turmoil in the U. S. and world economies. I would not go down that road. *** In short, like the Court, I see no good reason here to unsettle a critical constitutional question that has long been settled and that should remain settled.

* * *

With those additional comments, I join the Court's opinion in full.

JUSTICE JACKSON, concurring.

Whether to issue a stay is fundamentally an equitable determination. *** I have joined the Court's opinion because I also agree that the Government's merits arguments are unlikely to succeed. On the equities, the Government has not identified any injury whatsoever beyond the harm that a President purportedly suffers when a Governor of the Board of the Federal Reserve exercises power "over [his] objection." Application to Stay Preliminary Injunction 36. *** But "that assertion is just another species of the far-fetched contention that the President [is] injured whenever he is prevented from doing as he wishes." Orr, 607 U. S., at ___ (JACKSON, J., dissenting) (slip op., at 10). As such, it does not amount to the sort of tangible harm that warrants setting the interim status of a dispute in the President's favor. *** On the facts presented here, the public interest unmistakably weighs against the Government's application. Economic experts of all stripes agree that "[t]he Federal Reserve's independence is critical to fostering the long-term health and stability of the national economy." *** That is because "effective monetary policy requires a commitment" to the often politically unpopular "long-term goals of price stability and steady growth." *** But those long-term goals are not served if the officials responsible for the Nation's monetary policy are subject to the whims of politicians—many of whom "have an incentive to respond to their constituents' immediate interests by prioritizing short-term economic growth." *** Put differently, the public's interest is not served if a President can intimidate members of the Federal Reserve into doing his bidding. Experience has taught that high inflation, price variability, and, ultimately, financial panic can result when the Federal Reserve is subjected to rank politicization. *** Allowing Governor Lisa Cook "to be removed now, without even full merits review, would send an unmistakable signal that the Federal Reserve is vulnerable" to exactly this kind of influence. ***

* * *

*** Still, on the most important stay considerations (the risk of irreparable harm and the equities) this application is not a close call. The Government misses the mark by a mile.

JUSTICE THOMAS, dissenting.

The President of the United States seeks relief from a court order that restores a principal executive officer to her position after the President removed her. *** Cook sued in federal court to reclaim her office. She argued that her office was her "property," which the President could not deprive her of without "due process of law." She also argued that her apparent mortgage fraud was not a "cause" to remove her, and that the statute authorizing the President to remove her for "cause" implicitly required that the President provide her with notice and a hearing before any such removal. *** Today, this Court denies the President a stay of that injunction, allowing Cook to continue to exercise executive power after being removed by the President. The Court's decision is incorrect. Cook's office was not her "property" because, in this country, government officials do not own the public offices in which they serve. Apparent mortgage fraud was a "cause" to remove Cook. And, the statute authorizing the President to remove Cook for "cause" says nothing about notice or a hearing, so it does not require notice and a hearing. Any other result would violate Article II of the Constitution, under which the President may remove executive officers at will. The Court makes many policy arguments for an "independent" banking agency that exercises executive power free from accountability, *ante*, at 5, but those are ultimately arguments against the Constitution. The federal courts also lack the authority to enter the relief that the Court upholds today. *** I respectfully dissent.

II

The President is likely to succeed on the merits. The President's removal complied with the Due Process Clause because, in our system of government, officials do not own the public offices that they hold. The President's removal likewise complied with the statute because he removed Cook for "cause" and because the statute does not require notice and a hearing. Were there any doubt about what the statute requires, the canon of constitutional avoidance counsels strongly against reading it to implicitly restrict the President's Article II removal power. Finally, federal courts lack the power to grant the relief that Cook received.

A

*** Cook has no property right to hold power on the Board. In our system of government, a "public office is not property." Taylor, 178 U. S., at 576. Cook's claim that she has a property right to exercise governmental power is "alien to the concept of a republican form of government." *Barnes v. Kline*, 759 F. 2d 21, 50 (CADC 1985) (Bork, J., dissenting). *** Because the President did not deprive Cook of any protected interest in property, the Court rightly does not accept Cook's due-process claim. The President's removal of Cook was also for "cause." 12 U. S. C. §242. By authorizing the President to remove Cook for "cause" in the Federal Reserve Act, Congress gave Cook the weakest available removal protection, which this Court has described as weaker even than the relatively deferential "inefficiency, neglect, or malfeasance in office" standard. *Collins v. Yellen*, 594 U. S. 220, 255–256 (2021) (internal quotation marks omitted). The "for cause" standard required nothing more than what the plain meaning suggests—a cause. Any "cause relating to the conduct, ability, fitness, or competence of the officer" would do. Black's Law Dictionary 796 (3d ed. 1933). *** Cook's alleged mortgage fraud is a "cause" for removing her. *** The Court rightly does not accept Cook's claim that the President lacked "cause" to remove her. The Court opines that "cause" means a "'substantial, reasonable, and just'" reason, or a "'disqualification' akin to 'inefficiency' or 'incompetency.'" *Ante*, at 13. Given the presumption of regularity, the accusation of mortgage fraud—a financial crime punishable by up to 30 years in prison—satisfies that standard. The Court does not hold otherwise. The President's removal of Cook complied with the statute regardless of whether he provided notice and a hearing. The statute, as its plain text makes clear, did not require the President to provide Cook with notice and a hearing. The Court errs in concluding otherwise. Its interpretation also renders the statute unconstitutional.

a

We, as courts, have no authority to change what statutes say. "Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operation." *United States v. Temple*, 105 U. S. 97, 99 (1882). *** In the Federal Reserve Act, Congress chose not to require that the President provide notice or a hearing to officers on the Board before removing them. The Federal Reserve Act specifies "only causes for removal," not "procedures for removal." *Ante*, at 11 (emphasis in original). ***

b

The Court nonetheless interprets the Federal Reserve Act to say what it obviously does not—that notice and a hearing are required. *** The Federal Reserve Act's removal provision is not a common-law term of art that means perforce that a removed officer is entitled to notice and a hearing. The Court's interpretation of the removal provision is not based on the common law at all. In support of its notice-and-hearing requirement, the Court cites no "eminent common-law authorities" interpreting any of the terms of the Federal Reserve Act's removal provision. *Kahler v. Kansas*, 589 U. S. 271, 279 (2020). The Court's reasoning is instead based on two statutory-interpretation decisions that said nothing about the common law. *** Earlier this Term, this Court held that the prior-construction principle does not permit a court to depart from the ordinary meaning of a statutory term, as the Court does here, unless the earlier judicial constructions of that term were ubiquitous and unanimous: "[T]o conclude that Congress incorporated a judicial definition into a statutory term," "we have required" a "'broad and unquestioned' 'judicial consensus.'" *Learning Resources, Inc. v. Trump*, 607 U. S. 229, 252–253, n. 5 (2026). When Congress enacted the Federal Reserve Act, there was no "'broad and unquestioned'" judicial consensus that a "term of years limited only by removal 'for cause,'" *ante*, at 18, 21, forbade removals without notice and a hearing. In point of fact, many courts held the opposite. A "for cause" removal provision, courts explained, "not only fails to require any hearing or proceeding, but also strongly implies that the removal shall be summary, and without any antecedent proceeding." *In re* Carter, 141 Cal. 316, 321, 74 P. 997, 998 (1903). *** The Court thus does not even attempt to muster the "required" "'judicial consensus.'" Learning Resources, 607 U. S., at 252–253, n. 5. The Court instead relies on only two opinions, each of which is an odd fit for the Court's conclusion. *** Reagan and Shurtleff are not typically invoked in support of removed officers like Cook. *** This one line does not interpret the "same language" that the Federal Reserve Act's removal provision used, so the prior-construction canon "has no application here." Armstrong, 575 U. S., at 330. *** After all, hundreds of statutes provide for fixed terms of office, and nobody believes that all of those statutes implicitly require notice and a hearing. *** The Court's interpretation is also inconsistent with "congressional practice." Congress has enacted dozens of statutes that require notice and a hearing before an officer can be removed. They all do so "in explicit terms." *** Congress of course has many reasons not to require notice and a hearing, including that they can cause delay and uncertainty, can waste resources, and can empower the Judiciary at the expense of the political branches. It is thus difficult to rationalize the Court's interpretation of the Federal Reserve Act in terms of ordinary meaning, the common law, or any statutory precedents. The more obvious rationale for the Court's interpretation today is not any principle of law, but instead the Court's view of "the Federal Reserve's unique historical status and role." *Ante*, at 13.

c

The Court's interpretation is also inconsistent with Article II and the canon of constitutional avoidance. Limits on the President's ability to remove executive officers are unconstitutional. "Under our Constitution," "the 'executive power'—all of it—is 'vested in a President.'" *Seila Law*, 591 U. S., at 203 (plurality opinion). *** Thus, we explained in an opinion also released today, "the President may remove his subordinates at will," without cause, without notice, and without a hearing, so long as they exercise any executive power. *Id.*, at ___ (slip op., at 13). Any statute that limits "[t]he President's power to remove—and thus supervise—those who wield executive power on his behalf" is unconstitutional. *Seila Law*, 591 U. S., at 204 (plurality opinion). This principle admits no exceptions: "The Constitution places all Executive power in the hands of the President." Slaughter, 609 U. S., at ___ (slip op., at 10) (internal quotation marks omitted). *** In recent decades, this Court has without fail held restrictions on the President's power of removal to be unconstitutional.

See *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477 (2010); *Seila Law*, 591 U. S. 197; Collins, 594 U. S. 220; Slaughter, 609 U. S., at ___ (slip op., at 25). The Court has not upheld a removal restriction for a principal officer, like Cook, for nearly seven decades. *** The Board "unquestionably exercises executive power, and must therefore be controlled by the Chief Executive, in whom such power is vested." Slaughter, 609 U. S., at ___ (slip op., at 27). *** The President, therefore, may remove Cook for any reason that he wants and by any procedure that he wants. *** The Court today upholds the constitutionality of a limitation on the President's ability to remove a principal executive officer for only the third time in American history. Its constitutional reasoning consists of two paragraphs. *** Instead, the Court endorses a contradiction: "the Constitution vests the whole executive power in the President alone," Slaughter, 609 U. S., at ___ (slip op., at 21) (internal quotation marks omitted), but the Board can exercise executive power "independen[t] from Presidential control," *ante*, at 22. The Court's constitutional reasoning depends entirely on an ahistorical analogy between the Board and the First and Second Banks of the United States. *** The problem for the Court is that the First and Second Banks were banks with no executive power, whereas the Board is unquestionably a federal agency that wields considerable executive power. *** It is not a "bank," *ante*, at 23, but a novel "federal agency" with "broad powers affecting the entire banking and currency system," Cushman 153.

B

The President is also likely to succeed on an independent ground: The injunction against Cook's removal exceeds the limits on federal judicial authority. "Observing the limits on judicial authority . . . is required by a judge's oath to follow the law." *Trump v. CASA, Inc.*, 606 U. S. 831, 858 (2025). *** Cook lacks a right of action to enforce the terms of the Federal Reserve Act against government officials. No plaintiff, of course, can sue without a right of action. *** When seeking to enforce the terms of a federal statute, such as the Federal Reserve Act, that plaintiff's right of action must come from Congress, because "Congress determines who may sue to enforce federal law." *FS Credit v. Saba*, 608 U. S. ___, ___ (2026) (slip op., at 3). *** Even if Cook had a right of action that overcame sovereign immunity, this Court's precedents would foreclose the preliminary injunction that she obtained here. *** Traditionally, courts of equity could not grant injunctions to wrongly removed officers to restore them to office. "No principle of the law of injunctions, and perhaps no doctrine of equity jurisprudence is more definitely fixed or more clearly established than that courts of equity will not interfere by injunction to determine questions concerning the appointment of public officers or their title to office." 2 J. High, Law of Injunctions §1312, p. 863 (2d ed. 1880). This Court has therefore long held, in categorical terms, that "a court of equity" "has no jurisdiction" over "the removal of public officers." *In re* Sawyer, 124 U. S., at 210. *** Finally, even if she had a right of action, a waiver of sovereign immunity, and a basis for equitable relief, Cook would not be entitled to prevail because she challenges the removal of an executive officer by the President. Just two Terms ago, this Court said that both Congress and the Judiciary lack the power to impede the President's removal of his own executive officers. The President's "'power to remove—and thus supervise—those who wield executive power'" is within his "'conclusive and preclusive'" constitutional authority, no different from his power to issue pardons or Congress's power to impeach. Trump, 603 U. S., at 608–609. *** Today's decision is an unprecedented incursion on the Executive Branch. Neither the parties nor the Court can point to a single time in American history that this Court has upheld an injunction against the President's removal of an executive officer. In the 237-year history of our Constitution, this Court has, by all accounts, never done so.

III

Finally, the balance of harms and equities also favors the President. "[T]he Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Trump v. Wilcox*, 605 U. S. ___, ___ (2025) (slip op., at 1). *** The Court offers many policy arguments for an "independent" Federal Reserve Board. *** Many do not share the Court's rosy appraisal of the past century. But if the Court prefers an independent Federal Reserve Board, then its issue is not with the President but with the Constitution. Regardless of whether unaccountable executive officers like Cook would better govern the economy, the Framers rejected such a "promised land of technocratic governance." Slaughter, 609 U. S., at ___ (slip op., at 24). *** They instead chose government by the people. As a court, our duty is not to second-guess that decision, but to uphold it. I respectfully dissent from the denial of the stay application.

JUSTICE ALITO, with whom JUSTICE GORSUCH joins, dissenting.

This case presents many thorny legal questions. *** Some of these questions present issues of first impression, and many of them lack obvious answers. More important, the lower courts in this case have passed on very few of these issues and have done so in a preliminary and rushed fashion. We often say that "we are a court of review, not of first view," *Cutter v. Wilkinson*, 544 U. S. 709, 718, n. 7 (2005), but the Court has strayed far from that oft-repeated maxim here. What is before us is simply an application for a stay pending appeal, and the Court should have granted or denied that application in a brief order last fall. The nascency of this lawsuit and the novelty of the issues that it presents militated against holding oral argument and issuing a comprehensive opinion at this juncture. Rather than resolving several challenging and underdeveloped issues at this early stage of the litigation, I would decide this application solely on the two issues that the District Court addressed. And because the District Court resolved those issues incorrectly, I respectfully dissent from the Court's denial of a stay.

II

I would grant the application because, within the narrow confines of this case's posture, the President has satisfied the traditional stay factors. Consider first the President's likelihood of success on the merits. If the Court were to grant certiorari at this stage of the litigation, we would normally limit our consideration to the specific issues on which the courts below passed. *** Those issues are (1) whether removal "for cause" is limited to removal for in-office conduct, and (2) whether the President's attempt to remove Cook violated the Due Process Clause. On those two issues, the courts below were incorrect. As the majority and JUSTICE THOMAS apparently agree, the District Court erred in holding that removal "for cause" means removal only for "events that have occurred while [the officer is] in office." *** And as JUSTICE THOMAS and Judge Katsas have explained, Cook lacks a private property interest in her seat on the Board of Governors. *** Thus, the President's attempt to remove her could not have violated the Due Process Clause. *** Because the courts below resolved these two issues incorrectly, I would conclude that the President has shown a likelihood that we would reverse at this preliminary stage, leaving all other issues to be developed on remand in the first instance. *** A stay is therefore warranted here. I respectfully dissent.

JUSTICE BARRETT, dissenting.

The Court chooses to answer a series of difficult merits questions, most of which were not addressed by the D. C. Circuit below or almost any other court before today. *** All these questions are complicated and important, but the last is in a league of its own. And unlike the other issues, the constitutional status of the Federal Reserve is entirely outside the scope of this case. The Government expressly waived any constitutional challenge to the removal restriction, so the parties did not brief it. *** We ordinarily do not jump ahead of the lower courts to decide waived issues. *** Nonetheless, the Court raises and settles the constitutional issue—and does so based on a conclusory analogy to the First and Second Banks of the United States. *** Even assuming that the Court is right on the merits, the issue warrants much more than a few paragraphs. As JUSTICE THOMAS points out, the differences between the Federal Reserve and our early national banks are more significant than the majority lets on. *** And the Court's holding is in serious tension with *Trump v. Slaughter*, which we also decide today. *** Slaughter announces a categorical rule: Whenever "an agency 'executes' a congressional mandate against private parties, it exercises executive power" and must be subject to plenary executive control—"no ifs, ands, or quasis about it." *Id.*, at ___ (slip op., at 22). Yet here, the Court claims a special exception "'sanctioned by history'" and based on the Federal Reserve's role in setting monetary policy. *Ante*, at 24. How can history support both a categorical rule and a carveout? *** Do all the Federal Reserve's existing regulatory powers have the requisite connection to monetary policy? If not, are they grandfathered in? *** And is the Federal Reserve unique, or might history sanction other exceptions too? The Court does not say. For present purposes, though, the most significant problem is that the Court decides this issue at all—not to mention the many others covered in its opinion. While a modest approach would have been appropriate, the Court chooses to go big. Its opinion sets precedent on a series of important issues, with implications that extend well beyond this case. I agree with JUSTICE ALITO that the Court should have limited itself to the issues supporting the District Court's injunction. *** Putting aside my difficulties with the opinion's scope, there is a disconnect between its holding and its disposition line. The Court does not rule out mortgage fraud as sufficient cause for removal under §242; instead, it denies a stay on the "narrow groun[d]" that the President has not yet provided Cook enough process. *Ante*, at 17. The President remains free to "tr[y] again," the Court says, so long as he gives Cook proper notice and an opportunity to respond. *** But if the Court wanted to leave the President in that position, it should not have denied the stay. Recall that the District Court held that Cook's alleged mortgage fraud, as pre-office conduct, does not constitute cause for removal under §242. *** So it entered a preliminary injunction barring defendants Jerome Powell and the Board of Governors "from effectuating in any manner Plaintiff's removal from her position as a member of the Board of Governors on the basis of the grounds stated in the President's letter of August 25, 2025." App. to Application 23a (emphasis added). *** As it stands, then, the President has no way to remove Cook for her alleged mortgage fraud. That is true even if he gives Cook a full-blown judicial trial (process far exceeding what the Court requires, *ante*, at 18–19), and satisfies the Court's "substantial threshold for 'cause'" (by demonstrating that the mortgage fraud truly implies an unfitness for the office, *ante*, at 14). To get around this problem, the Court adopts an implausibly narrow reading of the injunction: It interprets the injunction "to forbid the implementation of 'the President's letter of August 25' in which he purported to fire Cook—but not to forbid the President from trying again, if he chooses to do so." *Ante*, at 26, n. 8. In other words, the injunction stops the President from "firing her by that letter," not "firing her for mortgage fraud." But that is simply not what the injunction says. It forbids Cook's removal based on "the grounds" stated in the President's August 25th letter—i.e., mortgage fraud. And the D. C. Circuit's order denying the stay left that broad injunction in place—as does the Court's. We have repeatedly found that the President suffers irreparable harm when he is barred from firing a subordinate. See *Trump v. Wilcox*, 605 U. S. ___, ___ (2025) (slip op., at 1); *Trump v. Boyle*, 606 U. S. ___, ___ (2025) (slip op., at 1). In my view, that harm is somewhat lessened here because the Government has conceded for purposes of this litigation that the President cannot remove Cook or any other member of the Board of Governors for policy reasons. See Application 26. Still, the District Court's order blocks the President from removing Cook for mortgage fraud, and that is so even if he satisfies the requirements that the Court's opinion sets out. Under our precedent, that significant interference with the President's removal authority clears the "irreparable harm" threshold. For these reasons, I respectfully dissent from the denial of the stay application.

Note: The Federal Reserve Carve-Out and Its Critics

Slaughter announces what it calls a categorical rule: whenever "an agency 'executes' a congressional mandate against private parties, it exercises executive power" and must be freely removable by the President — "no ifs, ands, or quasis about it." *Slaughter*, 609 U.S. at ___ (slip op., at 22). *Cook*, decided the same day, nonetheless preserves for-cause protection for Federal Reserve Governors based on the Board's "unique historical status and role" and its lineage to the First and Second Banks of the United States. *Id.* at 13, 22–23. Justice Barrett's dissent presses the resulting tension directly: if the rule is truly categorical, on what basis does history support both the rule and an exception to it? *See Cook*, 609 U.S. at ___ (Barrett, J., dissenting) (slip op., at 2–3). Two recent articles engage this question directly and are useful companion reading: Anuj C. Desai & Aaron L. Nielson, *Article II and the Federal Reserve*, 109 Cornell L. Rev. 843, 905–908 (2024) (arguing that the Fed's structural differences from ordinary independent agencies are more significant, historically, than the *Cook* majority's two paragraphs suggest); and Lev Menand, *The Unitary Executive and the Federal Reserve*, 94 Fordham L. Rev. 2089, 2119–2121 (2026) (contending that the carve-out is doctrinally unstable and will require further litigation to define its edges).

REVIEW QUESTIONS AND COMMENTS

1. *Wilcox* reached the Court on the emergency docket and was resolved in a brief per curiam order. What does Justice Kagan's dissent say is wrong with deciding a question of this magnitude that way?
2. What is the "for-cause" removal protection at issue in *Slaughter*, and what does the Court conclude makes the FTC's functions "executive" enough that the President must be able to remove its Commissioners at will?
3. How does the majority in *Slaughter* treat *Humphrey's Executor*? Is it overruled outright, distinguished, or something else?
4. Justice Gorsuch's concurrence in *Slaughter* raises a concern that goes beyond removal power alone. What is it, and why does he think the decision does not, by itself, resolve that concern?
5. In *Cook*, why does the Court conclude that the Federal Reserve is different from the FTC, even after *Slaughter* eliminates for-cause protection for most independent agencies?
6. What procedural defect lets the Court deny the stay in *Cook* without reaching the removal question?

7. Consider *Wilcox*, *Slaughter*, and *Cook* together. What does this trio suggest about how quickly, and through what procedural vehicles, a 90-year-old precedent can be narrowed or dismantled?

Insert at p. 193, after REVIEW QUESTIONS AND COMMENTS following Seacoast, at the close of Part III (Formal Adjudication) and immediately before Chapter 6 (Policymaking Choices) begins

***SEC v. Jarkesy*, 603 U.S. 109 (2024)**

Supreme Court of the United States

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

In 2013, the Securities and Exchange Commission initiated an enforcement action against respondents George Jarkesy Jr., and Patriot28, LLC, seeking civil penalties for alleged securities fraud. The SEC chose to adjudicate the matter in-house before one of its administrative law judges, rather than in federal court where respondents could have proceeded before a jury. We consider whether the Seventh Amendment permits the SEC to compel respondents to defend themselves before the agency rather than before a jury in federal court.

In the aftermath of the Wall Street Crash of 1929, Congress passed a suite of laws designed to combat securities fraud and increase market transparency. Three such statutes are relevant here: The Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. These Acts respectively govern the registration of securities, the trading of securities, and the activities of investment advisers. Their protections are mutually reinforcing and often overlap. Although each regulates different aspects of the securities markets, their pertinent provisions—collectively referred to by regulators as "the antifraud provisions"—target the same basic behavior: misrepresenting or concealing material facts.

The three antifraud provisions are Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act, and Section 206 of the Investment Advisers Act. Section 17(a) prohibits regulated individuals from "obtain[ing] money or property by means of any untrue statement of a material fact," as well as causing certain omissions of material fact. As implemented by Rule 10b–5, Section 10(b) prohibits using "any device, scheme, or artifice to defraud," making "untrue statement[s] of . . . material fact," causing certain material omissions, and "engag[ing] in any act . . . which operates or would operate as a fraud." And finally, Section 206(b), as implemented by Rule 206(4)–8, prohibits investment advisers from making "any untrue statement of a material fact" or engaging in "fraudulent, deceptive, or manipulative" acts with respect to investors or prospective investors.

To enforce these Acts, Congress created the SEC. The SEC may bring an enforcement action in one of two forums. First, the Commission can adjudicate the matter itself. Alternatively, it can file a suit in federal court. The SEC's choice of forum dictates two aspects of the litigation: The procedural protections enjoyed by the defendant, and the remedies available to the SEC.

Procedurally, these forums differ in who presides and makes legal determinations, what evidentiary and discovery rules apply, and who finds facts. Most pertinently, in federal court a jury finds the facts, depending on the nature of the claim. In addition, a life-tenured, salary-protected Article III judge presides, and the litigation is governed by the Federal Rules of Evidence and the ordinary rules of discovery.

Conversely, when the SEC adjudicates the matter in-house, there are no juries. Instead, the Commission presides and finds facts while its Division of Enforcement prosecutes the case. The Commission may also delegate its role as judge and factfinder to one of its members or to an administrative law judge (ALJ) that it employs. In these proceedings, the Commission or its delegee decides discovery disputes, and the SEC's Rules of Practice govern. The Commission or its delegee also determines the scope and form of permissible evidence and may admit hearsay and other testimony that would be inadmissible in federal court.

When a Commission member or an ALJ presides, the full Commission can review that official's findings and conclusions, but it is not obligated to do so. Judicial review is also available once the proceedings have concluded. But such review is deferential. By law, a reviewing court must treat the agency's factual findings as "conclusive" if sufficiently supported by the record, even when they rest on evidence that could not have been admitted in federal court.

The remedy at issue in this case, civil penalties, also originally depended upon the forum chosen by the SEC. Except in cases against registered entities, the SEC could obtain civil penalties only in federal court. That is no longer so. In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). That Act "ma[de] the SEC's authority in administrative penalty proceedings coextensive with its authority to seek penalties in Federal court." In other words, the SEC may now seek civil penalties in federal court, or it may impose them through its own in-house proceedings.

Civil penalties rank among the SEC's most potent enforcement tools. These penalties consist of fines of up to $725,000 per violation. And the SEC may levy these penalties even when no investor has actually suffered financial loss.

Shortly after passage of the Dodd-Frank Act, the SEC began investigating Jarkesy and Patriot28 for securities fraud.***

According to the SEC, Jarkesy and Patriot28 misled investors in at least three ways: (1) by misrepresenting the investment strategies that Jarkesy and Patriot28 employed, (2) by lying about the identity of the funds' auditor and prime broker, and (3) by inflating the funds' claimed value so that Jarkesy and Patriot28 could collect larger management fees. The SEC initiated an enforcement action, contending that these actions violated the antifraud provisions of the Securities Act, the Securities Exchange Act, and the Investment Advisers Act, and sought civil penalties and other remedies.

Relying on the new authority conferred by the Dodd-Frank Act, the SEC opted to adjudicate the matter itself rather than in federal court. In 2014, the presiding ALJ issued an initial decision. The SEC reviewed the decision and then released its final order in 2020.

The final order levied a civil penalty of $300,000 against Jarkesy and Patriot28, directed them to cease and desist committing or causing violations of the antifraud provisions, ordered Patriot28 to disgorge earnings, and prohibited Jarkesy from participating in the securities industry and in offerings of penny stocks.

Jarkesy and Patriot28 petitioned for judicial review. A divided panel of the Fifth Circuit granted their petition and vacated the final order.***

II

This case poses a straightforward question: whether the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud. *** The threshold issue is whether this action implicates the Seventh Amendment. It does. The SEC's antifraud provisions replicate common law fraud, and it is well established that common law claims must be heard by a jury.

Since this case does implicate the Seventh Amendment, we next consider whether the "public rights" exception to Article III jurisdiction applies. This exception has been held to permit Congress to assign certain matters to agencies for adjudication even though such proceedings would not afford the right to a jury trial. The exception does not apply here because the present action does not fall within any of the distinctive areas involving governmental prerogatives where the Court has concluded that a matter may be resolved outside of an Article III court, without a jury. The Seventh Amendment therefore applies and a jury is required.***

A

We first explain why this action implicates the Seventh Amendment.

1

The right to trial by jury is "of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right" has always been and "should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U. S. 474, 486 (1935). Commentators recognized the right as "the glory of the English law," and it was prized by the American colonists. When the English began evading American juries by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts, Americans condemned Parliament for "subvert[ing] the rights and liberties of the colonists." Representatives gathered at the First Continental Congress demanded that Parliament respect the "great and inestimable privilege of being tried by their peers of the vicinage, according to the [common] law." And when the English continued to try Americans without juries, the Founders cited the practice as a justification for severing our ties to England. See Declaration of Independence ¶20

In the Revolution's aftermath, perhaps the "most success[ful]" critique leveled against the proposed Constitution was its "want of a . . . provision for the trial by jury in civil cases." The Federalist No. 83, p. 495 (C. Rossiter ed. 1961) (A. Hamilton) (emphasis deleted). The Framers promptly adopted the Seventh Amendment to fix that flaw. In so doing, they "embedded" the right in the Constitution, securing it "against the passing demands of expediency or convenience." *Reid v. Covert*, 354 U. S. 1, 10 (1957) (plurality opinion). Since then, "every encroachment upon it has been watched with great jealousy." *Parsons v. Bedford*, 3 Pet. 433, 446 (1830).

2

By its text, the Seventh Amendment guarantees that in "[s]uits at common law, . . . the right of trial by jury shall be preserved." In construing this language, we have noted that the right is not limited to the "common-law forms of action recognized" when the Seventh Amendment was ratified. As Justice Story explained, the Framers used the term "common law" in the Amendment "in contradistinction to equity, and admiralty, and maritime jurisprudence." Parsons, 3 Pet., at 446. The Amendment therefore "embrace[s] all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume." *Id.*, at 447.

The Seventh Amendment extends to a particular statutory claim if the claim is "legal in nature." As we made clear in *Tull v. United States,* 481 U.S. 412 (1987), whether that claim is statutory is immaterial to this analysis. In that case, the Government sued a real estate developer for civil penalties in federal court. The developer responded by invoking his right to a jury trial. Although the cause of action arose under the Clean Water Act, the Court surveyed early cases to show that the statutory nature of the claim was not legally relevant. "Actions by the Government to recover civil penalties under statutory provisions," we explained, "historically ha[d] been viewed as [a] type of action in debt requiring trial by jury." *Id.*, at 418–419. To determine whether a suit is legal in nature, we directed courts to consider the cause of action and the remedy it provides. Since some causes of action sound in both law and equity, we concluded that the remedy was the "more important" consideration. *Id.*, at 421 (brackets and internal quotation marks omitted); see *id.*, at 418–421.

In this case, the remedy is all but dispositive. For respondents' alleged fraud, the SEC seeks civil penalties, a form of monetary relief. While monetary relief can be legal or equitable, money damages are the prototypical common law remedy. What determines whether a monetary remedy is legal is if it is designed to punish or deter the wrongdoer, or, on the other hand, solely to "restore the status quo." *Tull*, 481 U. S., at 422. As we have previously explained, "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment." *Austin v. United States*, 509 U. S. 602, 610 (1993) (internal quotation marks omitted). And while courts of equity could order a defendant to return unjustly obtained funds, only courts of law issued monetary penalties to "punish culpable individuals." *Tull*, 481 U. S., at 422. Applying these principles, we have recognized that "civil penalt[ies are] a type of remedy at common law that could only be enforced in courts of law." *Ibid.* The same is true here.

To start, the Securities Exchange Act and the Investment Advisers Act condition the availability of civil penalties on six statutory factors: (1) whether the alleged misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard for regulatory requirements, (2) whether it caused harm, (3) whether it resulted in unjust enrichment, accounting for any restitution made, (4) whether the defendant had previously violated securities laws or regulations, or had previously committed certain crimes, (5) the need for deterrence, and (6) other "matters as justice may require." Of these, several concern culpability, deterrence, and recidivism. Because they tie the availability of civil penalties to the perceived need to punish the defendant rather than to restore the victim, such considerations are legal rather than equitable.

The same is true of the criteria that determine the size of the available remedy. The Securities Act, the Securities Exchange Act, and the Investment Advisers Act establish three "tiers" of civil penalties. *** successive tier authorizes a larger monetary sanction.

Like the considerations that determine the availability of civil penalties in the first place, the criteria that divide these tiers are also legal in nature. Each tier conditions the available penalty on the culpability of the defendant and the need for deterrence, not the size of the harm that must be remedied. Indeed, showing that a victim suffered harm is not even required to advance a defendant from one tier to the next. Since nothing in this analysis turns on "restor[ing] the status quo," *Tull*, 481 U. S., at 422, these factors show that these civil penalties are designed to be punitive.

The final proof that this remedy is punitive is that the SEC is not obligated to return any money to victims. See *id.*, at 422–423. Although the SEC can choose to compensate injured shareholders from the civil penalties it collects, it admits that it is not required to do so. Such a penalty by definition does not "restore the status quo" and can make no pretense of being equitable.

In sum, the civil penalties in this case are designed to punish and deter, not to compensate. ***. That conclusion effectively decides that this suit implicates the Seventh Amendment right, and that a defendant would be entitled to a jury on these claims.

The close relationship between the causes of action in this case and common law fraud confirms that conclusion. Both target the same basic conduct: misrepresenting or concealing material facts. That is no accident. Congress deliberately used "fraud" and other common law terms of art in the Securities Act, the Securities Exchange Act, and the Investment Advisers Act. ***

***

That is not to say that federal securities fraud and common law fraud are identical. In some respects, federal securities fraud is narrower. For example, federal securities law does not "convert every common-law fraud that happens to involve securities into a violation." *SEC v. Zandford*, 535 U. S. 813, 820 (2002). It only targets certain subject matter and certain disclosures. In other respects, federal securities fraud is broader. For example, federal securities fraud employs the burden of proof typical in civil cases, while its common law analogue traditionally used a more stringent standard. Courts have also not typically interpreted federal securities fraud to require a showing of harm to be actionable ***. Nevertheless, the close relationship between federal securities fraud and common law fraud confirms that this action is "legal in nature."

B

1

Although the claims at issue here implicate the Seventh Amendment, the Government and the dissent argue that a jury trial is not required because the "public rights" exception applies. Under this exception, Congress may assign the matter for decision to an agency without a jury, consistent with the Seventh Amendment. But this case does not fall within the exception, so Congress may not avoid a jury trial by preventing the case from being heard before an Article III tribunal.

The Constitution prohibits Congress from "withdraw[ing] from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law." *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856). Once such a suit "is brought within the bounds of federal jurisdiction," an Article III court must decide it, with a jury if the Seventh Amendment applies. *Stern v. Marshall*, 564 U. S. 462, 484 (2011) ***.

On that basis, we have repeatedly explained that matters concerning private rights may not be removed from Article III courts. A hallmark that we have looked to in determining if a suit concerns private rights is whether it "is made of 'the stuff of the traditional actions at common law tried by the courts at Westminster in 1789.'" *Id.*, at 484 (quoting *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U. S. 50, 90 (1982) (Rehnquist, J., concurring in judgment)). If a suit is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory. *Stern*, 564 U. S., at 484.

At the same time, our precedent has also recognized a class of cases concerning what we have called "public rights." Such matters "historically could have been determined exclusively by [the executive and legislative] branches," *id.*, at 493 (internal quotation marks omitted), even when they were "presented in such form that the judicial power [wa]s capable of acting on them," *Murray's Lessee*, 18 How., at 284. In contrast to common law claims, no involvement by an Article III court in the initial adjudication is necessary in such a case.

The decision that first recognized the public rights exception was *Murray's Lessee*. In that case, a federal customs collector failed to deliver public funds to the Treasury, so the Government issued a "warrant of distress" to compel him to produce the withheld sum. 18 How., at 274–275. Pursuant to the warrant, the Government eventually seized and sold a plot of the collector's land. *Id.*, at 274. Plaintiffs later attacked the purchaser's title, arguing that the initial seizure was void because the Government had audited the collector's account and issued the warrant itself without judicial involvement.

The Court upheld the sale. It explained that pursuant to its power to collect revenue, the Government could rely on "summary proceedings" to compel its officers to "pay such balances of the public money" into the Treasury "as may be in their hands." *Id.*, at 281, 285. Indeed, the Court observed, there was an unbroken tradition—long predating the founding—of using these kinds of proceedings to "enforce payment of balances due from receivers of the revenue." *Id.*, at 278; see *id.*, at 281. In light of this historical practice, the Government could issue a valid warrant without intruding on the domain of the Judiciary ***.

This principle extends beyond cases involving the collection of revenue. In *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320 (1909), we considered the imposition of a monetary penalty on a steamship company. Pursuant to its plenary power over immigration, Congress had excluded immigration by aliens afflicted with "loathsome or dangerous contagious diseases," and it authorized customs collectors to enforce the prohibition with fines. *Id.*, at 331–334. When a steamship company challenged the penalty under Article III, we upheld it. Congress's power over foreign commerce, we explained, was so total that no party had a "'vested right'" to import anything into the country. *Id.*, at 335 (quoting *Buttfield* *v. Stranahan*, 192 U. S. 470, 493 (1904)). By the same token, Congress could also prohibit immigration by certain classes of persons and enforce those prohibitions with administrative penalties assessed without a jury. See Oceanic Steam Navigation Co., 214 U. S., at 339–340.

In *Ex parte Bakelite Corp.,* we upheld a law authorizing the President to impose tariffs on goods imported by "unfair methods of competition." 279 U. S. 438, 446 (1929) ***. Because the political branches had traditionally held exclusive power over this field and had exercised it, we explained that the assessment of tariffs did not implicate Article III. *Id.*, at 458, 460–461.

This Court has since held that certain other historic categories of adjudications fall within the exception, including relations with Indian tribes, see *United States v. Jicarilla Apache Nation*, 564 U. S. 162, 174 (2011), the administration of public lands, *Crowell v. Benson*, 285 U. S. 22, 51 (1932), and the granting of public benefits such as payments to veterans, *ibid.,* pensions, *ibid.*, and patent rights, *United States v. Duell,* 172 U. S. 576, 582–583 (1899).

Our opinions governing the public rights exception have not always spoken in precise terms. This is an "area of frequently arcane distinctions and confusing precedents." *Thomas v. Union Carbide Agricultural Products Co.*, 473 U. S. 568, 583 (1985) (internal quotation marks omitted). The Court "has not 'definitively explained' the distinction between public and private rights," and we do not claim to do so today. *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 584 U. S. 325, 334 (2018).

Nevertheless, since *Murray's Lessee*, this Court has typically evaluated the legal basis for the assertion of the doctrine with care. The public rights exception is, after all, an exception. It has no textual basis in the Constitution and must therefore derive instead from background legal principles. *Murray's Lessee* itself, for example, took pains to justify the application of the exception in that particular instance by explaining that it flowed from centuries-old rules concerning revenue collection by a sovereign. See 18 How., at 281–285. Without such close attention to the basis for each asserted application of the doctrine, the exception would swallow the rule. [Note 2]

From the beginning we have emphasized one point: "To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider congress can . . . withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Murray's Lessee*, 18 How., at 284. We have never embraced the proposition that "practical" considerations alone can justify extending the scope of the public rights exception to such matters. Stern, 564 U. S., at 501***.

2

This is not the first time we have considered whether the Seventh Amendment guarantees the right to a jury trial "in the face of Congress' decision to allow a non-Article III tribunal to adjudicate" a statutory "fraud claim." 492 U. S., at 37, 50. We did so in *Granfinanciera*, and the principles identified in that case largely resolve this one.

Granfinanciera involved a statutory action for fraudulent conveyance. As codified in the Bankruptcy Code, the claim permitted a trustee to void a transfer or obligation made by the debtor before bankruptcy if the debtor "received less than a reasonably equivalent value in exchange for such transfer or obligation." 11 U. S. C. §548(a)(2)(A) (1982 ed., Supp. V). Actions for fraudulent conveyance were well known at common law. 492 U. S., at 43. Even when Congress added these claims to the Bankruptcy Code in 1978, see 92 Stat. 2600, it preserved parties' rights to a trial by jury, 492 U. S., at 49–50. In 1984, however, Congress designated fraudulent conveyance actions "core [bankruptcy] proceedings" and authorized non-Article III bankruptcy judges to hear them without juries. *Id.*, at 50.

The issue in *Granfinanciera* was whether this designation was permissible under the public rights exception. *Ibid.* We explained that it was not. ***"[T]raditional legal claims" must be decided by courts, "whether they originate in a newly fashioned regulatory scheme or possess a long line of common-law forebears." *Ibid.* ***.

A survey of English cases showed that "actions to recover . . . fraudulent transfers were often brought at law in late 18th-century England." *Id.*, at 43. The remedy the trustee sought was also one "traditionally provided by law courts." *Id.*, at 49. Fraudulent conveyance actions were thus "quintessentially suits at common law." *Id.*, at 56.

***

*** The public rights exception therefore did not apply, and a jury was required.

3

Granfinanciera effectively decides this case. Even when an action "originate[s] in a newly fashioned regulatory scheme," what matters is the substance of the action, not where Congress has assigned it. *Id.*, at 52. And in this case, the substance points in only one direction.

***

4

Notwithstanding *Granfinanciera*, the SEC contends the public rights exception still applies in this case because Congress created "new statutory obligations, impose[d] civil penalties for their violation, and then commit[ted] to an administrative agency the function of deciding whether a violation ha[d] in fact occurred."

The foregoing from *Granfinanciera* already does away with much of the SEC's argument. Congress cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be . . . taken to an administrative tribunal." 492 U. S., at 52. Nor does the fact that the SEC action "originate[d] in a newly fashioned regulatory scheme" permit Congress to siphon this action away from an Article III court. *Ibid.* The constructive fraud claim in *Granfinanciera* was also statutory, see *id.*, at 37, but we nevertheless explained that the public rights exception did not apply. Again, if the action resembles a traditional legal claim, its statutory origins are not dispositive.

The SEC's sole remaining basis for distinguishing *Granfinanciera* is that the Government is the party prosecuting this action. But we have never held that "the presence of the United States as a proper party to the proceeding is . . . sufficient" by itself to trigger the exception. Again, what matters is the substance of the suit, not where it is brought, who brings it, or how it is labeled***.

5

The principal case on which the SEC and the dissent rely is *Atlas Roofing Co. v. Occupational Safety and Health Review Commission*, 430 U. S. 442 (1977). Because the public rights exception as construed in *Atlas Roofing* does not extend to these civil penalty suits for fraud, that case does not control. And for that same reason, we need not reach the suggestion made by Jarkesy and Patriot28 that *Tull* and *Granfinanciera* effectively overruled *Atlas Roofing* to the extent that case construed the public rights exception to allow the adjudication of civil penalty suits in administrative tribunals.

***

Unlike the claims in *Granfinanciera* and this action, the OSH Act did not borrow its cause of action from the common law. Rather, it simply commanded that "[e]ach employer . . . shall comply with occupational safety and health standards promulgated under this chapter." 84 Stat. 1593, 29 U. S. C. §654(a)(2) (1976 ed.). These standards bring no common law soil with them. The purpose of this regime was not to enable the Federal Government to bring or adjudicate claims that traced their ancestry to the common law. Rather, Congress stated that it intended the agency to "develop[ ] innovative methods, techniques, and approaches for dealing with occupational safety and health problems." 29 U. S. C. §651(b)(5) (1976 ed.). In both concept and execution, the Act was self-consciously novel.

***

Atlas Roofing concluded that Congress could assign the OSH Act adjudications to an agency because the claims were "unknown to the common law." 430 U. S., at 461. The case therefore does not control here, where the statutory claim is "'in the nature of'" a common law suit ***.

*** The dissent chants "*Atlas Roofing*" like a mantra, but no matter how many times it repeats those words, it cannot give *Atlas Roofing* substance that it lacks. [Note 4] Even as *Atlas Roofing* invoked the public rights exception, the definition it offered of the exception was circular. The exception applied, the Court said, "in cases in which 'public rights' are being litigated—e. g., cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes." 430 U. S., at 450; see *id.*, at 458.

After *Atlas Roofing*, this Court clarified*** that the Seventh Amendment does apply to novel statutory regimes, so long as the claims are akin to common law claims. See 481 U. S., at 421–423. In addition, we have explained that the public rights exception does not apply automatically whenever Congress assigns a matter to an agency for adjudication. See *Granfinanciera*, 492 U. S., at 52.

For its part, the dissent also seems to suggest that *Atlas Roofing* establishes that the public rights exception applies whenever a statute increases governmental efficiency. Again, our precedents foreclose this argument ***. Otherwise, evading the Seventh Amendment would become nothing more than a game, where the Government need only identify some slight advantage to the public from agency adjudication to strip its target of the protections of the Seventh Amendment.

The novel claims in *Atlas Roofing* had never been brought in an Article III court. By contrast, law courts have dealt with fraud actions since before the founding, and Congress had authorized the SEC to bring such actions in Article III courts and still authorizes the SEC to do so today. Given the judiciary's long history of handling fraud claims, it cannot be argued that the courts lack the capacity needed to adjudicate such actions.

In short, *Atlas Roofing* does not conflict with our conclusion. ***

***

A defendant facing a fraud suit has the right to be tried by a jury of his peers before a neutral adjudicator. Rather than recognize that right, the dissent would permit Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch. That is the very opposite of the separation of powers that the Constitution demands***.

The judgment of the Court of Appeals for the Fifth Circuit is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORSUCH, with whom *JUSTICE THOMAS* joins, concurring.

I write separately to highlight that other constitutional provisions reinforce the correctness of the Court's course. The Seventh Amendment's jury-trial right does not work alone. It operates together with Article III and the Due Process Clause of the Fifth Amendment to limit how the government may go about depriving an individual of life, liberty, or property. The Seventh Amendment guarantees the right to trial by jury. Article III entitles individuals to an independent judge who will preside over that trial. And due process promises any trial will be held in accord with time-honored principles. Taken together, all three provisions vindicate the Constitution's promise of a "fair trial in a fair tribunal." *In re* Murchison, 349 U. S. 133, 136 (1955).

***

*** Yes, ALJs enjoy some measure of independence as a matter of regulation and statute from the lawyers who pursue charges on behalf of the agency. But they remain servants of the same master—the very agency tasked with prosecuting individuals like Mr. Jarkesy. This close relationship, as others have long recognized, can make it "extremely difficult, if not impossible, for th[e ALJ] to convey the image of being an impartial fact finder." And with a jury out of the picture, the ALJ decides not just the law but the facts as well.

***

The shift from a court to an ALJ didn't just deprive Mr. Jarkesy of the right to an independent judge and a jury. He also lost many of the procedural protections our courts supply in cases where a person's life, liberty, or property is at stake. After an agency files a civil complaint in court, a defendant may obtain from the SEC a large swathe of documents relevant to the lawsuit. He may subpoena third parties for testimony and documents and take 10 oral depositions—more with the court's permission. A court has flexibility, as well, to set deadlines for discovery and other matters to meet the needs of the case. And come trial, the Federal Rules of Evidence apply, meaning that hearsay is generally inadmissible and witnesses must usually testify in person, subject to cross-examination.

Things look very different in agency proceedings. The SEC has a responsibility to provide "documents that contain material exculpatory evidence." But the defendant enjoys no general right to discovery. Though ALJs enjoy the power to issue subpoenas on the request of litigants like Mr. Jarkesy, they "often decline to issue [them] or choose to significantly narrow their scope." Oral depositions are capped at five, with another two if the ALJ grants permission. In some cases, an administrative trial must take place as soon as 1 month after service of the charges, and that hearing must follow within 10 months in even the most complex matters. The rules of evidence, including their prohibition against hearsay, do not apply with the same rigor they do in court. For that reason, live testimony often gives way to "investigative testimony"—that is, a "sworn statement" taken outside the presence of the defendant or his counsel.

***

If administrative proceedings like Mr. Jarkesy's seem a thoroughly modern development, the British government and its agents engaged in a strikingly similar strategy in colonial America. Colonial administrators routinely steered enforcement actions out of local courts and into vice-admiralty tribunals where they thought they would win more often. These tribunals lacked juries. They lacked truly independent judges. And the procedures materially differed from those available in everyday common-law courts.

***

The abuses of these courts featured prominently in the calls for revolution***.

*** As the Court details, the Seventh Amendment promised the right to a jury trial in " '[s]uits at common law.' " But because the Constitution was designed to "endure for ages to come," *McCulloch v. Maryland*, 4 Wheat. 316, 415 (1819), this did not mean only those "suits, which the common law recognized among its old and settled proceedings," *Parsons v. Bedford*, 3 Pet. 433 (1830). The founding generation anticipated the possibility Congress would introduce new causes of action and perhaps new remedies, too. See *ibid.* Accordingly, this Court has long understood the Seventh Amendment's protections to apply in "all [civil] suits which are not of equity [or] admiralty jurisdiction." *Ibid.*; accord, *ante*, at 2128. In this way, the Seventh Amendment seeks to ensure there will be no juryless vice-admiralty courts in the United States.

The Fifth Amendment's Due Process Clause addressed remaining concerns about the processes that would attend trials before independent judges and juries ***.

More than that, because it was "the peculiar province of the judiciary" to safeguard life, liberty, and property, due process often meant judicial process. 1 St. George Tucker, Blackstone's Commentaries, Editor's App. 358 (1803). That is, if the government sought to interfere with those rights, nothing less than "the process and proceedings of the common law" had to be observed before any such deprivation could take place. 3 J. Story, Commentaries on the Constitution of the United States § 1783, p. 661 (1833)***.

These three constitutional provisions were meant to work together, and together they make quick work of this case. In fact, each provision requires the result the Court reaches today.

***

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, dissenting.

Throughout our Nation's history, Congress has authorized agency adjudicators to find violations of statutory obligations and award civil penalties to the Government as an injured sovereign. The Constitution, this Court has said, does not require these civil-penalty claims belonging to the Government to be tried before a jury in federal district court. Congress can instead assign them to an agency for initial adjudication, subject to judicial review. This Court has blessed that practice repeatedly, declaring it "the 'settled judicial construction' " all along; indeed, " 'from the beginning.' " *Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n*, 430 U.S. 442, 460 (1977). Unsurprisingly, Congress has taken this Court's word at face value. It has enacted more than 200 statutes authorizing dozens of agencies to impose civil penalties for violations of statutory obligations. Congress had no reason to anticipate the chaos today's majority would unleash after all these years.

Today, for the very first time, this Court holds that Congress violated the Constitution by authorizing a federal agency to adjudicate a statutory right that inheres in the Government in its sovereign capacity, also known as a public right. According to the majority, the Constitution requires the Government to seek civil penalties for federal-securities fraud before a jury in federal court. The nature of the remedy is, in the majority's view, virtually dispositive. That is plainly wrong. This Court has held, without exception, that Congress has broad latitude to create statutory obligations that entitle the Government to civil penalties, and then to assign their enforcement outside the regular courts of law where there are no juries.

Beyond the majority's legal errors, its ruling reveals a far more fundamental problem: This Court's repeated failure to appreciate that its decisions can threaten the separation of powers. Here, that threat comes from the Court's mistaken conclusion that Congress cannot assign a certain public-rights matter for initial adjudication to the Executive because it must come only to the Judiciary. The majority today upends longstanding precedent and the established practice of its coequal partners in our tripartite system of Government. Because the Court fails to act as a neutral umpire when it rewrites established rules in the manner it does today, I respectfully dissent.

***

Although this case involves a Seventh Amendment challenge, the principal question at issue is one rooted in Article III and the separation of powers. That is because, as the majority rightly acknowledges, the Seventh Amendment's jury-trial right "applies" only in "an Article III court." *Ante*, at 2127. That conclusion follows from both the text of the Constitution and this Court's precedents.

As to the text, the Amendment is limited to "Suits at common law." That means two things. First, that the right applies only in judicial proceedings***. Consistent with that understanding, this Court has held repeatedly that "the Seventh Amendment is not applicable to administrative proceedings." *Tull v. United States*, 481 U.S. 412, 418, n. 4 (1987). Factfinding by a jury is "incompatible with the whole concept of administrative adjudication," which empowers executive officials to find the relevant facts and apply the law to those facts like juries do in a courtroom.

Second, the requirement that the " '[s]uit' " must be one " 'at common law' " means that the claim at issue must be " 'legal in nature.' " So, whether a defendant is entitled to a jury under the Seventh Amendment depends on both the forum and the cause of action***.

The conclusion that Congress properly assigned a matter to an agency for adjudication therefore necessarily "resolves [any] Seventh Amendment challenge." Since the founding, Executive Branch officials have adjudicated certain matters, while others have required resolution in an Article III court. An executive official properly vested with the authority to find facts, apply the law to those facts, and impose the consequences prescribed by law exercises executive power under Article II, not judicial power under Article III. When executive power is at stake, Congress does not violate Article III or the Seventh Amendment by authorizing a nonjury factfinder to adjudicate the dispute.

So, the critical issue in this type of case is whether Congress can assign a particular matter to a non-Article III factfinder.

***

When a claim belongs to the Government as sovereign, the Constitution permits Congress to enact new statutory obligations, prescribe consequences for the breach of those obligations, and then empower federal agencies to adjudicate such violations and impose the appropriate penalty***.

***

It should be obvious by now how this case should have been resolved under a faithful and straightforward application of *Atlas Roofing* and a long line of this Court's precedents***.

***

The practice of assigning the Government's right to civil penalties for statutory violations to non-Article III adjudication had been so settled that it become an undisputable reality of how "our Government has actually worked." Consumer Financial Protection Bureau, 601 U.S. at 445 (KAGAN, J., concurring). That is why the Court has had no cause to address this kind of constitutional challenge since its unanimous decision in *Atlas Roofing*. The majority takes a wrecking ball to this settled law and stable government practice. To do so, it misreads this Court's precedents, ignores those that do not suit its thesis, and advances distinctions created from whole cloth.

***

There are good reasons for Congress to set up a scheme like the SEC's. It may yield important benefits over jury trials in federal court, such as greater efficiency and expertise, transparency and reasoned decisionmaking, as well as uniformity, predictability, and greater political accountability. See, e.g., Brief for Administrative Law Scholars as *Amici Curiae* 30–32. Others may believe those benefits are overstated, and that a federal jury is a better check on government overreach. See, e.g., Brief for Cato Institute as *Amicus Curiae* 11–25. Those arguments take place against the backdrop of a philosophical (and perhaps ideological) debate on whether the number of agencies and authorities properly corresponds to the ever-increasing and evolving problems faced by our society.

This Court's job is not to decide who wins this debate. These are policy considerations for Congress in exercising its legislative judgment and constitutional authority to decide how to tackle today's problems. It is the electorate, and the Executive to some degree, not this Court, that can and should provide a check on the wisdom of those judgments.

Deeply entrenched in today's ruling is the erroneous belief that any "mistaken or wrongful exertion by the legislative department of its authority" can lead to "grave abuses" and "it behooves the judiciary to apply a corrective by exceeding its own authority" through requiring civil-penalty claims to proceed before a federal jury. *Stranahan*, 214 U.S. at 340. As this Court said over a century ago in this public rights context, that belief "mistakenly assumes that the courts can alone be safely intrusted with power, and that hence it is their duty to unlawfully exercise prerogatives which they have no right to exert, upon the assumption that wrong must be done to prevent wrong being accomplished." *Ibid.*

By giving respondents a jury trial, even one that the Constitution does not require, the majority may think that it is protecting liberty. That belief, too, is deeply misguided. The American People should not mistake judicial hubris with the protection of individual rights.***

***

Note: Distinguishing *Atlas Roofing*

The majority and dissent in *Jarkesy* disagree sharply about how to read *Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n*, 430 U.S. 442 (1977), which upheld Congress's authority to assign OSHA civil-penalty adjudication to an agency without a jury. The dissent treats *Atlas Roofing* as controlling precedent that the majority simply overrides; the majority distinguishes it on the ground that OSHA penalties involved a new statutory (public) right created by Congress, whereas SEC antifraud claims are closely analogous to common-law fraud actions historically tried to a jury. *Compare Jarkesy, 603 U.S. at ___, with id.* at ___ (Sotomayor, J., dissenting).

Note: The Open Question for Other Agencies

Jarkesy itself resolves only the SEC's antifraud authority, but the same public-rights/private-rights question is presented by dozens of other agencies that impose civil penalties through in-house adjudication — among them the EPA, OSHA, CFTC, FCC, and FTC. See Cong. Rsch. Serv., LSB11229, *SEC v. Jarkesy: Constitutionality of Administrative Enforcement Actions* (2024) (short, non-technical summary.)

REVIEW QUESTIONS AND COMMENTS

1. What choice does the SEC have in selecting a forum to bring an enforcement action, and what procedural consequences flow from that choice?
2. Why does the Court conclude that the SEC's antifraud claims are "legal in nature," triggering the Seventh Amendment jury-trial right, rather than falling within the "public rights" exception?
3. How does the majority distinguish (or attempt to distinguish) *Atlas Roofing Co. v. Occupational Safety and Health Review Commission*, which upheld administrative adjudication of OSHA penalties?

4. What is Justice Sotomayor's principal objection in dissent, and what practical consequence does she predict for other agencies that adjudicate civil penalties in-house?
5. Which other agencies could face the same open question after *Jarkesy*?

Insert at p. 272, after REVIEW QUESTIONS AND COMMENTS following Collins v. Yellen, at the close of Standing for Non-State Actors in Part III of Chapter 9, and immediately before B (State Standing)

***Diamond Alternative Energy, LLC v. EPA*, 606 U.S. ___ (2025)**, Supreme Court of the United States

JUSTICE KAVANAUGH delivered the opinion of the Court.

Pursuant to the Clean Air Act, the U. S. Environmental Protection Agency approved California regulations requiring automakers to alter their fleets of new vehicles. Under those California regulations, automakers must manufacture more electric vehicles and fewer gasoline-powered vehicles. The goal is to decrease emissions from the use of gasoline and other liquid fuels. Producers of gasoline and other liquid fuels sued EPA, arguing that EPA's approval of the California regulations violated the Clean Air Act.

The sole issue before this Court is whether the fuel producers have standing to maintain their suit.

The fuel producers assert that the California regulations reduce the manufacture and sale of cars powered by gasoline and other liquid fuels, thereby causing a decrease in sales of those fuels by the fuel producers. So fuel producers take in less revenue than they would in a free market. Invalidating the regulations, they say, would remove a regulatory impediment to their ability to fully compete in the market. And without California's regulations in effect, manufacturers would likely make more cars powered by gasoline and other liquid fuels, thereby increasing purchases of those fuels and redressing the fuel producers' injury.

EPA and California dispute redressability. They suggest that, even if the regulations are invalidated, car manufacturers nonetheless would not manufacture more gasoline-powered cars. They posit that the California regulations no longer have any impact because, in a free market, consumer demand for and manufacturers' supply of electric vehicles would still supposedly exceed what the California regulations mandate.

Based on this Court's precedents and the evidence in the record, we hold that the fuel producers have standing. We therefore reverse the contrary judgment of the U. S. Court of Appeals for the D. C. Circuit and remand for that court to consider the merits of the fuel producers' legal claims.

I

A

As relevant here, the Clean Air Act requires the Environmental Protection Agency, or EPA, to periodically "prescribe . . . standards" that limit emissions of certain air pollutants from new motor vehicles. To promote uniformity in vehicle emissions regulations, the Act also preempts state standards "relating to the control of emissions from new motor vehicles."

But the Act's preemption provision exempts California. Under certain circumstances, California may adopt emissions standards for new motor vehicles that are more stringent than EPA's. California may do so when it concludes that more stringent standards are needed to meet "compelling and extraordinary conditions." Other States may also adopt California's stricter limits on emissions from new motor vehicles, but may not adopt or enforce state standards that differ from California's.

The upshot of this system is that EPA sets nationwide emissions standards for new motor vehicles; California in limited circumstances may set more stringent emissions standards for vehicles sold in the State; and other States may either follow EPA's standards or adopt California's but may not set their own. ***

This case involves California's 2012 request for EPA approval of new California regulations. As relevant here, those regulations generally require automakers (i) to limit average greenhouse-gas emissions across their fleets of new motor vehicles sold in the State and (ii) to manufacture a certain percentage of electric vehicles as part of their vehicle fleets. ***

Under President Obama, EPA reversed its legal position and, in 2013, allowed the California regulations to take effect. Then in 2019, under President Trump, EPA flipped back and rescinded approval of the California regulations. In 2022, under President Biden, EPA again reversed course and reinstated approval of California's regulations. That is where things stand as of now, although President Trump has directed EPA to again reconsider its approval of California's standards.

To date, acting pursuant to the Clean Air Act, 17 States and the District of Columbia have copied California's greenhouse-gas emissions standards for new motor vehicles, the electric-vehicle mandate, or both. Together with California, those jurisdictions account for about 40 percent of America's market for new cars and light-duty trucks.

B

In 2022, after EPA reinstated approval of California's 2012 regulations, several fuel producers sued EPA in the D. C. Circuit. The fuel producers primarily argued that EPA lacked authority under the Clean Air Act to approve the California regulations. They reasoned that the regulations did not target a local California air-quality problem—as they say is required by the Clean Air Act—but instead were designed to address global climate change. ***

To establish Article III standing for their D. C. Circuit challenge, the fuel producers submitted 14 declarations and devoted two pages of their opening brief to standing. In one declaration, for example, an analyst for American Fuel & Petrochemical Manufacturers explained that "the demand for gasoline and diesel fuel will be depressed" by California's regulations (also adopted by 17 other States) because they "require the sale of vehicles that use less gasoline and diesel fuel" or "use no liquid fuel at all." As support, the declaration quoted California's own estimate that "its regulations would cause 'substantial reductions in demand for gasoline exceeding $1 billion beginning in 2020 and increasing to over $10 billion in 2030.' " Various fuel producers further stated that those "injuries would be substantially ameliorated if EPA's decision" to reinstate the waiver "were set aside."

Notably, in the D. C. Circuit, EPA did not argue that the fuel producers lacked Article III standing. EPA's silence on standing was telling—the proverbial dog that did not bark—because EPA routinely challenges a party's standing when the agency believes that injury in fact, causation, or redressability is questionable. So EPA's failure to do so here tends to suggest that EPA believed that the fuel producers had standing. ***

After the D. C. Circuit granted California's motion to intervene, however, California completely changed its tune about the continuing impact of the regulations. In its merits briefing in that court, California suddenly argued that the fuel producers lacked Article III standing because they had not "established any probability" that automobile "manufacturers would change course if EPA's decision were vacated." Specifically, California suggested that because of supposed "surging consumer demand" for electric vehicles, invalidating the fleet-wide emissions standards and electric-vehicle mandate would not cause vehicle manufacturers to make more gasoline-powered vehicles. Therefore, California argued that judicial invalidation of the California regulations was not likely to redress the fuel producers' injuries.

The D. C. Circuit agreed with California and held that the fuel producers lacked Article III standing. *Ohio v. EPA*, 98 F. 4th 288 (2024). The court explained that redressability depended on how third-party automakers would act in the absence of California's fleet-wide emissions standards and electric-vehicle mandate. According to the D. C. Circuit, the fuel producers failed to "cite any record evidence" or "file additional affidavits or other evidence" demonstrating that automakers would respond to invalidation of the regulations by producing fewer electric vehicles and more gasoline-powered vehicles.

This Court granted certiorari limited to the question of whether the fuel producers have Article III standing.

II

Article III of the Constitution confines the jurisdiction of federal courts to "Cases" and "Controversies." §2, cl. 1. For a lawsuit to constitute a case within the meaning of Article III, the plaintiff must have standing to sue. To demonstrate standing, plaintiffs must answer a basic question—" 'What's it to you?' " *FDA v. Alliance for Hippocratic Medicine*, 602 U. S. 367, 379 (2024). In other words, plaintiffs must show that they possess "a 'personal stake' in the dispute" and are not mere bystanders. ***

This Court's "cases have established that the irreducible constitutional minimum of standing contains three elements": injury in fact, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560 (1992).

The first requirement, injury in fact, requires the plaintiff to demonstrate an injury that is "concrete," "particularized," and "actual or imminent, not speculative." Alliance for Hippocratic Medicine, 602 U. S., at 381. "Monetary costs are of course an injury." *United States v. Texas*, 599 U. S. 670, 676 (2023).

The second and third requirements, causation and redressability, are usually "flip sides of the same coin." Causation requires the plaintiff to show "that the injury was likely caused by the defendant," and redressability requires the plaintiff to demonstrate "that the injury would likely be redressed by judicial relief." *TransUnion*, 594 U. S., at 423. "If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury." ***

Importantly, if a plaintiff is "an object of the action (or forgone action) at issue," then "there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan*, 504 U. S., at 561–562.

When the plaintiff is not the object of a government regulation, however, causation and redressability often depend on how regulated third parties not before the court will act in response to the government regulation or judicial relief. Courts must distinguish the "predictable" from the "speculative" effects of government action or judicial relief on third parties. With respect to causation (and redressability), a court must conclude that " 'third parties will likely react' " to the government regulation (or judicial relief) " 'in predictable ways' " that will likely cause (or redress) the plaintiff's injury. ***

III

We hold that the fuel producers have standing to sue.

To begin, the injury in fact and causation elements of the fuel producers' standing, which no party disputes, are straightforward.

As for injury in fact, the fuel producers make money by selling fuel. Therefore, the decrease in purchases of gasoline and other liquid fuels resulting from the California regulations hurts their bottom line. Those monetary costs "are of course an injury."

As for causation, EPA's approval authorized California (and ultimately 17 other States) to enforce regulations that require lower fleet-wide greenhouse-gas emissions and the electrification of automakers' vehicle fleets, thereby reducing purchases of liquid fuels such as gasoline. The regulations likely cause fuel producers' monetary injuries because the regulations likely cause a decrease in purchases of gasoline and other liquid fuels for automobiles. Indeed, that is the whole point of the regulations.

As for redressability, invalidating the California regulations would likely redress at least some of the fuel producers' monetary injuries. Even "one dollar" of additional revenue for the fuel producers would satisfy the redressability component of Article III standing. *Uzuegbunam v. Preczewski*, 592 U. S. 279, 292 (2021). And as we will explain, it is "likely" that invalidating the California regulations would result in more revenue for the fuel producers from additional sales of gasoline and other liquid fuels.

A

When a plaintiff is the "object" of a government regulation, there should "ordinarily" be "little question" that the regulation causes injury to the plaintiff and that invalidating the regulation would redress the plaintiff's injuries. *Lujan*, 504 U. S., at 561.

The fuel producers here might be considered an object of the California regulations because the regulations explicitly seek to restrict the use of gasoline and other liquid fuels in automobiles. When the government prohibits or impedes Company A from using Company

B's product, then both Company A and Company B might be deemed objects of the government action at issue. For example, if the government bans hot dog sales in stadiums, then hot dog manufacturers, not just stadiums, might be considered objects of the regulation. If the government prohibits aluminum bats in Little League, then aluminum bat manufacturers, not only Little League, might be objects of the regulation. If the government bans bookstores from selling certain publishers' books, then those publishers, not just bookstores, might be objects of the regulation.

This Court has applied principles of that kind in various contexts. For example, when a State prohibited parents from sending their children to private schools, affected schools had standing to sue, even though parents were the directly regulated parties. See *Pierce v. Society of Sisters*, 268 U. S. 510, 535–536 (1925). And when the Federal Communications Commission announced that it would deny a license to any broadcasting station that conducted certain business with broadcasting networks, a broadcasting network (CBS) had standing to sue even though broadcasting stations were the directly regulated parties. See *Columbia Broadcasting System, Inc. v. United States*, 316 U. S. 407, 422 (1942). ***

That argument is not without force and, at a minimum, highlights how the government might seek to indirectly target a product or service "through a conduit" in addition to regulating it directly. But we ultimately need not further consider that argument in this case because, regardless, the fuel producers have readily demonstrated their standing.

B

This case presents what the Court has described as the "familiar" circumstance where government regulation of a business "may be likely" to cause injuries to other linked businesses. Alliance for Hippocratic Medicine, 602 U. S., at 384. As the Court has explained, "when the government regulates (or under-regulates) a business, the regulation (or lack thereof) may cause downstream or upstream economic injuries to others in the chain, such as certain manufacturers, retailers, suppliers, competitors, or customers."

In cases of that kind, this Court's analysis of causation and redressability has recognized commonsense economic realities. When third party behavior is predictable, commonsense inferences may be drawn. Importantly, EPA agrees that "commonsense economic principles" can be useful when evaluating Article III standing. ***

By the same token, the fuel producers persuasively contend that invalidating California's regulations would likely mean more gasoline-powered automobiles, which would in turn likely mean more sales of gasoline and other liquid fuels by the fuel producers. Because the fuel producers have suffered classic monetary injury caused by a government regulatory action, it would be surprising and unusual if invalidating the regulations did not redress the fuel producers' injuries. After all, the fact that a regulation was designed to produce a particular effect on the market ordinarily means that the likely result of vacating that regulation would be to reduce that effect on the market.

EPA and California push back on that reasoning, asserting that this case is unusual and does not fit the typical pattern. They suggest that the new vehicle market has developed in a way that even if the California regulations are invalidated, automakers would not likely manufacture or sell more gasoline-powered cars than they do now.

To begin with, that is an odd argument for EPA and California to advance. After all, if invalidating the regulations would change nothing in the market, why are EPA and California enforcing and defending the regulations? The whole point of the regulations is to increase the number of electric vehicles in the new automobile market beyond what consumers would otherwise demand and what automakers would otherwise manufacture and sell. And EPA and California are presumably defending the regulations because they think that the regulations still make a difference in the market.

In all events, record evidence confirms what common sense tells us: Invalidating the regulations likely (not certainly, but likely) would make a difference for fuel producers because automakers would likely manufacture more vehicles that run on gasoline and other liquid fuels.

First, the fuel producers' standing declarations explain that California's regulations have historically harmed the fuel producers by causing a decrease in purchases of fuel. The declarations further quote California's estimate that its standards would produce " 'substantial reductions in demand for gasoline exceeding $1 billion beginning in 2020 and increasing to over $10 billion in 2030.' " *** The declarations also note that California recognized that the "oil and gas industry" and "fuel providers" would likely be "most adversely affected" by the regulations due to "the resulting substantial reductions in demand for gasoline."

Second, the record reveals that California itself stated in 2021, when asking EPA to reinstate the regulations, that the regulations are "critical not just for immediate emissions reductions" but also for "greater emission reductions in the future." And after the fuel producers sued EPA in 2022, California moved to intervene and attached expert declarations stating that California's standards are likely to decrease fuel use. Specifically, California's experts opined that absent California's regulations, "fewer" electric vehicles "are likely to be sold than would otherwise have been . . . and thus additional gasoline-fueled vehicles would be sold." California itself therefore acknowledged that its regulations were still having an impact and that invalidating the regulations would likely affect the automobile market and increase demand for gasoline and other liquid fuels.

Third, EPA too has stated that the California regulations are likely to reduce consumption of fuel. When approving California's regulations, EPA repeatedly affirmed that California "needs" its standards "to address compelling and extraordinary air quality conditions in the state." And in proposing to amend California's state implementation plan under the Clean Air Act more than two years after this suit was filed, EPA credited California's estimates that the regulations would continue reducing greenhouse-gas emissions in California through at least 2037.

Fourth, five automakers who have invested heavily in electric vehicles—and thus have an interest in the government continuing to support and favor that market—intervened on the side of EPA and California in the Court of Appeals. Their motion to intervene predicted that, absent California's regulations, other automakers would seek a competitive advantage over them by selling fewer electric vehicles and more gasoline-powered vehicles. As with California's motion to intervene, the automakers' assessment that the regulations make a difference—and that invalidating them would make a difference—indicates that the regulations are still likely having a real-world impact on the automobile market.

In short, the commonsense economic inferences about the operation of the automobile market—combined with the statements of the fuel producers, California, EPA, and the vehicle manufacturers—make it sufficiently "predictable" that invalidating California's regulations would likely redress the fuel producers' injury.

Article III's redressability requirement serves to align injuries and remedies. The primary goals of that requirement are to ensure that plaintiffs do not sue the wrong parties and that courts do not issue advisory opinions. The redressability requirement should not be misused, however, to prevent the targets of government regulations from challenging regulations that threaten their businesses. EPA and California cite no case where Article III's redressability requirement has been applied to prevent challenges to a regulation setting a permanent ceiling on the sale or use of a business's products. Here, the fuel producers have established their standing to challenge EPA's approval of the California regulations.

C

EPA and California further argue, however, that the fuel producers had to introduce still more evidence—for example, affidavits either from expert economists or from directly regulated automakers explaining how they would respond to a court order invalidating California's regulations.

We disagree. This Court has not demanded that plaintiffs introduce evidence from expert economists or from directly regulated third parties to show how third parties would likely respond to a government regulation or invalidation thereof. Rather, to show redressability, the plaintiff must simply "show a predictable chain of events" that would likely result from judicial relief and redress the plaintiff's injury. ***

Requiring the plaintiff to produce affidavits from regulated parties would be especially problematic in cases of this kind. It would render the plaintiff's ability to obtain judicial review dependent on the happenstance of whether the plaintiff and the relevant regulated parties are aligned and share litigation interests—and whether the regulated party is willing to publicly oppose (and possibly antagonize) the government regulator by supporting the plaintiff's suit. Such a rule would create incentives for gamesmanship and could make it difficult or impossible to establish standing in cases where the standing analysis should be straightforward. A heightened "proof of redressability" requirement of that kind would ultimately close the courthouse doors to many traditional challenges to agency action. Such a rule has little to commend it, and we decline to adopt it.

D

In ruling against EPA and California, we recognize that there may conceivably be some atypical instances where a market has permanently and dramatically changed such that invalidating a challenged regulation would have no effect on the market in question, thereby defeating redressability. But that is likely to be a fairly rare and unusual scenario, for a couple of reasons.

First, we can assume that governments do not usually continue to enforce and defend regulations that have no continuing effect in the relevant market. EPA and California continue to enforce these regulations, and for three years, EPA and California have tenaciously defended them in court. So it is difficult to put much stock in their suggestion that invalidating the regulations (in California and 17 other States) would have zero effect on the new vehicle market in America both now and in the future. Simply put, EPA's and California's own actions—their statements, their enforcement decisions, their litigation positions—undermine the central premise of their redressability argument. When as here a government seeks to justify its regulatory actions by, on the one hand, touting the consequences for fuel usage and emissions while, on the other, maintaining that those same regulations are unreviewable because there are no consequences, courts can appropriately be skeptical. Judges "are 'not required to exhibit a naiveté from which ordinary citizens are free.' "

Second, EPA and California's view of redressability fails to account for dynamic markets and the effects of interrelated economic forces and regulatory programs that change over time. *** To deny standing based on a theory that invalidating an important regulation would actually have zero impact on a dynamic and heavily regulated market requires a degree of economic and political clairvoyance that is difficult for a court to maintain. That is particularly so when the government regulation itself may be skewing the market at issue. So courts should exercise caution before denying standing because of a claimed lack of redressability rooted in questionable economic speculation. ***

In sum, this case does not present the unusual scenario where invalidating a challenged government restriction on businesses in a competitive market is not likely to have any effect. Here, it may not be certain, but it is at least "predictable" that invalidating the California regulations would likely result in the fuel producers ultimately selling more gasoline and other liquid fuels. ***

This case concerns only standing, not the merits. EPA and California may or may not prevail on the merits in defending EPA's approval of the California regulations. But the justiciability of the fuel producers' challenge to EPA's approval of the California regulations is evident. Courts should not "make standing law more complicated than it needs to be." *Thole v. U. S. Bank N. A.*, 590 U. S. 538, 547 (2020). The government generally may not target a business or industry through stringent and allegedly unlawful regulation, and then evade the resulting lawsuits by claiming that the targets of its regulation should be locked out of court as unaffected bystanders. In light of this Court's precedents and the evidence before the Court of Appeals, the fuel producers established Article III standing to challenge EPA's approval of the California regulations. We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOTOMAYOR, dissenting.

In May 2022, several businesses in the fuel industry challenged the Environmental Protection Agency's effective reinstatement of two California vehicle-emissions rules. The rules in question aimed to reduce greenhouse gas emissions by requiring vehicle manufacturers to produce more fuel-efficient cars. Before the D. C. Circuit, petitioners argued, relying in part on statements from California regulators and the EPA, that this shift toward fuel efficiency would reduce demand for the fossil fuels they produce, thereby causing a financial injury. Petitioners did not meaningfully address redressability, likely because they assumed it would follow naturally from the evidence about injury and causation. With no dispute over those elements, the case appeared ready to proceed to the merits.

Then, a factual complication arose. California, which had intervened to defend its regulations before the D. C. Circuit, explained that by the time this suit was filed, car manufacturers could no longer change their manufacturing schedule for cars with model years up to 2025. Evidence in the record overwhelmingly supported that contention. As the car manufacturers explained to the court, production plans are set years in advance and cannot be changed on short notice.

Due in part to petitioners' own briefing, the D. C. Circuit thought that neither of California's regulations would apply beyond model year 2025. So, when the court considered redressability, it asked only whether vacatur of the rules "would be substantially likely to result in any change to automobile manufacturers' vehicle fleets by Model Year 2025." On that question, the evidence did not support petitioners, who bore the burden of proof to establish redressability. Thus, the D. C. Circuit dismissed the petition for lack of standing.

Before this Court, the EPA conceded that the D. C. Circuit had been partly mistaken about the facts. Whereas that court thought both of California's rules expired with model year 2025, in fact only one of the two does. That concession undercut the core factual premise on which the D. C. Circuit's standing analysis depended. It called instead for a new assessment of redressability: Would manufacturers change their plans for any future, post-2025 model years if the court vacated the fuel-efficiency rule? California now says that, by the time petitioners sued, demand for electric vehicles had expanded so dramatically that manufacturers would not return to producing more environmentally unfriendly vehicles even if the rules were vacated. Petitioners say otherwise. Yet the D. C. Circuit never opined on this purely factual question, and it is hard to see why this Court should do so in its stead.

Having granted certiorari, the Court relegates to a footnote the actual basis for the D. C. Circuit's decision. A version of that footnote should have been the Court's entire opinion in this case. For reasons unknown, the majority instead conjures up a "heightened 'proof of redressability' requirement" that the D. C. Circuit did not adopt and that no party advanced, and then laboriously "decline[s] to adopt" that requirement. I see no need to expound on the law of standing in a case where the sole dispute is a factual one not addressed below. Indeed, as Justice Jackson explains, this case is unlikely to present a live controversy for much longer regardless of petitioners' standing, as the administration is likely to withdraw the challenged rules. I would simply have vacated the case and remanded it to the D. C. Circuit to reconsider its redressability analysis, keeping in mind the now corrected timeline for the challenged vehicle-emissions programs.

JUSTICE JACKSON, dissenting.

Standing is a constitutional doctrine meant to promote judicial restraint. By design, it " 'prevent[s] the judicial process from being used to usurp the powers of the political branches' " and "helps safeguard the Judiciary's proper—and properly limited—role in our constitutional system." *United States v. Texas*, 599 U. S. 670, 675–676 (2023). But standing doctrine cannot serve that important purpose if the Judiciary fails to apply it evenhandedly. When courts adjust standing requirements to let certain litigants challenge the actions of the political branches but preclude suits by others with similar injuries, standing doctrine cannot perform its constraining function. Over time, such selectivity begets judicial overreach and erodes public trust in the impartiality of judicial decisionmaking.

Today's ruling runs the risk of setting us down that path. The Court shelves its usual case-selection standards to revive a fuel-industry lawsuit that all agree will soon be moot (and is largely moot already). And it rests its decision on a theory of standing that the Court has refused to apply in cases brought by less powerful plaintiffs. This case gives fodder to the unfortunate perception that moneyed interests enjoy an easier road to relief in this Court than ordinary citizens. Because the Court had ample opportunity to avoid that result, I respectfully dissent. ***

It is "a bedrock principle that a federal court cannot redress 'injury that results from the independent action of some third party not before the court.' " *Murthy v. Missouri*, 603 U. S. 43, 57 (2024). Accordingly, "we have 'been reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment.' "

It is indisputable that petitioners' theory of standing requires guesswork as to how independent decisionmakers (specifically, automakers and consumers) would respond to a court order invalidating the pre-emption waiver for California's emissions standards. The only way that such an order could possibly benefit the fuel industry would be if it ultimately spurred the production, purchase, and usage of more gas-powered cars. The majority holds, however, that our usual skepticism about standing theories that turn on independent third-party conduct is not warranted because, in its view, petitioners' theory of redressability rests on "commonsense economic principles."

I have no quarrel with relying on common sense as a general matter. But we should acknowledge that what counts as a "commonsense" inference to the Justices on this Court may not be viewed as such by others. And, if anything, the actual evidence presented in this case suggests that the majority's "[c]ommon sense is not so common."

The central problem petitioners face is one of timing. Had they challenged California's emissions program at its inception, then commonsense intuitions might have sufficed to establish redressability; indeed, "the whole point" of California's program was to reduce fuel consumption, as the majority notes. But petitioners did not challenge the program at its inception. Instead, they challenged it nearly a decade after California obtained its pre-emption waiver. By that point, consumer demand for electric and low-emissions vehicles had grown many times over, and automakers had invested billions to transform their production and marketing strategies. As California's expert attested, by the time petitioners filed suit, automakers were "already selling more qualifying vehicles in California than the State's standards require." ***

The only thing we know for sure is that the onus of establishing what is likely to happen is on petitioners (the fuel industry), as the party invoking the jurisdiction of a federal court. It is the fuel producers who must present evidence supporting their theory that invalidation of the waiver by a court will benefit them—intuition alone will not suffice. When redressability " 'depends on the unfettered choices made by independent actors not before the courts,' " it "becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to . . . permit redressability." *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 562 (1992). ***

The Court's remarkably lenient approach to standing in this case contrasts starkly with the stern stance it has taken in cases concerning the rights of ordinary citizens. Here, the Court's "commonsense" inferences readily align with the fuel industry's assertions of economic injury, even in the face of conflicting evidence. But for less wealthy individual plaintiffs, establishing redressability to the Court's satisfaction is often harder to come by.

Take our decision in *Warth v. Seldin*, 422 U. S. 490 (1975). There, the Court held that a group of low-income plaintiffs in upstate New York lacked standing to challenge a zoning ordinance that effectively barred the construction of affordable housing in the town where they wished to move. *** Critically, the Court stated that it was not enough for the plaintiffs to show generally that the zoning ordinance suppressed the overall supply of affordable housing. Rather, we explained, the plaintiffs needed to show that the invalidation of the ordinance by court order would lead to the availability of specific units that met their individual needs and fell within their individual budgets. "[C]ommonsense economic principles"—say, about the general impact of increased housing supply on housing prices—did not rescue the plaintiffs.

Our decision in *Allen v. Wright*, 468 U. S. 737 (1984), was more of the same. There, we held that a group of Black parents lacked standing to challenge the Internal Revenue Service's (IRS) policies concerning tax exemptions for private schools. *** Justice Brennan noted in dissent that "[c]ommon sense alone would recognize that the elimination of tax-exempt status for racially discriminatory private schools would serve to lessen the impact that those institutions have in defeating efforts to desegregate the public schools." But "[c]ommon sense alone" was not enough for those plaintiffs, either. ***

I could go on. My point here is not that any of these particular standing decisions was wrongly decided. Instead, I am simply observing that the Court seems inconsistent in its willingness to premise redressability on commonsense inferences about third-party behavior. That inconsistency, which we reinforce with today's holding, tends to redound to the benefit of particular litigants. But nothing in Article III's text or history justifies relying on "commonsense" inferences in one standing context and not another. The Constitution does not distinguish between plaintiffs whose claims are backed by the Chamber of Commerce and those who seek to vindicate their rights to fair housing, desegregated schools, or privacy. But if someone reviewing our case law harbored doubts about that proposition, today's decision will do little to dissuade them. ***

Time will tell if today's decision portends a broader shift in the Court's view of Article III standing for all litigants. If it does not, and if the Court is not fastidious in maintaining consistency across its certiorari decisions and substantive rulings, its decisions will come to represent, like so many marble façades, another mere facsimile of justice.

REVIEW QUESTIONS AND COMMENTS

1. Who are the plaintiffs in this case, and what is the source of their claimed injury if California's vehicle-emissions regulations remain in effect?
2. Why do EPA and California argue that the fuel producers lack standing, and specifically, which element of the standing inquiry do they dispute?
3. What kind of evidence does the Court rely on to conclude that invalidating California's regulations would likely increase demand for gasoline and other liquid fuels, thereby redressing the fuel producers' injury?
4. How does the Court's redressability analysis here compare to its approach in cases involving individual plaintiffs? The 9th Circuit's opinion in *Our Children's Trust*?

5. If a plaintiff's theory of injury depends on how third parties (here, automakers and consumers) will respond to a change in the law, what makes that theory of standing harder to establish than a case of direct injury?

Insert at p. 333, after REVIEW QUESTIONS AND COMMENTS following Darby v. Cisneros, at the close of the Timing/Exhaustion discussion and the end of Chapter 10, immediately before Chapter 11 begins

D. Statute of Limitations for Facial APA Challenges

A distinct timing issue from finality, ripeness, and exhaustion, but one that similarly determines whether a court may hear an APA challenge, is the statute of limitations. Suits against the United States and its agencies are generally subject to a six-year limitations period. 28 U.S.C. § 2401(a). The question is: when does that period begin to run for a facial challenge to an agency rule?

***Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U. S. 799 (2024)**, Supreme Court of the United States

JUSTICE BARRETT delivered the opinion of the Court.

The default statute of limitations for suits against the United States requires "the complaint [to be] filed within six years after the right of action first accrues." 28 U. S. C. §2401(a). We must decide when a claim brought under the Administrative Procedure Act "accrues" for purposes of this provision. The answer is straightforward. A claim accrues when the plaintiff has the right to assert it in court—and in the case of the APA, that is when the plaintiff is injured by final agency action.

I

Corner Post is a truckstop and convenience store located in Watford City, North Dakota. It was incorporated in 2017, and in 2018, it opened for business. Like most merchants, Corner Post accepts debit cards as a form of payment. While convenient for customers, debit cards are costly for merchants: Every transaction requires them to pay an "interchange fee" to the bank that issued the card. The amount of the fee is set by the payment networks, like Visa and Mastercard, that process the transaction between the banks of merchants and cardholders. The cost quickly adds up. Since it opened, Corner Post has paid hundreds of thousands of dollars in interchange fees—which has meant higher prices for its customers.

Interchange fees have long been a sore point for merchants. For many years, payment networks had free rein over the fee amount—and because they used the promise of per-transaction profit to compete for the banks' business, they had significant incentive to raise the fees. Merchants—who would lose customers if they declined debit cards—had little choice but to pay whatever the networks charged. Left unregulated, interchange fees ballooned. Congress eventually stepped in. The Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 tasks the Federal Reserve Board with setting "standards for assessing whether the amount of any interchange transaction fee . . . is reasonable and proportional to the cost incurred by the issuer with respect to the transaction." 15 U. S. C. §1693o–2(a)(3)(A). Discharging this duty, the Board promulgated Regulation II, which sets a maximum interchange fee of $0.21 per transaction plus .05% of the transaction's value. The Board published the rule on July 20, 2011. Four months later, a group of retail-industry trade associations and individual retailers sued the Board, arguing that Regulation II allows costs that the statute does not. The District Court agreed, but the D. C. Circuit reversed, concluding "that the Board's rules generally rest on reasonable constructions of the statute." *NACS v. Board of Governors of FRS*, 746 F. 3d 474, 477 (2014). Corner Post, of course, did not exist when the Board adopted Regulation II or even during the D. C. Circuit litigation.

But after opening its doors, it too became frustrated by interchange fees, and in 2021, joined a suit brought against the Board under the Administrative Procedure Act (APA). The complaint alleges that Regulation II is unlawful because it allows payment networks to charge higher fees than the statute permits. See 5 U. S. C. §§706(2)(A), (C). The District Court dismissed the suit as barred by 28 U. S. C. §2401(a), the applicable statute of limitations, and the Eighth Circuit affirmed. Following other Circuits, it distinguished between "facial" challenges to a rule (like Corner Post's challenge to Regulation II) and challenges to a rule "as-applied" to a particular party. The Eighth Circuit held that "when plaintiffs bring a facial challenge to a final agency action, the right of action accrues, and the limitations period begins to run, upon publication of the regulation." On this view, §2401(a)'s 6-year limitations period began in 2011, when the Board published Regulation II, and expired in 2017, before Corner Post swiped its first debit card. Corner Post's suit was therefore too late.

The Eighth Circuit's decision deepened a circuit split over when §2401(a)'s statute of limitations begins to run for APA suits challenging agency action. At least six Circuits now hold that the limitations period for "facial" APA challenges begins on the date of final agency action—e.g., when the rule was promulgated—regardless of when the plaintiff was injured. *** By contrast, the Sixth Circuit has stated a generally applicable rule that §2401(a)'s limitations period begins when the plaintiff is injured by agency action, even if that injury did not occur until many years after the action became final. *Herr v. United States Forest Serv.*, 803 F. 3d 809, 820–822 (2015) ("When a party first becomes aggrieved by a regulation that exceeds an agency's statutory authority more than six years after the regulation was promulgated, that party may challenge the regulation without waiting for enforcement proceedings"). We granted certiorari to resolve the split.

II

Three statutory provisions control our analysis: 5 U. S. C. §702 and §704, the relevant APA provisions, and 28 U. S. C. §2401(a), the relevant statute of limitations. The APA provisions grant Corner Post a cause of action subject to certain conditions, and §2401(a) sets the window within which Corner Post can assert its claim. Section 702 authorizes persons injured by agency action to obtain judicial review by suing the United States or one of its agencies, officers, or employees. It provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U. S. C. §702. We have explained that §702 "requir[es] a litigant to show, at the outset of the case, that he is injured in fact by agency action." Director, *Office of Workers' Compensation Programs v. Newport News Shipbuilding & Dry Dock Co.*, 514 U. S. 122, 127 (1995). Thus, a litigant cannot bring an APA claim unless and until she suffers an injury.

While §702 equips injured parties with a cause of action, §704 limits the agency actions that are subject to judicial review. Unless another statute makes the agency's action reviewable (and none does for Regulation II), judicial review is available only for "final agency action." §704. In most cases, then, a plaintiff can only challenge an action that "mark[s] the consummation of the agency's decisionmaking process" and is "one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U. S. 154, 177–178 (1997). Note that §702's injury requirement and §704's finality requirement work hand in hand: Each is a "necessary, but not by itself . . . sufficient, ground for stating a claim under the APA." Herr, 803 F. 3d, at 819.

The applicable statute of limitations, 28 U. S. C. §2401(a), contains the language we must interpret: "[E]very civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." This provision applies generally to suits against the United States unless the timing provision of a more specific statute displaces it. The Board contends that an APA claim "accrues" when agency action is "final" for purposes of §704—injury, it says, is necessary for the suit but irrelevant to the statute of limitations. We disagree. A right of action "accrues" when the plaintiff has a "complete and present cause of action"—i.e., when she has the right to "file suit and obtain relief." *Green v. Brennan*, 578 U. S. 547, 554 (2016). An APA plaintiff does not have a complete and present cause of action until she suffers an injury from final agency action, so the statute of limitations does not begin to run until she is injured.

III

Congress enacted §2401(a) in 1948, two years after it enacted the APA. Section 2401(a)'s predecessor was the statute-of-limitations provision for the Little Tucker Act, which gave district courts jurisdiction over nontort monetary claims not exceeding $10,000 against the United States. See §24, 36 Stat. 1093 ("That no suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made"). When Congress revised and recodified the Judicial Code in 1948, it converted the Little Tucker Act's statute of limitations into a general statute of limitations for all suits against the Government—replacing "under this paragraph" with "every civil action against the United States." But Congress continued to start the 6-year limitations period when the right "accrues."

In 1948, as now, "accrue" had a well-settled meaning: A "right accrues when it comes into existence," *United States v. Lindsay*, 346 U. S. 568, 569 (1954)—i.e., "'when the plaintiff has a complete and present cause of action,'" *Gabelli v. SEC*, 568 U. S. 442, 448 (2013). This definition has appeared "in dictionaries from the 19th century up until today." *Gabelli*, 568 U. S., at 448. Legal dictionaries in the 1940s and 1950s uniformly explained that a cause of action "'accrues' when a suit may be maintained thereon." Black's Law Dictionary 37 (4th ed. 1951); see also Ballentine's Law Dictionary 15–16 (2d ed. 1948) ("[A]ccrual of cause of action" defined as the "coming or springing into existence of a right to sue"). Importantly, contemporaneous dictionaries also explained that a cause of action accrues "on [the] date that damage is sustained and not [the] date when causes are set in motion which ultimately produce injury." Black's 37. Thus, when Congress used the phrase "right of action first accrues" in §2401(a), it was well understood that a claim does not "accrue" as soon as the defendant acts, but only after the plaintiff suffers the injury required to press her claim in court.

Our precedent treats this definition of accrual as the "standard rule for limitations periods." Green, 578 U. S., at 554. "We have repeatedly recognized that Congress legislates against the 'standard rule that the limitations period commences when the plaintiff has a complete and present cause of action.' " *Graham County Soil & Water Conservation Dist. v. United States* ex rel. Wilson, 545 U. S. 409, 418 (2005) (quoting Bay Area Laundry, 522 U. S., at 201). *** Conversely, we have "reject[ed]" the possibility that a "limitations period commences at a time when the [plaintiff] could not yet file suit" as "inconsistent with basic limitations principles." Bay Area Laundry, 522 U. S., at 200. This traditional rule constitutes a strong background presumption. While the "standard rule can be displaced such that the limitations period begins to run before a plaintiff can file a suit," we "'will not infer such an odd result in the absence of any such indication' in the text of the limitations period." Green, 578 U. S., at 554.

There is good reason to conclude that Congress codified the traditional accrual rule in §2401(a). Nothing "in the text of [§2401(a)'s] limitations period" gives any indication that it begins to run before the plaintiff has a complete and present cause of action. Green, 578 U. S., at 554. Moreover, Congress knew how to depart from the traditional rule to create a limitations period that begins with the defendant's action instead of the plaintiff's injury: Just six years before it enacted §2401(a), Congress passed the Emergency Price Control Act of 1942, which required challenges to Office of Price Administration actions to be filed "[w]ithin a period of sixty days after the issuance of any regulation or order." §203(a), 56 Stat. 31. Section 2401(a), by contrast, stuck with the standard accrual language.

Section 2401(a) thus operates as a statute of limitations rather than a statute of repose. "[A] statute of limitations creates 'a time limit for suing in a civil case, based on the date when the claim accrued.'" *CTS Corp. v. Waldburger*, 573 U. S. 1, 7–8 (2014). That describes §2401(a), with its reference to when the right of action "accrues," to a tee. "A statute of repose, on the other hand, puts an outer limit on the right to bring a civil action" that is "measured not from the date on which the claim accrues but instead from the date of the last culpable act or omission of the defendant." 573 U. S., at 8. Such statutes bar "'any suit that is brought after a specified time since the defendant acted . . . even if this period ends before the plaintiff has suffered a resulting injury.'" That describes statutes like the Hobbs Act, which sets a filing deadline of 60 days from the "entry" of the agency order. Statutes of limitations "require plaintiffs to pursue diligent prosecution of known claims"; statutes of repose reflect a "legislative judgment that a defendant should be free from liability after the legislatively determined period of time." The Board asks us to interpret §2401(a) as a defendant-protective statute of repose that begins to run when agency action becomes final. But §2401(a)'s plaintiff-focused language makes it an accrual-based statute of limitations.

Section 2401(a) embodies the plaintiff-centric traditional rule that a statute of limitations begins to run only when the plaintiff has a complete and present cause of action. Because injury, not just finality, is required to sue under the APA, Corner Post's cause of action was not complete and present until it was injured by Regulation II. Therefore, its suit is not barred by the statute of limitations.

IV

The Board concedes that some claims accrue for purposes of §2401(a) when the plaintiff has a complete and present cause of action—in other words, it admits that "accrue" carries its usual meaning for some claims. But it argues that facial challenges to agency rules are different, accruing when agency action is final rather than when the plaintiff can assert her claim. The Board raises several arguments to support its position, but none work.

A

The Board puts the most weight on the many specific statutory review provisions that start the clock at finality. The Hobbs Act, for example, requires persons aggrieved by certain final orders and regulations of the Federal Communications Commission, Secretary of Agriculture, and Secretary of Transportation, among others, to petition for review "within 60 days after [the] entry" of the final agency action. 28 U. S. C. §§2342, 2344. The Board contends that such statutes reflect a standard administrative-law practice of starting the limitations period when "any proper plaintiff" can challenge the final agency action. There is "no sound basis," it insists, "for instead applying a challenger-by-challenger approach to calculate the limitations period on APA claims."

This argument hits the immutable obstacle of §2401(a)'s text. Unlike the specific review provisions that the Board cites, §2401(a) does not refer to the date of the agency action's "entry" or "promulgat[ion]"; it says "right of action first accrues." That textual difference matters. To begin, the latter language reflects a statute of limitations and the former a statute of repose. Moreover, the specific review provisions actually undercut the Board's argument, because they illustrate that Congress has sometimes employed the Board's preferred final-agency-action rule—but did not do so in §2401(a). As the Court observed in *Rotkiske v. Klemm*, it is "particularly inappropriate" to read language into a statute of limitations "when, as here, Congress has shown that it knows how to adopt the omitted language or provision." 589 U. S. 8, 14 (2019).

*** But §2401(a)'s text reflects a choice: Congress took the Little Tucker Act's plaintiff-focused limitations period—which began when "the right accrued for which the claim is made," 36 Stat. 1093—and made it generally applicable to "every" suit against the United States, §2401(a). *** Congress could have created a separate residual provision for suits challenging agency action and pegged its limitations period to the moment of finality, using statutes like the Emergency Price Control Act as a model. It chose a different path.

Given the settled, plaintiff-centric meaning of "right of action first accrues" in 1948—not to mention in the Little Tucker Act—the dissent cannot "displace" this "standard rule" with scattered citations to different, inapposite statutes.

The standard accrual rule that §2401(a)'s limitations period exemplifies is plaintiff specific—even if repose provisions like the Hobbs Act eschew a "challenger-by-challenger" approach. *** The Board's rule would start the limitations period applicable to the plaintiff not when she had a complete and present cause of action but when the agency action was final and, theoretically, some other plaintiff was injured and could have sued. But §2401(a)'s text focuses on a specific plaintiff: "the complaint is filed within six years after the right of action first accrues." (Emphasis added.)

*** No precedent suggests that the traditional rule contemplates the Board's hypothetical "when could someone else have sued" sort of inquiry.

Importing the Board's special administrative-law rule into §2401(a) would create a defendant-focused rule for agency suits while retaining the traditional challenger-specific accrual rule for other suits against the United States. That would give the same statutory text—"right of action first accrues"—different meanings in different contexts, even though those words had a single, well-settled meaning when Congress enacted §2401(a). *** We "will not infer such an odd result in the absence of any such indication" in the text of the limitations period.

B

Turning to §2401(a)'s text, the Board draws significance from this sentence: "The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases." This language, the Board stresses, "necessarily reflects Congress's understanding that a claim can 'accrue[]' for purposes of Section 2401(a)" even when a person is unable to sue. True enough. It is a mystery, however, why the Board finds this helpful. The tolling exception applies when the plaintiff had a complete and present cause of action after he was injured but his legal disability or absence from the country "prevent[ed] him from bringing a timely suit." What matters for accrual is when the plaintiff had "the right to apply to the court for relief," not whether some external impediment prevented her from doing so. The exception, therefore, sheds no light on when the clock started ticking for Corner Post—but it does show Congress's concern for plaintiffs who might lose a cause of action through no fault of their own.

C

The Board also leans on our precedent—namely, *Reading Co. v. Koons*, 271 U. S. 58 (1926), and *Crown Coat Front Co. v. United States*, 386 U. S. 503 (1967)—to support its unusual interpretation of "accrual." In Koons, we interpreted the statute of limitations under the Federal Employers' Liability Act, which barred actions brought more than two years after "'the cause of action accrued.'" We held that the plaintiff's wrongful-death claim accrued when the employee died, even though the estate's administrator was not appointed until later and the administrator was "the only person authorized by the statute to maintain the action." The Board interprets Koons to hold that a claim accrued at a time when no plaintiff could sue. *** The Board's characterization of Koons is incomplete. Koons explained that the administrator "acts only for the benefit of persons specifically designated in the statute," and at the "time of death there are identified persons for whose benefit the liability exists and who can start the machinery of the law in motion to enforce it, by applying for the appointment of an administrator." *** So "at the death of decedent, there are real parties in interest who may procure the action to be brought." *** Given this unique context, Koons does not contradict the proposition that a claim generally accrues when the plaintiff has a complete and present cause of action.

Nor does *Crown Coat*. That case concerned a contract dispute in which a Government contractor sought an equitable adjustment to the payment it received. The contract required the contractor to present its claim to the contracting officer and Armed Services Board of Contract Appeals; its claim was "not subject to adjudication in the courts" until it was denied by the Board. We held that the right of action first accrued when the Board denied the contractor's claim, because the contractor had "the right to resort to the courts only upon the making of that administrative determination." *Crown Coat* thus supports Corner Post: The Court interpreted §2401(a) to embody the traditional rule that a claim accrues when the plaintiff has the right to bring suit in court.

Notwithstanding *Crown Coat*'s holding, the Board and the dissent try to marshal support from its dicta. The Court noted that it is hazardous "to define for all purposes when a 'cause of action' first 'accrues'"; it cautioned that those words should be "'interpreted in the light of the general purposes of the statute and of its other provisions'" and the "'practical ends'" served by time limitations. Seizing on this language, the Board insists that the word "accrues" is a chameleon, taking on different meanings in different contexts—and in the administrative-law context, a right of action "accrues" when a regulation is final, full stop.

The Board and the dissent vastly overread—in fact, they misread—*Crown Coat*. The Court did not suggest that the same words "right of action first accrues" in a single statute should mean different things in different contexts—which is how the Board and the dissent would have us interpret §2401(a). Rather, the Court made its observation in the course of distinguishing §2401(a) from a statutory scheme that departed from the traditional accrual rule. Moreover, as we have already explained, the Court interpreted §2401(a)—the very statute at issue in this case—to start the clock when the plaintiff is "legally entitled" to file suit. It also specifically rejected the Government's position that the time can run even before a plaintiff's "civil action against the United States matures." We therefore do not read *Crown Coat*'s "general purposes" language to contradict either its holding or the "'standard rule' for limitations periods."

D

Finally, the Board raises policy concerns. It emphasizes that agencies and regulated parties need the finality of a 6-year cutoff. After that point, facial challenges impose significant burdens on agencies and courts. Moreover, if they are successful, such challenges upset the reliance interests of the agencies and regulated parties that have long operated under existing rules. "[P]leas of administrative inconvenience . . . never 'justify departing from the statute's clear text.'" Niz-*Chavez v. Garland*, 593 U. S. 155, 169 (2021). Congress could have chosen different language in §2401(a) or created a general statute of repose for agencies. It did not.

That is enough to dispatch the Board's policy arguments, but we add that its concerns are overstated. Put aside facial challenges like Corner Post's. Regulated parties "may always assail a regulation as exceeding the agency's statutory authority in enforcement proceedings against them" or "petition an agency to reconsider a longstanding rule and then appeal the denial of that petition." So even on the Board's preferred interpretation, "[a] federal regulation that makes it six years without being contested does not enter a promised land free from legal challenge." Moreover, the opportunity to challenge agency action does not mean that new plaintiffs will always win or that courts and agencies will need to expend significant resources to address each new suit. Given that major regulations are typically challenged immediately, courts entertaining later challenges often will be able to rely on binding Supreme Court or circuit precedent.

Turning to the other side of the policy ledger, the Board slights the arguments supporting the plaintiff-centric accrual rule. In addition to being compelled by §2401(a)'s text, this rule vindicates the APA's "basic presumption" that anyone injured by agency action should have access to judicial review. Abbott Labs., 387 U. S., at 140. It also respects our "deep-rooted historic tradition that everyone should have his own day in court." *Richards v. Jefferson County*, 517 U. S. 793, 798 (1996) (internal quotation marks omitted). Under the Board's finality rule, only those fortunate enough to suffer an injury within six years of a rule's promulgation may bring an APA suit. Everyone else—no matter how serious the injury or how illegal the rule—has no recourse.

The dissent also raises a host of policy arguments masquerading as "matter[s] of congressional intent." And it warns that today's opinion will "devastate the functioning of the Federal Government." This claim is baffling—indeed, bizarre—in a case about a statute of limitations. The Solicitor General, whose mandate is to protect the interests of the Federal Government, comes nowhere close to suggesting that a plaintiff-centric interpretation of §2401(a) spells the end of the United States as we know it. *** We have more confidence in both the Executive Branch and the Judiciary. But we do agree with the dissent on one point: "'[T]he ball is in Congress' court.'" *Post*, at 24 (quoting *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U. S. 618, 661 (2007) (Ginsburg, J., dissenting)). Section 2401(a) is 75 years old. If it is a poor fit for modern APA litigation, the solution is for Congress to enact a distinct statute of limitations for the APA.

* * *

An APA claim does not accrue for purposes of §2401(a)'s 6-year statute of limitations until the plaintiff is injured by final agency action. Because Corner Post filed suit within six years of its injury, §2401(a) did not bar its challenge to Regulation II. We reverse the Eighth Circuit's judgment to the contrary and remand the case for further proceedings consistent with this opinion. It is so ordered.

JUSTICE KAVANAUGH, concurring.

I agree with the Court that a claim under the Administrative Procedure Act accrues when the plaintiff is injured by the challenged agency rule. I also agree with the Court that today's decision vindicates the APA's "'basic presumption' that anyone injured by agency action should have access to judicial review." I write separately to explain a crucial additional point: Corner Post can obtain relief in this case only because the APA authorizes vacatur of agency rules.

Corner Post challenged an agency rule that regulates the fees that banks may charge. But Corner Post is not a bank regulated by the rule. Rather, it is a business that must pay the fees charged by the banks who are regulated by the rule. Corner Post complains that the agency rule allows banks to charge fees that are unreasonably high. Corner Post's suit is a typical APA suit. An unregulated plaintiff such as Corner Post often will sue under the APA to challenge an allegedly unlawful agency rule that regulates others but also has adverse downstream effects on the plaintiff. In those cases, an injunction barring the agency from enforcing the rule against the plaintiff would not help the plaintiff, because the plaintiff is not regulated by the rule in the first place. Instead, the unregulated plaintiff can obtain meaningful relief only if the APA authorizes vacatur of the agency rule, thereby remedying the adverse downstream effects of the rule on the unregulated plaintiff.

The APA empowers federal courts to "hold unlawful and set aside agency action" that, as relevant here, is arbitrary and capricious or is contrary to law. 5 U. S. C. §706(2). The Federal Government and the federal courts have long understood §706(2) to authorize vacatur of unlawful agency rules, including in suits by unregulated plaintiffs who are adversely affected by an agency's regulation of others. Recently, the Government has advanced a far-reaching argument that the APA does not allow vacatur. Invoking a few law review articles, the Government contends that the APA's authorization to "set aside" agency action does not allow vacatur, but instead permits a court only to enjoin an agency from enforcing a rule against the plaintiff. If the Government were correct on that point, Corner Post could not obtain any relief in this suit because, to reiterate, Corner Post is not regulated by the rule to begin with. And the APA would supply no remedy for most other unregulated but adversely affected parties who traditionally have brought, and regularly still bring, APA suits challenging agency rules. The Government's position would revolutionize longsettled administrative law—shutting the door on entire classes of everyday administrative law cases. The Government's newly minted position is both novel and wrong.

I

Corner Post owns a truck stop and convenience store in rural North Dakota. When a customer uses a debit card at its business, Corner Post must pay a fee (known as an interchange fee) to the bank that processes the customer's transaction. *** Corner Post is not subject to the fee rule. Corner Post does not charge interchange fees to its customers, and Corner Post lacks any authority to set those fees. But because Corner Post must pay the fees to banks, it is affected by the agency's rule setting the maximum fees that banks may charge. In particular, Corner Post would be harmed by a fee rule that allows unreasonably high fees and would benefit from a fee rule that more strictly limits the fees that banks may charge.

The APA authorizes any person who has been "adversely affected or aggrieved" by a "final agency action" to obtain judicial review in federal district court. 5 U. S. C. §§702, 704. In an APA suit, the district court "shall" "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." §706(2)(A). Corner Post filed this APA suit because it believes that the fee rule allows banks to charge unreasonably high fees. Corner Post asked the Federal District Court to vacate the fee rule on the ground that the Board must more strictly regulate bank fees. Corner Post would not be able to obtain relief in its lawsuit through any remedy other than vacatur. Corner Post could not obtain relief through an injunction forbidding the Board from enforcing the rule against it. That is because the rule does not regulate Corner Post and therefore is not and cannot be enforced against Corner Post in the first place. Nor could Corner Post secure relief through an injunction against banks; the APA does not authorize suits against private parties. Corner Post instead needs a remedy that acts directly on the fee rule—specifically, by vacating it. Indeed, without vacatur, it is hard to imagine what kind of lawsuit Corner Post could file.

II

For Corner Post to obtain relief, an important question therefore is whether the APA authorizes vacatur of unlawful agency actions, including agency rules. The answer is yes—in light of the text and history of the APA, the longstanding and settled precedent adhering to that text and history, and the radical consequences for administrative law and individual liberty that would ensue if vacatur were suddenly no longer available.

The text and history of the APA authorize vacatur. The text directs courts to "set aside" unlawful agency actions. 5 U. S. C. §706(2)(A). When Congress enacted the APA in 1946, the phrase "set aside" meant "cancel, annul, or revoke." At that time, it was common for an appellate court that reversed the decision of a lower court to direct that the lower court's "judgment" be "set aside," meaning vacated. Likewise, Congress used the phrase "set aside" in many pre-APA statutes that plainly contemplated the vacatur of agency actions. *** The APA prescribes the same "set aside" remedy for all categories of "agency action," including agency adjudicative orders and agency rules. And because federal courts must "set aside" agency rules in the same way that they set aside agency orders, successful challenges to agency rules must award the same remedy. In short, to "set aside" a rule is to vacate it.

Longstanding precedent reinforces the text. Over the decades, this Court has affirmed countless decisions that vacated agency actions, including agency rules. *** Those decisions vacated the challenged agency rules rather than merely providing injunctive relief that enjoined enforcement of the rules against the specific plaintiffs. And the D. C. Circuit—which handles the lion's share of the country's administrative law cases—has likewise long recognized vacatur as the usual relief when a court holds that agency rules are unlawful. In the words of the D. C. Circuit: "When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *Harmon v. Thornburgh*, 878 F. 2d 484, 495, n. 21 (CADC 1989).

Importantly, as Corner Post's lawsuit shows, the availability of vacatur determines not only the extent of the relief that courts may award in APA suits by regulated parties, but also whether unregulated parties can obtain relief under the APA at all. In most APA litigation brought by unregulated but adversely affected parties, a plaintiff can obtain relief only through vacatur of the adverse agency action. Prohibiting courts from vacating agency actions would essentially close the courthouse doors on those unregulated plaintiffs—a radical change to administrative law that would insulate a broad swath of agency actions from any judicial review. Vacatur is therefore essential to fulfill the "basic presumption of judicial review" for parties who have been "adversely affected or aggrieved" by federal agency action. *Abbott Laboratories v. Gardner*, 387 U. S. 136, 140 (1967). Eliminating the vacatur remedy would contravene the strong *Abbott Laboratories* presumption by insulating many agency rules from meaningful judicial review.

The absence of vacatur would also create an asymmetry. For example, without the vacatur remedy, a bank could still challenge the Board's regulation of interchange fees in a suit for injunctive relief. The bank might argue that the fee cap is too low and that the Board should be enjoined from enforcing the cap against the bank—a result that would allow the bank to charge higher fees. But because Corner Post is not subject to the Board's regulation, it could not contend that the fee cap is too high and that the Board should be enjoined from keeping the cap so high. So Corner Post would be precluded from suing even though the allegedly unlawful regulation is causing it monetary injury.

III

Eliminating vacatur as a remedy would terminate entire classes of administrative litigation that have traditionally been brought by unregulated parties. One example is the wide range of administrative law suits in which businesses target the allegedly unlawful under-regulation of other businesses, such as their competitors. For example, in *National Credit Union Administration v. First National Bank & Trust Co.*, several banks challenged the decision of a federal agency to approve a series of amendments to the charter of a federal credit union, a competitor of the banks. 522 U. S. 479, 484–485 (1998). The Court held that the banks could sue under the APA to challenge the agency's approval of those charter amendments, and also that the agency's approval of the amendments was unlawful. Of course, the District Court could remedy the banks' harm only by vacating the approval of the amendments. In short, for the plaintiff in First National Bank to have a remedy, the APA must have authorized vacatur. Those competitor suits are ubiquitous in administrative law. ***

Suits where one business challenges the underregulation of another go well beyond competitor suits. One example is the Court's landmark decision in *Motor Vehicle Manufacturers Association of United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U. S. 29 (1983). That case arose when several insurance companies challenged a federal agency's rescission of safety standards for new motor vehicles. The Court held that the agency's decision to rescind those safety standards was subject to the same degree of judicial review as the decision to issue the standards in the first place. The Court also concluded that the rescission of the safety standards was arbitrary and capricious. At no point in that landmark opinion on the judicial review of agency actions did the Court state (or need to state) the obvious: Because the agency did not regulate the insurers themselves, the insurers could obtain relief from the downstream effects of the agency's rescission of the safety standards only if the insurers could obtain vacatur of that rescission. Only now—some 40 years later—does the Government imply that the premise of State Farm was mistaken.

The Government's new position would also largely eliminate the common form of environmental litigation where private citizens sue a federal agency based on the externalities that an agency action is likely to produce. *** In those cases, the plaintiff generally cannot bring an APA suit against the developer, who is usually a private party. Instead, the plaintiff typically sues the federal agency that approved the development and asks a federal court to vacate that approval.

Workers and their unions also regularly challenge agency rules that rescind or loosen federal workplace safety standards. Those suits often arise under statutory review provisions that, like the APA, authorize courts to "set aside" agency actions. And the suits all depend on the availability of vacatur as a remedy. So if "set aside" did not mean vacate, workplace safety rules could be challenged from only one direction—by employers who want less regulation, not by workers who want more regulation. The examples of standard agency litigation that depend on the availability of vacatur are seemingly endless. I will stop there. But to be clear, I could go on all day (and then some) listing cases where vacatur was necessary for an unregulated but adversely affected plaintiff in an APA suit to obtain relief.

IV

Against all of that text, history, precedent, and common sense, the Government has recently rejected the straightforward and long-accepted conclusion that the phrase "set aside" in the APA authorizes vacatur. Instead, the Government contends that plaintiffs harmed by agency rules must seek injunctions against enforcement of those rules. One effect of the Government's new position would be to insulate many agency rules from meaningful judicial review in suits by unregulated but adversely affected parties.

To support its new position, the Government has offered an array of arguments. First, the Government says that vacatur of a federal rule is akin to a nationwide injunction. But in the APA, Congress did in fact depart from the ordinary equitable-relief baseline and authorize vacatur. As noted above, the text of the APA expressly authorizes federal courts to "set aside" agency action. Second, the Government argues that the remedies available in APA suits are not governed by §706(2), which directs courts to "set aside" agency action, but instead are governed by §703. That argument is weak. Section 703 determines the "form of proceeding" for suits under the APA; it does not delimit the kinds of remedies available. Third, the Government seizes on legislative history to argue that Congress did not expect the APA to create new remedies against unlawful agency actions. But vacatur was not a new remedy. On the contrary, several pre-APA statutes authorized courts to "set aside" specific kinds of agency actions, such as orders by the Interstate Commerce Commission, and this Court correctly understood those statutes to authorize vacatur. Moreover, although vacatur was not as common in the years surrounding the APA's enactment, there is a simple explanation for that: Courts had few occasions to set aside agency rules before this Court's 1967 decision in *Abbott Laboratories v. Gardner*, which significantly expanded the opportunities for facial, pre-enforcement review of agency rules. Fourth, the Government objects to the real-world consequences that occur when a federal district court wrongly vacates a lawful rule. I appreciate that concern. But federal law already gives the Government tools to mitigate those consequences—if not avoid them altogether. When the Government believes that a district court has erroneously vacated a rule, the Government may promptly seek a stay in the relevant federal court of appeals, and if the court of appeals denies a stay, the Government may seek further review in this Court.

Some 78 years after the APA and 57 years after *Abbott Laboratories*, I would not suddenly throw out that sound and settled interpretation of the APA and eliminate entire classes of historically common and vitally important litigation against federal agencies. *** I agree with the longstanding consensus—a consensus based on text, history, precedent, and common sense—that vacatur is an appropriate remedy when a federal court holds that an agency rule is unlawful. Because vacatur remains an available remedy under the APA, Corner Post can obtain meaningful relief if it prevails in this lawsuit.

JUSTICE JACKSON, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

More than half a century ago, this Court highlighted the long-recognized "hazards inherent in attempting to define for all purposes when a 'cause of action' first 'accrues.'" *Crown Coat Front Co. v. United States*, 386 U. S. 503, 517 (1967). Today, the majority throws that caution to the wind and engages in the same kind of misguided reasoning about statutory limitations periods that we have previously admonished. The flawed reasoning and far-reaching results of the Court's ruling in this case are staggering.

First, the reasoning. The text and context of the relevant statutory provisions plainly reveal that, for facial challenges to agency regulations, the 6-year limitations period in 28 U. S. C. §2401(a) starts running when the rule is published. The Court says otherwise today, holding that the broad statutory term "accrues" requires us to conclude that the limitations period for Administrative Procedure Act (APA) claims runs from the time of a plaintiff's injury. Never mind that this Court's precedents tell us that the meaning of "accrues" is context specific. Never mind that, in the administrativelaw context, limitations statutes uniformly run from the moment of agency action. Never mind that a plaintiff's injury is utterly irrelevant to a facial APA claim.

Next, the results. The Court's baseless conclusion means that there is effectively no longer any limitations period for lawsuits that challenge agency regulations on their face.

Allowing every new commercial entity to bring fresh facial challenges to long-existing regulations is profoundly destabilizing for both Government and businesses. It also allows well-heeled litigants to game the system by creating new entities or finding new plaintiffs whenever they blow past the statutory deadline. I respectfully dissent.

I

When a claim accrues depends on the nature of the claim. So, understanding the context in which these claims arose is essential to determining when Congress meant for them to accrue. The facts of this very case illustrate the absurdity of the majority's one-size-fits-all approach. The procedural history is also a prime example of the gamesmanship that statutory limitations periods are enacted to prevent.

A

Start with the relevant agency regulation. In 2010, Congress required the Federal Reserve Board to issue rules for debit-card transaction fees. The Board did as Congress instructed. As relevant here, in 2011, the Board issued Regulation II, capping debit-card interchange fees at 21 cents per transaction plus 0.05 percent of the transaction. As often happens, affected parties challenged Regulation II almost immediately after the Board issued it. Several large trade groups sued under the APA, alleging that Regulation II was, in several respects, arbitrary, capricious, and not in accordance with law. Ultimately, the D. C. Circuit rejected that challenge in relevant part. And, a few months after that, we denied certiorari.

B

Now consider the facts of this challenge. In the majority's telling, this is about a single "truckstop and convenience store located in Watford City, North Dakota." Not quite. Rather, two large trade groups initially filed this action in 2021—a full decade after the Federal Reserve Board finalized the debit-card-fee regulations at issue. Those groups were the North Dakota Petroleum Marketers Association, a "trade association that has existed since the mid-1950s," and the North Dakota Retail Association, another trade group. Corner Post, which had only opened its doors in 2018, was not a party to the trade groups' initial complaint. The Government moved to dismiss the pleading, invoking §2401(a)'s 6-year statute of limitations. In response, the trade groups sought leave to amend. It was only then that Corner Post was added as a plaintiff. And, importantly, other than the addition of Corner Post, the trade groups' complaint remained practically identical to the untimely one they had filed before. Other than a few changes of phrasing and some newly available 2019 data, the amended complaint alleged the same facts and sought the same relief as the original pleading. It also included the exact same legal claims—verbatim. The only material change to the amended complaint was the addition of Corner Post. Thus, even before I analyze the statute of limitations arguments, one can see that this case is the poster child for the type of manipulation that the majority now invites—new groups being brought in (or created) just to do an end run around the statute of limitations.

Rather than accepting that the untimely challenge remained so, Corner Post demanded a personalized, plaintiff-specific limitations rule, giving an entity six years from when it was first affected by a Government action to file a facial challenge. The District Court rejected Corner Post's argument, following the lead of every court of appeals that had ever addressed accrual of an APA facial challenge. It held that the addition of Corner Post as a plaintiff did not make a difference to the timeliness of the business groups' claims. The Eighth Circuit affirmed, holding that "when plaintiffs bring a facial challenge to a final agency action, the right of action accrues, and the limitations period begins to run, upon publication of the regulation."

II

But here we are. Three-quarters of a century after Congress enacted the APA, a majority of this Court rejects the consensus view that, for facial challenges to agency rules, the statutory 6-year limitations period runs from the publication of the rule. Instead, it holds that an APA claim accrues "when the plaintiff is injured by final agency action." The majority maintains that the text of §2401(a) demands this result. But if that answer is so obvious, one wonders why no court proclaimed it until more than 75 years after all the statutory pieces were in place.

To explain how the majority got this ruling wrong, I find it necessary to provide the right answer. Here, the relevant statutory text is the catchall limitations provision for suits brought against the United States: §2401(a) of Title 28 of the United States Code. All agree that there are two key terms in that provision—"accrues" and "the right of action." The majority misreads both. Contrary to the Court's rigid reading, the word "accrues" lacks any fixed meaning. Instead, the meaning of accrue for the purpose of a statute of limitations is determined by the particular "right of action" at issue. For many kinds of legal claims, accrual is plaintiff specific because the claims themselves are plaintiff specific. But facial administrative-law claims are not. This means that, in the administrative-law context, the limitations period begins not when a plaintiff is injured, but when a rule is finalized.

A

When sovereign immunity has been waived, the Federal Government is often sued, and Congress has enacted statutes of limitations to ensure that those lawsuits are brought in a timely fashion. Because such suits arise in different contexts, Congress has enacted different statutes of limitations for different types of suits. Most statutes of limitations are context specific. For example, a tort claim against the United States typically must be brought "within two years after such claim accrues." 28 U. S. C. §2401(b). By contrast, a party challenging certain administrative orders must seek review "within 60 days after [the order's] entry." §2344.

The statute at issue here—28 U. S. C. §2401(a)—supplements those specific provisions. In doing so, §2401(a) serves a special purpose: to act as a catchall that imposes an outer time limit on claims brought against the United States when no other statute of limitations applies. Under §2401(a), "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." No more elaboration or specificity is given. So, what does the sparse text of §2401(a) tell us? To start, the statute tells us to look at when "the right of action first accrues." The word "first" directs us to start the clock at the earliest possible opportunity once the claim accrues. Next, the provision uses the unadorned phrase "the right of action." Because this statute is applicable to a broad range of causes of action against the Government, the underlying statute (here the APA) provides "the right of action," not §2401(a) itself.

B

A proper understanding of the word "accrues" makes clear that this term is far more flexible and context dependent than the majority appreciates. Crucially, the Court has said this very thing before—more than once, in fact. We have long understood that it is simply not "possible to assign the word 'accrued' any definite technical meaning which by itself would enable us to say whether the statutory period begins to run at one time or the other." *Reading Co. v. Koons*, 271 U. S. 58, 61–62 (1926). Far from imposing a one-size-fits-all definition of the word "accrue," this Court has traditionally taken a claim-specific view. *** For example, in *McMahon v. United States*, 342 U. S. 25 (1951), we held that, under the Suits in Admiralty Act, a claim accrued when a seaman was injured, even though he could not yet sue at that time. In *Crown Coat*, we held the opposite—a claim brought under 28 U. S. C. §1346 did not accrue at the time of injury, but rather at the moment of final administrative action, because a plaintiff could not sue until the agency action was final. The point is not that these cases all point in one direction or the other with respect to the meaning of accrue. Instead, our cases illustrate what this Court has expressly stated: The term "accrued" lacks "any definite technical meaning."

The majority nevertheless decrees today that accrual must always be plaintiff specific—i.e., that a claim cannot accrue until "this particular plaintiff" can bring suit. But that is not what §2401(a) says. It does not say that the clock starts when the plaintiff's right of action first accrues; rather, §2401(a) starts the clock when "the right of action first accrues." In other words, the limitations provision here focuses on the claim being brought without regard for who brings it. The dictionary definitions on which the majority relies further highlight this important observation. A claim accrues, according to those definitions, "'when a suit may be maintained thereon'" or upon the "'coming or springing into existence of a right to sue.'" Again, and notably, these dictionaries speak of a right to sue, not the plaintiff's right to sue.

Of course, many of our cases do say that a claim accrues when "'the plaintiff has a complete and present cause of action.'" But those statements were made in the context of particular cases, each of which dealt with plaintiff-specific causes of action. Here is what I mean by this. When a complaint brought against a defendant asserts, "You falsely imprisoned me," or "You retaliated against me," it is making a legal claim that is specific to the particular plaintiff. But it is not similarly plaintiff specific to bring a claim saying, for example, that a particular regulation is invalid because it "exceeds the Board's statutory authority," or because the Government "failed to consider important aspects of the problem," as the complaint here alleges. So, while accrual may sometimes—even usually—be plaintiff specific, that is just because underlying legal claims are often plaintiff specific.

The majority's other hard-and-fast distinction—between statutes of limitations and statutes of repose—fares no better. The majority sets up a dichotomy: Statutes of limitations are plaintiff-centric rules that "'require plaintiffs to pursue diligent prosecution of known claims,'" while statutes of repose emphasize finality and are tied to "'the last culpable act or omission of the defendant.'" The problem is that statutes of limitations and statutes of repose, while different, are not nearly as different as the majority imagines. "The very purpose of a period of limitation is that there may be, at some definitely ascertainable period, an end to litigation." In fact, according to one of the dictionaries the majority cites, "[s]tatutes of limitation are statutes of repose." The difference is that unlike statutes of repose, statutes of limitations have more than one purpose: they bring finality for defendants and prevent plaintiffs from sleeping on their rights. Understanding these dual functions sheds no light whatsoever on what to do when those competing purposes point in different directions.

III

Because different claims accrue at different times, we must look to the specific types of claims that the plaintiffs have brought and consider the context in which the limitations period operates. In other words, to understand when "the right of action" accrues under §2401(a), we must understand what the right of action is.

A

The right of action that is invoked in many administrative-law cases, including this one, is a statutory claim that an agency has violated certain legal requirements when it took a certain action, such that the agency's action itself is invalid. And Congress has repeatedly made clear, through various statutory enactments, that in the administrative-law context, the statute of limitations for filing a claim that seeks to invalidate the agency action runs from the moment of final agency action. Take the Administrative Orders Review Act (also known as the Hobbs Act), for example. That statute is the exclusive mechanism for reviewing certain orders issued by over a half-dozen federal agencies. The Act requires suits to be brought "within 60 days after [the] entry" of any final agency order. There are many other similar statutes. In its brief, the Government provided us with more than two dozen statutory provisions where the limitations period starts running at the moment of final agency action. ***

Despite the dozens of statutes that start the limitations period at the moment of final agency action, neither Corner Post nor the majority identifies a single statute in the administrative-law context—either now or before 1948—that takes any other approach. This tells us exactly the message that Congress might have expected courts to infer when interpreting §2401(a): For administrative-law actions, a claim accrues at the moment of final agency action.

What is more, the standard accrual rule for the administrative-law context makes perfect sense. The APA itself focuses on the agency's action, not on the plaintiff. Section 704 subjects certain "agency action[s]" to judicial review. Section 706 lays out the scope of judicial review. As relevant here, courts shall "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Other subsections of §706 likewise focus exclusively on what the agency did. Section 702 is not to the contrary. The majority suggests otherwise, characterizing §702 as "equip[ping] injured parties with a cause of action." This is a misleading characterization. Section 702 restricts who may challenge agency action: only those "person[s] suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action." It is simply a limitation on who can sue. As such, it says nothing about the cause of action that such a person might bring, nor does it establish that an injury is an element of the claim, as the majority mistakenly suggests.

The way that courts review agency actions also reinforces this basic observation. Courts do not look at what happened to the plaintiff or what happened after the rulemaking—they look only at the rule and the rulemaking process itself. "[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U. S. 138, 142 (1973). Anything that happened after the rule's publication (including, perhaps, some injury to a regulated party) does not matter to an APA claim. So, the available claims, causes of action, and evidence are the same regardless of who brings the challenge or when they bring it. Again, the complaint in this case proves the point. Before Corner Post was added as a plaintiff, the complaint alleged that (1) Regulation II is contrary to law and exceeds the Board's statutory authority, and (2) Regulation II is arbitrary and capricious. After Corner Post was added as a plaintiff, the complaint made exactly those same two legal claims. From the pleadings filed in this case, three observations stand out. First, these APA claims, like all APA claims, are about what the agency itself did, so the logical point to start the clock is the moment the agency acted. Second, the claims that Corner Post brings are not specific to it—they are identical to the untimely claims the coplaintiff trade groups brought before. And, finally, although the majority puts procedural challenges to the side, the claims in this case are procedural, so the majority's linedrawing exercise is meaningless.

B

On the matter of congressional intent, the consistent accrual rule in the administrative-law context (the limitations period starts running at the time of the final agency action) is patently superior to the majority's reading of §2401(a). Congress enacts statutes of limitations to achieve basic policy goals: "repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." For APA claims, where rulemakings apply to the public writ large, repose and certainty would never exist if any and every newly formed entity can challenge every agency regulation in existence.

First, repose. This principle means that, at some point, litigation must end. Under the majority's reading of the statute, it never will. Instead of putting a stop to things after six years, §2401(a) now does nothing to prevent agency rules from being forever subjected to legal challenge by newly formed entities. Second, elimination of stale claims. The majority forces courts and agencies to parse cold administrative records. Long after the action in question, courts may be ill equipped to review decades-old administrative explanations. Last, certainty. Agency rulemaking serves important "notice and predictability purposes." When an administrative agency changes its own rules, it follows specific, established processes, so parties have some predictability about how the rules of the road might change. But when every rule on the books can perpetually be challenged by any new plaintiff, and is thus subject to limitless ad hoc amendment, no policy determination can ever be put to rest, and certainty about the rules that govern will forever remain elusive.

IV

Today's ruling is not only baseless. It is also extraordinarily consequential. In one fell swoop, the Court has effectively eliminated any limitations period for APA lawsuits, despite Congress's unmistakable policy determination to cut off such suits within six years of the final agency action. The Court has decided that the clock starts for limitations purposes whenever a new regulated entity is created. This means that, from this day forward, administrative agencies can be sued in perpetuity over every final decision they make. The majority's ruling makes legal challenges to decades-old agency decisions fair game, even though courts of appeals had previously applied §2401(a) to find untimely a range of belated APA challenges. ***

No more. After today, even the most well-settled agency regulations can be placed on the chopping block. And please take note: The fallout will not stop with new challenges to old rules involving the most contentious issues of today. Any established government regulation about any issue—say, workplace safety, toxic waste, or consumer protection—can now be attacked by any new regulated entity within six years of the entity's formation. A brand new entity could pop up and challenge a regulation that is decades old; perhaps even one that is as old as the APA itself. No matter how entrenched, heavily relied upon, or central to the functioning of our society a rule is, the majority has announced open season.

Still, in issuing its ruling in this case, the Court seems oddly oblivious to the most foreseeable consequence of the accrual rule it is adopting: Giving every new entity in a regulated industry its own personal statute of limitations to challenge longstanding regulations affects our Nation's economy. Why? Because administrative agencies establish the baseline rules around which businesses and individuals order their lives. When an agency publishes a final rule, and the period for challenging that rule passes, people in that industry understand that the agency's policy choice is the law and act accordingly. They make investments because of it. They change their practices because of it. They enter contracts in light of it. They may not like the rule, but they live and work with it, because that is what the Rule of Law requires. It is profoundly destabilizing—and also acutely unfair—to permit newcomers to bring legal challenges that can overturn settled regulations long after the rest of the competitive marketplace has adapted itself to the regulatory environment.

Seeking to minimize the fully foreseeable and potentially devastating impact of its ruling, the majority maintains that there is nothing to see here, because not every lawsuit brought by a new industry upstart will win, and, at any rate, many agency regulations are already subject to challenge. But this myopic rationalization overlooks other significant changes that this Court has wrought this Term with respect to the longstanding rules governing review of agency actions. In *Loper Bright Enterprises v. Raimondo*, 603 U. S. ___ (2024), for example, the Court has reneged on a blackletter rule of administrative law that had been foundational for the last four decades. Under that prior interpretive doctrine, courts deferred to agency interpretations of ambiguous statutes that Congress authorized the agency to administer. Now, every legal claim conceived of in those last four decades—and before—can possibly be brought before courts newly unleashed from the constraints of any such deference. Put differently, a fixed statute of limitations, running from the agency's action, was one barrier to the chaotic upending of settled agency rules; the requirement that deference be given to an agency's reasonable interpretations concerning its statutory authority to issue rules was another. The Court has now eliminated both. Any new objection to any old rule must be entertained and determined *de novo* by judges who can now apply their own unfettered judgment as to whether the rule should be voided.

* * *

At the end of a momentous Term, this much is clear: The tsunami of lawsuits against agencies that the Court's holdings in this case and *Loper Bright* have authorized has the potential to devastate the functioning of the Federal Government. Even more to the present point, that result simply cannot be what Congress intended when it enacted legislation that stood up and funded federal agencies and vested them with authority to set the ground rules for the individuals and entities that participate in our economy and our society. It is utterly inconceivable that §2401(a)'s statute of limitations was meant to permit fresh attacks on settled regulations from all newcomers forever. Yet, that is what the majority holds today.

But Congress still has a chance to address this absurdity and forestall the coming chaos. It can opt to correct this Court's mistake by clarifying that the statutes it enacts are designed to facilitate the functioning of agencies, not to hobble them. In particular, Congress can amend §2401(a), or enact a specific review provision for APA claims, to state explicitly what any such rule must mean if it is to operate as a limitations period in this context: Regulated entities have six years from the date of the agency action to bring a lawsuit seeking to have it changed or invalidated; after that, facial challenges must end. By doing this, Congress can make clear that lawsuits bringing facial claims against agencies are not personal attack vehicles for new entities created just for that purpose. So, while the Court has made a mess of this pivotal statute, and the consequences are profound, "the ball is in Congress' court." *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U. S. 618, 661 (2007) (Ginsburg, J., dissenting).

Note: The Pre-Corner Post Circuit Split, and What Comes Next

Before *Corner Post*, at least six circuits had held that the six-year limitations period for facial APA challenges runs from the date of final agency action regardless of when a particular plaintiff was injured, while the Sixth Circuit alone held that the period runs from the plaintiff's own injury. *See Corner Post*, 603 U.S. at ___ (citing, e.g., *Wind River Min. Corp. v. United States*, 946 F.2d 710 (9th Cir. 1991), and *Herr v. United States Forest Serv.*, 803 F.3d 809 (6th Cir. 2015)). The Court resolved that split in the plaintiff-specific direction. For a critical assessment of the practical consequences, see the student note, *Time Bars for Administrative Procedure Act Claims After Corner Post*, 114 Calif. L. Rev. ___ (2026).

Note: ACUS Saw This Coming

The accrual ambiguity *Corner Post* resolved was not a surprise to the administrative-law establishment. Years before the decision, the Administrative Conference of the United States had already flagged §2401(a)'s uncertain application to facial APA challenges and proposed statutory clarification. *See* Admin. Conf. of the U.S., Recommendation 2021-5, *Clarifying Statutory Access to Judicial Review of Agency Action* (2021); M. Sant'Ambrogio & A. Bandes, *Timing of Judicial Review of Agency Action*, Report to the Admin. Conf. of the U.S. (2021). For a shorter, more current alternative, see Cong. Rsch. Serv., LSB11197, *Corner Post and the Statute of Limitations for Administrative Procedure Act Claims* (2024).

> *"In the wake of the issuance of the Supreme Court's decision in Corner Post, this report can make the following conclusions... consistent with the holding of Corner Post, the six-year time period in § 2401(a)... must be deemed to run from the time 'when the plaintiff has a complete and present cause of action.'"*
>
> — Aditya Bamzai & John F. Duffy, Timing of Judicial Review of Agency Action, Report to the Admin. Conf. of the U.S. (2026)

REVIEW QUESTIONS AND COMMENTS

1. What is the six-year limitations period at issue, and under the Government's proposed rule, when would it have begun to run for the regulation *Corner Post* challenged?

2. Why does the Court hold instead that the limitations period runs from the date the plaintiff was first injured by the rule, rather than from the date the rule was promulgated?
3. *Corner Post* did not exist as a business until years after the regulation took effect. Why does that timing matter to the outcome?
4. What practical effect does the Court's accrual rule have on an agency's ability to treat a rule as settled once the traditional six-year window from promulgation has passed?
5. Why has *Corner Post* generated so much commentary and concern from agencies?

Insert at p. 340, after REVIEW QUESTIONS AND COMMENTS following the Chevron excerpt, immediately before Michigan v. EPA

***Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)**

Supreme Court of the United States (decided together with *Relentless, Inc. v. Dep't of Commerce*)

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Since our decision in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), we have sometimes required courts to defer to "permissible" agency interpretations of the statutes those agencies administer— even when a reviewing court reads the statute differently. In these cases we consider whether that doctrine should be overruled.

I

Our *Chevron* doctrine requires courts to use a two-step framework to interpret statutes administered by federal agencies. After determining that a case satisfies the various preconditions we have set for *Chevron* to apply, a reviewing court must first assess "whether Congress has directly spoken to the precise question at issue." *Id.*, at 842. If, and only if, congressional intent is "clear," that is the end of the inquiry. *Ibid.* But if the court determines that "the statute is silent or ambiguous with respect to the specific issue" at hand, the court must, at *Chevron*'s second step, defer to the agency's interpretation if it "is based on a permissible construction of the statute." *Id.*, at 843. The reviewing courts in each of the cases before us applied *Chevron*'s framework to resolve in favor of the Government challenges to the same agency rule.

***

II

A

Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate "Cases" and "Controversies"—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear. Cognizant of the limits of human language and foresight, they anticipated that "[a]ll new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation," would be "more or less obscure and equivocal, until their meaning" was settled "by a series of particular discussions and adjudications." The Federalist No. 37, p. 236 (J. Cooke ed. 1961) (J. Madison).

The Framers also envisioned that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." *Id.*, No. 78, at 525 (A. Hamilton). Unlike the political branches, the courts would by design exercise "neither Force nor Will, but merely judgment." *Id.*, at 523. To ensure the "steady, upright and impartial administration of the laws," the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches.

This Court embraced the Framers' understanding of the judicial function early on. In the foundational decision of *Marbury v. Madison*, Chief Justice Marshall famously declared that "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137, 177 (1803)***. When the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties." *Decatur v. Paulding*, 14 Pet. 497, 515 (1840).

The Court also recognized from the outset, though, that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes. For example, in *Edwards' Lessee v. Darby*, 12 Wheat. 206 (1827), the Court explained that "[i]n the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." *Id.*, at 210; see also *United States v. Vowell*, 5 Cranch 368, 372 (1809) (Marshall, C. J., for the Court).

Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time. That is because "the longstanding 'practice of the government' "—like any other interpretive aid—"can inform [a court's] determination of 'what the law is.' " *NLRB v. Noel Canning*, 573 U. S. 513, 525 (2014) (first quoting *McCulloch v. Maryland*, 4 Wheat. 316, 401 (1819); then quoting *Marbury*, 1 Cranch, at 177). The Court also gave "the most respectful consideration" to Executive Branch interpretations simply because "[t]he officers concerned [were] usually able men, and masters of the subject," who were "[n]ot unfrequently . . . the draftsmen of the laws they [were] afterwards called upon to interpret." *United States v. Moore*, 95 U. S. 760, 763 (1878); see also *Jacobs v. Prichard*, 223 U. S. 200, 214 (1912).

"Respect," though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. Whatever respect an Executive Branch interpretation was due, a judge "certainly would not be bound to adopt the construction given by the head of a department." Decatur, 14 Pet., at 515; see also *Burnet v. Chicago Portrait Co.*, 285 U. S. 1, 16 (1932). Otherwise, judicial judgment would not be independent at all.

B

The New Deal ushered in a "rapid expansion of the administrative process." *United States v. Morton Salt Co.*, 338 U. S. 632, 644 (1950). But as new agencies with new powers proliferated, the Court continued to adhere to the traditional understanding that questions of law were for courts to decide, exercising independent judgment.

During this period, the Court often treated agency determinations of fact as binding on the courts, provided that there was "evidence to support the findings." *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 51 (1936). "When the legislature itself acts within the broad field of legislative discretion," the Court reasoned, "its determinations are conclusive." *Ibid.* Congress could therefore "appoint[ ] an agent to act within that sphere of legislative authority" and "endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily." *Ibid.* (emphasis added).

But the Court did not extend similar deference to agency resolutions of questions of law. It instead made clear, repeatedly, that "[t]he interpretation of the meaning of statutes, as applied to justiciable controversies," was "exclusively a judicial function." *United States v. American Trucking Assns., Inc.*, 310 U. S. 534, 544 (1940); see also *Social Security Bd. v. Nierotko*, 327 U. S. 358, 369 (1946); *Medo Photo Supply Corp. v. NLRB*, 321 U. S. 678, 681–682, n. 1 (1944). The Court understood, in the words of Justice Brandeis, that "[t]he supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied." St. Joseph Stock Yards, 298 U. S., at 84 (concurring opinion). It also continued to note, as it long had, that the informed judgment of the Executive Branch—especially in the form of an interpretation issued contemporaneously with the enactment of the statute—could be entitled to "great weight." American Trucking Assns., 310 U. S., at 549.

Perhaps most notably along those lines, in *Skidmore v. Swift & Co.*, 323 U. S. 134 (1944), the Court explained that the "interpretations and opinions" of the relevant agency, "made in pursuance of official duty" and "based upon . . . specialized experience," "constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance," even on legal questions. *Id.*, at 139–140. "The weight of such a judgment in a particular case," the Court observed, would "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Id.*, at 140.

On occasion, to be sure, the Court applied deferential review upon concluding that a particular statute empowered an agency to decide how a broad statutory term applied to specific facts found by the agency. For example, in *Gray v. Powell*, 314 U. S. 402 (1941), the Court deferred to an administrative conclusion that a coal-burning railroad that had arrangements with several coal mines was not a coal "producer" under the Bituminous Coal Act of 1937 ***. Similarly, in *NLRB v. Hearst Publications, Inc.*, 322 U. S. 111 (1944), the Court deferred to the determination of the National Labor Relations Board that newsboys were "employee[s]" within the meaning of the National Labor Relations Act***.

Such deferential review, though, was cabined to factbound determinations like those at issue in Gray and Hearst. Neither *Gray* nor *Hearst* purported to refashion the longstanding judicial approach to questions of law***. At least with respect to questions it regarded as involving "statutory interpretation," the Court thus did not disturb the traditional rule. It merely thought that a different approach should apply where application of a statutory term was sufficiently intertwined with the agency's factfinding.

In any event, the Court was far from consistent in reviewing deferentially even such factbound statutory determinations. Often the Court simply interpreted and applied the statute before it. See K. Davis, Administrative Law §248, p. 893 (1951) ("The one statement that can be made with confidence about applicability of the doctrine of *Gray v. Powell* is that sometimes the Supreme Court applies it and sometimes it does not."); B. Schwartz, Gray vs. Powell and the Scope of Review, 54 Mich. L. Rev. 1, 68 (1955) (noting an "embarrassingly large number of Supreme Court decisions that do not adhere to the doctrine of *Gray v. Powell*")***.

Nothing in the New Deal era or before it thus resembled the deference rule the Court would begin applying decades later to all varieties of agency interpretations of statutes. Instead, just five years after Gray and two after Hearst, Congress codified the opposite rule: the traditional understanding that courts must "decide all relevant questions of law." 5 U. S. C. §706.

C

Congress in 1946 enacted the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." Morton Salt, 338 U. S., at 644. It was the culmination of a "comprehensive rethinking of the place of administrative agencies in a regime of separate and divided powers." *Bowen v. Michigan Academy of Family Physicians*, 476 U. S. 667, 670–671 (1986).

In addition to prescribing procedures for agency action, the APA delineates the basic contours of judicial review of such action. As relevant here, Section 706 directs that "[t]o the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U. S. C. §706. It further requires courts to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . not in accordance with law." §706(2)(A).

The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. It specifies that courts, not agencies, will decide "all relevant questions of law" arising on review of agency action, §706 (emphasis added)— even those involving ambiguous laws—and set aside any such action inconsistent with the law as they interpret it. And it prescribes no deferential standard for courts to employ in answering those legal questions. That omission is telling, because Section 706 does mandate that judicial review of agency policymaking and factfinding be deferential. See §706(2)(A) (agency action to be set aside if "arbitrary, capricious, [or] an abuse of discretion"); §706(2)(E) (agency factfinding in formal proceedings to be set aside if "unsupported by substantial evidence").

In a statute designed to "serve as the fundamental charter of the administrative state," *Kisor v. Wilkie*, 588 U. S. 558, 580 (2019) (plurality opinion) (internal quotation marks omitted), Congress surely would have articulated a similarly deferential standard applicable to questions of law had it intended to depart from the settled pre-APA understanding that deciding such questions was "exclusively a judicial function," American Trucking Assns., 310 U. S., at 544. But nothing in the APA hints at such a dramatic departure. On the contrary, by directing courts to "interpret constitutional and statutory provisions" without differentiating between the two, Section 706 makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are not entitled to deference***.

The text of the APA means what it says. And a look at its history if anything only underscores that plain meaning. According to both the House and Senate Reports on the legislation, Section 706 "provide[d] that questions of law are for courts rather than agencies to decide in the last analysis." H. R. Rep. No. 1980, 79th Cong., 2d Sess., 44 (1946) (emphasis added); accord, S. Rep. No. 752, 79th Cong., 1st Sess., 28 (1945). Some of the legislation's most prominent supporters articulated the same view. See 92 Cong. Rec. 5654 (1946) (statement of Rep. Walter); P. McCarran, Improving "Administrative Justice": Hearings and Evidence; Scope of Judicial Review, 32 A. B. A. J. 827, 831 (1946). Even the Department of Justice—an agency with every incentive to endorse a view of the APA favorable to the Executive Branch—opined after its enactment that Section 706 merely "restate[d] the present law as to the scope of judicial review." Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act. That "present law," as we have described, adhered to the traditional conception of the judicial function.

***

The APA, in short, incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions. In exercising such judgment, though, courts may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes***. And interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning.

In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes "expressly delegate[ ]" to an agency the authority to give meaning to a particular statutory term. *Batterton v. Francis*, 432 U. S. 416, 425 (1977) (emphasis deleted). Others empower an agency to prescribe rules to "fill up the details" of a statutory scheme, *Wayman v. Southard*, 10 Wheat. 1, 43 (1825), or to regulate subject to the limits imposed by a term or phrase that "leaves agencies with flexibility," *Michigan v. EPA*, 576 U. S. 743, 752 (2015), such as "appropriate" or "reasonable."

When the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, "fix[ing] the boundaries of [the] delegated authority," H. Monaghan, *Marbury* and the Administrative State, 83 Colum. L. Rev. 1, 27 (1983), and ensuring the agency has engaged in " 'reasoned decisionmaking' " within those boundaries***.

III

The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA.

A

In the decades between the enactment of the APA and this Court's decision in *Chevron*, courts generally continued to review agency interpretations of the statutes they administer by independently examining each statute to determine its meaning. Cf. T. Merrill, Judicial Deference to Executive Precedent, 101 Yale L. J. 969, 972–975 (1992). As an early proponent (and later critic) of *Chevron* recounted, courts during this period thus identified delegations of discretionary authority to agencies on a "statute-by-statute basis." A. Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 516.

Chevron, decided in 1984 by a bare quorum of six Justices, triggered a marked departure from the traditional approach. The question in the case was whether an EPA regulation "allow[ing] States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single 'bubble' " was consistent with the term "stationary source" as used in the Clean Air Act. 467 U. S., at 840. To answer that question of statutory interpretation, the Court articulated and employed a now familiar two-step approach broadly applicable to review of agency action.

The first step was to discern "whether Congress ha[d] directly spoken to the precise question at issue." *Id.*, at 842***.

Without mentioning the APA, or acknowledging any doctrinal shift, the Court articulated a second step applicable when "Congress ha[d] not directly addressed the precise question at issue." *Id.*, at 843. In such a case—that is, a case in which "the statute [was] silent or ambiguous with respect to the specific issue" at hand—a reviewing court could not "simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation." *Ibid.* (footnote omitted). A court instead had to set aside the traditional interpretive tools and defer to the agency if it had offered "a permissible construction of the statute," *ibid.*, even if not "the reading the court would have reached if the question initially had arisen in a judicial proceeding," *ibid.*, n. 11***.

*** the Court decided that *Chevron* rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley v. Citibank* (South Dakota), N. A., 517 U. S. 735, 740–741 (1996)

B

Neither *Chevron* nor any subsequent decision of this Court attempted to reconcile its framework with the APA***.

1

Chevron defies the command of the APA that "the reviewing court"—not the agency whose action it reviews—is to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). It requires a court to ignore, not follow, "the reading the court would have reached" had it exercised its independent judgment as required by the APA. *Chevron*, 467 U. S., at 843, n. 11. And although exercising independent judgment is consistent with the "respect" historically given to Executive Branch interpretations, see, e.g., Edwards' Lessee, 12 Wheat., at 210; *Skidmore*, 323 U. S., at 140, *Chevron* insists on much more. It demands that courts mechanically afford binding deference to agency interpretations, including those that have been inconsistent over time. See 467 U. S., at 863. Still worse, it forces courts to do so even when a pre-existing judicial precedent holds that the statute means something else—unless the prior court happened to also say that the statute is "unambiguous." *Brand X*, 545 U. S., at 982. That regime is the antithesis of the time-honored approach the APA prescribes***.

Chevron cannot be reconciled with the APA, as the Government and the dissent contend, by presuming that statutory ambiguities are implicit delegations to agencies. Presumptions have their place in statutory interpretation, but only to the extent that they approximate reality. *Chevron*'s presumption does not, because "[a]n ambiguity is simply not a delegation of law-interpreting power. *Chevron* confuses the two." C. Sunstein, Interpreting Statutes in the Regulatory State, 103 Harv. L. Rev. 405, 445 (1989). As *Chevron* itself noted, ambiguities may result from an inability on the part of Congress to squarely answer the question at hand, or from a failure to even "consider the question" with the requisite precision. 467 U. S., at 865. In neither case does an ambiguity necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question. And many or perhaps most statutory ambiguities may be unintentional. As the Framers recognized, ambiguities will inevitably follow from "the complexity of objects, . . . the imperfection of the human faculties," and the simple fact that "no language is so copious as to supply words and phrases for every complex idea." The Federalist No. 37, at 236.

Courts, after all, routinely confront statutory ambiguities in cases having nothing to do with *Chevron*—cases that do not involve agency interpretations or delegations of authority. Of course, when faced with a statutory ambiguity in such a case, the ambiguity is not a delegation to anybody, and a court is not somehow relieved of its obligation to independently interpret the statute. Courts in that situation do not throw up their hands because "Congress's instructions have" supposedly "run out," leaving a statutory "gap." *Post*, at 2 (opinion of KAGAN, J.). Courts instead understand that such statutes, no matter how impenetrable, do— in fact, must—have a single, best meaning. That is the whole point of having written statutes; "every statute's meaning is fixed at the time of enactment." *Wisconsin Central Ltd. v. United States*, 585 U. S. 274, 284 (2018) (emphasis deleted). So instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity.

In an agency case as in any other, though, even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same— "the reading the court would have reached" if no agency were involved. *Chevron*, 467 U. S., at 843, n. 11. It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.

Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do ***. The very point of the traditional tools of statutory construction—the tools courts use every day— is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is *least* appropriate.

The Government responds that Congress must generally intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer; because deferring to agencies purportedly promotes the uniform construction of federal law; and because resolving statutory ambiguities can involve policymaking best left to political actors, rather than courts. The dissent offers more of the same. But none of these considerations justifies *Chevron*'s sweeping presumption of congressional intent.

Beginning with expertise, *** But even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions. "[M]any statutory cases" call upon "courts [to] interpret the mass of technical detail that is the ordinary diet of the law," *Egelhoff v. Egelhoff*, 532 U. S. 141, 161 (2001) (Breyer, J., dissenting), and courts did so without issue in agency cases before *Chevron*. Courts, after all, do not decide such questions blindly. The parties and *amici* in such cases are steeped in the subject matter, and reviewing courts have the benefit of their perspectives. In an agency case in particular, the court will go about its task with the agency's "body of experience and informed judgment," among other information, at its disposal. *Skidmore*, 323 U. S., at 140. And although an agency's interpretation of a statute "cannot bind a court," it may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." Bureau of Alcohol, *Tobacco and Firearms v. FLRA*, 464 U. S. 89, 98, n. 8 (1983). Such expertise has always been one of the factors which may give an Executive Branch interpretation particular "power to persuade, if lacking power to control." *Skidmore*, 323 U. S., at 140.

***

Nor does a desire for the uniform construction of federal law justify *Chevron*. Given inconsistencies in how judges apply *Chevron*, see *infra*, at 30–33, it is unclear how much the doctrine as a whole (as opposed to its highly deferential second step) actually promotes such uniformity. In any event, there is little value in imposing a uniform interpretation of a statute if that interpretation is wrong. We see no reason to presume that Congress prefers uniformity for uniformity's sake over the correct interpretation of the laws it enacts.

The view that interpretation of ambiguous statutory provisions amounts to policymaking suited for political actors rather than courts is especially mistaken, for it rests on a profound misconception of the judicial role. It is reasonable to assume that Congress intends to leave policymaking to political actors. But resolution of statutory ambiguities involves legal interpretation. That task does not suddenly become policymaking just because a court has an "agency to fall back on." *Kisor*, 588 U. S., at 575 (opinion of the Court). Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences. Indeed, the Framers crafted the Constitution to ensure that federal judges could exercise judgment free from the influence of the political branches. See The Federalist, No. 78, at 522–525. They were to construe the law with "[c]lear heads . . . and honest hearts," not with an eye to policy preferences that had not made it into the statute. 1 Works of James Wilson 363 (J. Andrews ed. 1896).

That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has. But to stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA. By forcing courts to instead pretend that ambiguities are necessarily delegations, *Chevron* does not prevent judges from making policy. It prevents them from judging.

In truth, *Chevron*'s justifying presumption is, as Members of this Court have often recognized, a fiction. So we have spent the better part of four decades imposing one limitation on *Chevron* after another***.

Consider the many refinements we have made in an effort to match *Chevron*'s presumption to reality. We have said that *Chevron* applies only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." Mead, 533 U. S., at 226–227. In practice, that threshold requirement—sometimes called *Chevron* "step zero"—largely limits *Chevron* to "the fruits of notice-and-comment rulemaking or formal adjudication." 533 U. S., at 230***.

Even when those processes are used, deference is still not warranted "where the regulation is 'procedurally defective'—that is, where the agency errs by failing to follow the correct procedures in issuing the regulation." *Encino Motorcars*, *LLC v. Navarro*, 579 U. S. 211, 220 (2016) (quoting Mead, 533 U. S., at 227). Even where those procedural hurdles are cleared, substantive ones remain. Most notably, *Chevron* does not apply if the question at issue is one of "deep 'economic and political significance.' " *King v. Burwell*, 576 U. S. 473, 486 (2015)***. Nor have we applied *Chevron* to agency interpretations of judicial review provisions or to statutory schemes not administered by the agency seeking deference. And we have sent mixed signals on whether *Chevron* applies when a statute has criminal applications.

Confronted with this byzantine set of preconditions and exceptions, some courts have simply bypassed *Chevron*, saying it makes no difference for one reason or another. And even when they do invoke *Chevron*, courts do not always heed the various steps and nuances of that evolving doctrine. In one of the cases before us today, for example, the First Circuit both skipped "step zero," see 62 F. 4th, at 628, and refused to "classify [its] conclusion as a product of *Chevron* step one or step two"—though it ultimately appears to have deferred under step two.

This Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016. See *Cuozzo*, 579 U. S., at 280 (most recent occasion). But *Chevron* remains on the books. So litigants must continue to wrestle with it, and lower courts—bound by even our crumbling precedents, see *Agostini v. Felton*, 521 U. S. 203, 238 (1997)— understandably continue to apply it.

The experience of the last 40 years has thus done little to rehabilitate *Chevron*. It has only made clear that *Chevron*'s fictional presumption of congressional intent was always unmoored from the APA's demand that courts exercise independent judgment in construing statutes administered by agencies. At best, our intricate *Chevron* doctrine has been nothing more than a distraction from the question that matters: Does the statute authorize the challenged agency action? And at worst, it has required courts to violate the APA ***.

IV

The only question left is whether *stare decisis*, the doctrine governing judicial adherence to precedent, requires us to persist in the *Chevron* project. It does not ***. [T]he *stare decisis* considerations most relevant here—"the quality of [the precedent's] reasoning, the workability of the rule it established, . . . and reliance on the decision," *Knick v. Township of Scott*, 588 U. S. 180, 203 (2019) (quoting *Janus v. State*, County, and Municipal Employees, 585 U. S. 878, 917 (2018))—all weigh in favor of letting *Chevron* go.

Chevron has proved to be fundamentally misguided ***. For its entire existence, *Chevron* has been a "rule in search of a justification," *Knick*, 588 U. S., at 204, if it was ever coherent enough to be called a rule at all.

Experience has also shown that *Chevron* is unworkable. The defining feature of its framework is the identification of statutory ambiguity, which requires deference at the doctrine's second step. But the concept of ambiguity has always evaded meaningful definition. As Justice Scalia put the dilemma just five years after *Chevron* was decided: "How clear is clear?" 1989 Duke L. J., at 521.

We are no closer to an answer to that question than we were four decades ago. " '[A]mbiguity' is a term that may have different meanings for different judges." *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U. S. 546, 572 (2005) (Stevens, J., dissenting). One judge might see ambiguity everywhere; another might never encounter it. Compare L. Silberman, *Chevron*—The Intersection of Law & Policy, 58 Geo. Wash. L. Rev. 821, 822 (1990), with R. Kethledge, Ambiguities and Agency Cases: Reflections After (Almost) Ten Years on the Bench, 70 Vand. L. Rev. *En Banc* 315, 323 (2017). A rule of law that is so wholly "in the eye of the beholder," Exxon Mobil Corp., 545 U. S., at 572 (Stevens, J., dissenting), invites different results in like cases and is therefore "arbitrary in practice," *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U. S. 271, 283 (1988). Such an impressionistic and malleable concept "cannot stand as an every-day test for allocating" interpretive authority between courts and agencies. *Swift & Co. v. Wickham*, 382 U. S. 111, 125 (1965).

***

Four decades after its inception, *Chevron* has thus become an impediment, rather than an aid, to accomplishing the basic judicial task of "say[ing] what the law is." *Marbury*, 1 Cranch, at 177 ***.

Nor has *Chevron* been the sort of " 'stable background' rule" that fosters meaningful reliance. *Post*, at 8, n. 1 (opinion of KAGAN, J.) (quoting *Morrison v. National Australia Bank Ltd.*, 561 U. S. 247, 261 (2010)). Given our constant tinkering with and eventual turn away from *Chevron*, and its inconsistent application by the lower courts, it instead is hard to see how anyone—Congress included—could reasonably expect a court to rely on *Chevron* in any particular case ***.

Rather than safeguarding reliance interests, *Chevron* affirmatively destroys them. Under *Chevron*, a statutory ambiguity, no matter why it is there, becomes a license authorizing an agency to change positions as much as it likes ***. . But statutory ambiguity, as we have explained, is not a reliable indicator of actual delegation of discretionary authority to agencies. *Chevron* thus allows agencies to change course even when Congress has given them no power to do so. By its sheer breadth, *Chevron* fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty.

Chevron accordingly has undermined the very "rule of law" values that *stare decisis* exists to secure ***.

Chevron was a judicial invention that required judges to disregard their statutory duties. And the only way to "ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion," *Vasquez v. Hillery*, 474 U. S. 254, 265 (1986), is for us to leave *Chevron* behind.

By doing so, however, we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology***.

***

Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous ***.

JUSTICE THOMAS, concurring.

I join the Court's opinion in full ***.

I write separately to underscore a more fundamental problem: *Chevron* deference also violates our Constitution's separation of powers ***.

Chevron compels judges to abdicate their Article III "judicial Power." ***. Because the judicial power requires judges to exercise their independent judgment, the deference that *Chevron* requires contravenes Article III's mandate.

Chevron deference also permits the Executive Branch to exercise powers not given to it ***.

***

JUSTICE GORSUCH, concurring.

*** Today, the Court places a tombstone on *Chevron* no one can miss. In doing so, the Court returns judges to interpretive rules that have guided federal courts since the Nation's founding. I write separately to address why the proper application of the doctrine of *stare decisis* supports that course.

***

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join, dissenting.

For 40 years, *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), has served as a cornerstone of administrative law, allocating responsibility for statutory construction between courts and agencies. Under *Chevron*, a court uses all its normal interpretive tools to determine whether Congress has spoken to an issue. If the court finds Congress has done so, that is the end of the matter; the agency's views make no difference. But if the court finds, at the end of its interpretive work, that Congress has left an ambiguity or gap, then a choice must be made. Who should give content to a statute when Congress's instructions have run out? Should it be a court? Or should it be the agency Congress has charged with administering the statute? The answer *Chevron* gives is that it should usually be the agency, within the bounds of reasonableness. That rule has formed the backdrop against which Congress, courts, and agencies—as well as regulated parties and the public—all have operated for decades. It has been applied in thousands of judicial decisions. It has become part of the warp and woof of modern government, supporting regulatory efforts of all kinds—to name a few, keeping air and water clean, food and drugs safe, and financial markets honest.

And the rule is right. This Court has long understood *Chevron* deference to reflect what Congress would want, and so to be rooted in a presumption of legislative intent. Congress knows that it does not—in fact cannot—write perfectly complete regulatory statutes. It knows that those statutes will inevitably contain ambiguities that some other actor will have to resolve, and gaps that some other actor will have to fill. And it would usually prefer that actor to be the responsible agency, not a court. Some interpretive issues arising in the regulatory context involve scientific or technical subject matter. Agencies have expertise in those areas; courts do not. Some demand a detailed understanding of complex and interdependent regulatory programs. Agencies know those programs inside-out; again, courts do not. And some present policy choices, including trade-offs between competing goods. Agencies report to a President, who in turn answers to the public for his policy calls; courts have no such accountability and no proper basis for making policy. And of course Congress has conferred on that expert, experienced, and politically accountable agency the authority to administer—to make rules about and otherwise implement—the statute giving rise to the ambiguity or gap. Put all that together and deference to the agency is the almost obvious choice, based on an implicit congressional delegation of interpretive authority. We defer, the Court has explained, "because of a presumption that Congress" would have "desired the agency (rather than the courts)" to exercise "whatever degree of discretion" the statute allows. *Smiley v. Citibank* (South Dakota), N. A., 517 U. S. 735, 740–741 (1996).

Today, the Court flips the script: It is now "the courts (rather than the agency)" that will wield power when Congress has left an area of interpretive discretion. A rule of judicial humility gives way to a rule of judicial hubris ***. It defends that move as one (suddenly) required by the (nearly 80-year-old) Administrative Procedure Act. But the Act makes no such demand. Today's decision is not one Congress directed. It is entirely the majority's choice.

And the majority cannot destroy one doctrine of judicial humility without making a laughing-stock of a second. (If opinions had titles, a good candidate for today's would be Hubris Squared.) *Stare decisis* is, among other things, a way to remind judges that wisdom often lies in what prior judges have done ***. Because that is so, the majority needs a "particularly special justification" for its action. *Kisor v. Wilkie*, 588 U. S. 558, 588 (2019) (opinion of the Court). But the majority has nothing that would qualify. It barely tries to advance the usual factors this Court invokes for overruling precedent. Its justification comes down, in the end, to this: Courts must have more say over regulation—over the provision of health care, the protection of the environment, the safety of consumer products, the efficacy of transportation systems, and so on. A longstanding precedent at the crux of administrative governance thus falls victim to a bald assertion of judicial authority. The majority disdains restraint, and grasps for power.

I

Begin with the problem that gave rise to *Chevron* (and also to its older precursors): The regulatory statutes Congress passes often contain ambiguities and gaps. Sometimes they are intentional. Perhaps Congress "consciously desired" the administering agency to fill in aspects of the legislative scheme, believing that regulatory experts would be "in a better position" than legislators to do so. *Chevron*, 467 U. S., at 865. Or "perhaps Congress was unable to forge a coalition on either side" of a question, and the contending parties "decided to take their chances with" the agency's resolution. *Ibid.* Sometimes, though, the gaps or ambiguities are what might be thought of as predictable accidents. They may be the result of sloppy drafting, a not infrequent legislative occurrence. Or they may arise from the well-known limits of language or foresight. Or the provision may give rise, years or decades down the road, to an issue the enacting Congress could not have anticipated. Whichever the case—whatever the reason—the result is to create uncertainty about some aspect of a provision's meaning.

***

In each case, a statutory phrase has more than one reasonable reading. And Congress has not chosen among them: It has not, in any real-world sense, "fixed" the "single, best meaning" at "the time of enactment" (to use the majority's phrase). *Ante*, at 22. A question thus arises: Who decides which of the possible readings should govern?

This Court has long thought that the choice should usually fall to agencies, with courts broadly deferring to their judgments. For the last 40 years, that doctrine has gone by the name of *Chevron* deference, after the 1984 decision that formalized and canonized it ***.

That rule, the Court has long explained, rests on a presumption about legislative intent—about what Congress wants when a statute it has charged an agency with implementing contains an ambiguity or a gap ***. Does a statutory silence or ambiguity then go to a court for resolution? Or to an agency? This Court has long thought Congress would choose an agency, with courts serving only as a backstop to make sure the agency makes a reasonable choice among the possible readings ***. Of course, Congress can always refute that presumptive choice—can say that, really, it would prefer courts to wield that discretionary power. But until then, the presumption cuts in the agency's favor. The next question is why.

For one, because agencies often know things about a statute's subject matter that courts could not hope to. The point is especially stark when the statute is of a "scientific or technical nature." *Kisor*, 588 U. S., at 571 (plurality opinion). Agencies are staffed with "experts in the field" who can bring their training and knowledge to bear on open statutory questions. *Chevron*, 467 U. S., at 865 ***.

the same Congress that charged the Service with implementing the Act—would answer that question with a resounding "yes." A second idea is that Congress would value the agency's experience with how a complex regulatory regime functions, and with what is needed to make it effective ***.

Still more, *Chevron*'s presumption reflects that resolving statutory ambiguities, as Congress well knows, is "often more a question of policy than of law." *Pauley v. BethEnergy Mines, Inc.*, 501 U. S. 680, 696 (1991). The task is less one of construing a text than of balancing competing goals and values ***. So when faced with a statutory ambiguity, "an agency to which Congress has delegated policymaking responsibilities" may rely on an accountable actor's "views of wise policy to inform its judgments." *Chevron*, 467 U. S., at 865.

None of this is to say that deference to agencies is always appropriate. The Court over time has fine-tuned the *Chevron* regime to deny deference in classes of cases in which Congress has no reason to prefer an agency to a court. The majority treats those "refinements" as a flaw in the scheme, *ante*, at 27, but they are anything but. Consider the rule that an agency gets no deference when construing a statute it is not responsible for administering. Well, of course not—if Congress has not put an agency in charge of implementing a statute, Congress would not have given the agency a special role in its construction. Or take the rule that an agency will not receive deference if it has reached its decision without using—or without using properly—its rulemaking or adjudicatory authority. Again, that should not be surprising: Congress expects that authoritative pronouncements on a law's meaning will come from the procedures it has enacted to foster "fairness and deliberation" in agency decision-making. Or finally, think of the "extraordinary cases" involving questions of vast "economic and political significance" in which the Court has declined to defer. *King v. Burwell*, 576 U. S. 473, 485–486 (2015). The theory is that Congress would not have left matters of such import to an agency, but would instead have insisted on maintaining control. So the *Chevron* refinements proceed from the same place as the original doctrine. Taken together, they give interpretive primacy to the agency when—but only when—it is acting, as Congress specified, in the heartland of its delegated authority.

***

The majority makes two points in reply, neither convincing. First, it insists that "agencies have no special competence" in filling gaps or resolving ambiguities in regulatory statutes; rather, "[c]ourts do." *Ante*, at 23. Score one for self-confidence; maybe not so high for self-reflection or -knowledge. Of course courts often construe legal texts, hopefully well. And *Chevron*'s first step takes full advantage of that talent: There, a court tries to divine what Congress meant, even in the most complicated or abstruse statutory schemes. The deference comes in only if the court cannot do so—if the court must admit that standard legal tools will not avail to fill a statutory silence or give content to an ambiguous term. That is when the issues look like the ones I started off with: When does an alpha amino acid polymer qualify as a "protein"? How distinct is "distinct" for squirrel populations? What size "geographic area" will ensure appropriate hospital reimbursement? As between two equally feasible understandings of "stationary source," should one choose the one more protective of the environment or the one more favorable to economic growth? The idea that courts have "special competence" in deciding such questions whereas agencies have "no[ne]" is, if I may say, malarkey. Answering those questions right does not mainly demand the interpretive skills courts possess. Instead, it demands one or more of: subject-matter expertise, long engagement with a regulatory scheme, and policy choice. It is courts (not agencies) that "have no special competence"—or even legitimacy—when those are the things a decision calls for.

Second, the majority complains that an ambiguity or gap does not "necessarily reflect a congressional intent that an agency" should have primary interpretive authority. *Ante*, at 22. On that score, I'll agree with the premise: It doesn't "necessarily" do so. *Chevron* is built on a presumption. The decision does not maintain that Congress in every case wants the agency, rather than a court, to fill in gaps. The decision maintains that when Congress does not expressly pick one or the other, we need a default rule; and the best default rule—agency or court?—is the one we think Congress would generally want. As to why Congress would generally want the agency: The answer lies in everything said above about Congress's delegation of regulatory power to the agency and the agency's special competencies ***.

II

The majority's principal arguments are in a different vein. Around 80 years after the APA was enacted and 40 years after *Chevron*, the majority has decided that the former precludes the latter. The APA's Section 706, the majority says, "makes clear" that agency interpretations of statutes "are not entitled to deference." *Ante*, at 14–15 (emphasis in original). And that provision, the majority continues, codified the contemporaneous law, which likewise did not allow for deference. But neither the APA nor the pre-APA state of the law does the work that the majority claims. Both are perfectly compatible with *Chevron* deference.

*** The majority highlights the phrase "decide all relevant questions of law" (italicizing the "all"), and notes that the provision "prescribes no deferential standard" for answering those questions. *Ante*, at 14. But just as the provision does not prescribe a deferential standard of review, so too it does not prescribe a *de novo* standard of review (in which the court starts from scratch, without giving deference). In point of fact, Section 706 does not specify any standard of review for construing statutes ***.

*** In the years after the APA was enacted *** not a single Justice so much as floated that view of the APA. To the contrary, the Court issued a number of decisions in those years deferring to an agency's statutory interpretation. See, e.g., *Unemployment Compensation Comm'n of Alaska v. Aragon*, 329 U. S. 143, 153–154 (1946); *NLRB v. E. C. Atkins & Co.*, 331 U. S. 398, 403 (1947); *Cardillo v. Liberty Mut. Ins. Co.*, 330 U. S. 469, 478–479 (1947). And that continued right up until *Chevron*. To be clear: Deference in those years was not always given to interpretations that would receive it under *Chevron*. The practice then was more inconsistent and less fully elaborated than it later became. The point here is only that the Court came nowhere close to accepting the majority's view of the APA ***.

The majority's view of Section 706 likewise gets no support from how judicial review operated in the years leading up to the APA ***.

An influential study of administrative practice, published five years before the APA's enactment, described the state of play: Judicial "review may, in some instances at least, be limited to the inquiry whether the administrative construction is a permissible one." Final Report of Attorney General's Committee on Administrative Procedure (1941), reprinted in

Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess., 78 (1941). Or again: "[W]here the statute is reasonably susceptible of more than one interpretation, the court may accept that of the administrative body." *Id.*, at 90–91.

Two prominent Supreme Court decisions of the 1940s put those principles into action. *Gray v. Powell*, 314 U. S. 402 (1941), *** deferred to an agency construction of the term "producer" as used in a statutory exemption from price controls. Congress, the Court explained, had committed the scope of the exemption to the agency because its "experience in [the] field gave promise of a better informed, more equitable, adjustment of the conflicting interests." Gray, 314 U. S., at 412. Accordingly, the Court concluded that it was "not the province of a court" to "substitute its judgment" for the agency's. *Ibid.* Three years later, the Court decided *NLRB v. Hearst Publications, Inc.*, 322 U. S. 111 (1944) ***. The Court again deferred, this time to an agency's construction of the term "employee" in the National Labor Relations Act. The scope of that term, the Court explained, "belong[ed] to" the agency to answer based on its "[e]veryday experience in the administration of the statute." *Hearst,* 322 U. S., at 130. The Court therefore "limited" its review to whether the agency's reading had "warrant in the record and a reasonable basis in law." *Id.*, at 131. Recall here that even the majority accepts that Section 706 was meant to "restate[ ] the present law" as to judicial review. Well then? It sure would seem that the provision allows a deference regime.

The majority has no way around those two noteworthy decisions. It first appears to distinguish between "pure legal question[s]" and the so-called mixed questions in Gray and Hearst, involving the application of a legal standard to a set of facts. *Ante*, at 11. If in drawing that distinction, the majority intends to confine its holding to the pure type of legal issue—thus enabling courts to defer when law and facts are entwined—I'd be glad. But I suspect the majority has no such intent, because that approach would preserve *Chevron* in a substantial part of its current domain. *Cf. Wilkinson v. Garland*, 601 U. S. 209, 230 (2024) (ALITO, J., dissenting) (noting, in the immigration context, that the universe of mixed questions swamps that of pure legal ones). It is frequently in the consideration of mixed questions that the scope of statutory terms is established and their meaning defined ***.

The majority's next rejoinder—that "the Court was far from consistent" in deferring—falls equally flat. *Ante*, at 12. I am perfectly ready to acknowledge that in the pre-APA period, a deference regime had not yet taken complete hold. I'll go even further: Let's assume that deference was then an on-again, off-again function (as the majority seems to suggest). Even on that assumption, the majority's main argument—that Section 706 prohibited deferential review—collapses ***.

The majority's whole argument for overturning *Chevron* relies on Section 706. But the text of Section 706 does not support that result. And neither does the contemporaneous practice, which that text was supposed to reflect. So today's decision has no basis in the only law the majority deems relevant. It is grounded on air.

III

And still there is worse, because abandoning *Chevron* subverts every known principle of *stare decisis* ***.

***

And *Chevron* is entitled to a particularly strong form of *stare decisis*, for two separate reasons. First, it matters that "Congress remains free to alter what we have done." *Patterson v. McLean Credit Union*, 491 U. S. 164, 173 (1989) ***. Congress has kept *Chevron* as is for 40 years. It maintained that position even as Members of this Court began to call *Chevron* into question. See *ante*, at 30. From all it appears, Congress has not agreed with the view of some Justices that they and other judges should have more power.

Second, *Chevron* is by now much more than a single decision. This Court alone, acting as *Chevron* allows, has upheld an agency's reasonable interpretation of a statute at least 70 times. Lower courts have applied the *Chevron* framework on thousands upon thousands of occasions. See K. Barnett & C. Walker, *Chevron* and *Stare Decisis*, 31 Geo. Mason L. Rev. 475, 477, and n. 11 (2024) (noting that at last count, *Chevron* was cited in more than 18,000 federal-court decisions) ***. *Chevron* is as embedded as embedded gets in the law.

***

The majority does no better in its main justification for overruling *Chevron*—that the decision is "unworkable" ***.

*** *Chevron* is an especially puzzling decision to criticize on the ground of generating too much judicial divergence. There's good empirical—meaning, non-impressionistic—evidence on exactly that subject. And it shows that, as compared with *de novo* review, use of the *Chevron* two-step framework fosters agreement among judges. See K. Barnett, C. Boyd, & C. Walker, Administrative Law's Political Dynamics, 71 Vand. L. Rev. 1463, 1502 (2018) (Barnett). More particularly, *Chevron* has a "powerful constraining effect on partisanship in judicial decisionmaking." Barnett 1463 (italics deleted); see Sunstein 1672 ("[A] predictable effect of overruling *Chevron* would be to ensure a far greater role for judicial policy preferences in statutory interpretation and far more common splits along ideological lines"). So if consistency among judges is the majority's lodestar, then the Court should not overrule *Chevron*, but return to using it.

***

IV

Judges are not experts in the field, and are not part of either political branch of the Government.

Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U. S. 837, 865 (1984)

Those were the days, when we knew what we are not. When we knew that as between courts and agencies, Congress would usually think agencies the better choice to resolve the ambiguities and fill the gaps in regulatory statutes. Because agencies are "experts in the field." And because they are part of a political branch, with a claim to making interstitial policy. And because Congress has charged them, not us, with administering the statutes containing the open questions. At its core, *Chevron* is about respecting that allocation of responsibility—the conferral of primary authority over regulatory matters to agencies, not courts.

And it is impossible to pretend that today's decision is a one-off, in either its treatment of agencies or its treatment of precedent ***.

Once again, with respect I dissent.

Note: Life After *Chevron*

Chevron was cited by courts roughly 450 times a year over its 40-year existence — more than 18,000 citations in total. In just the first six months after *Loper Bright* was decided, courts had already cited it more than 400 times. Robin Kundis Craig, *The Impact of Loper Bright v. Raimondo: An Empirical Review of the First Six Months*, 109 Minn. L. Rev. ___ (2025), tracks this early citation pattern and offers a first look at how lower courts are actually applying the "best reading" standard the Court substituted for *Chevron* deference. For a broader, more theoretical treatment of what is displaced by *Chevron*'s absence, and what, if anything, will fill the gap. See Cary Coglianese & Daniel E. Walters, *The Great Unsettling: Administrative Governance After Loper Bright*, 77 Admin. L. Rev. ___ (2025). And for a longer-run empirical account of how deference regimes generally have shaped agency litigation outcomes, useful for situating *Loper Bright* against the decades of *Chevron* practice that preceded it, see Edward H. Stiglitz, *Deference Realities: Judicial Deference and Litigation Outcomes in the Appellate Review Era*, 103 Wash. U. L. Rev. ___ (2026). Together, these three pieces move past the doctrinal debate captured in the majority and dissent and ask the empirical question both sides of that debate were really arguing about: will courts, freed from *Chevron*, actually decide cases differently — and if so, how, and for whom?

> *"We know that Loper Bright has shaken up the legal landscape—much like we can feel an earthquake when it literally shakes up the ground beneath our feet. But just as with real earthquakes, it will take time to assess the full impacts of the Court's legal tremors—and on which particular structures."*
> — Cary Coglianese & Daniel E. Walters, The Great Unsettling: Administrative Governance After *Loper Bright*, 77 Admin. L. Rev. ___ (2025)

Note: *Loper Bright* Applied — *Lesko v. United States*, 161 F.4th 1352 (Fed. Cir. 2025) (en banc)

Loper Bright says courts must now decide for themselves what a statute means. *Lesko* shows how much work is left over after you say that. The Federal Circuit, sitting en banc, upheld an OPM regulation that had survived the last time around only because of *Chevron*. It did so 7–4, with both sides claiming *Loper Bright*.

Jillian Lesko was a registered nurse for the Indian Health Service during the COVID-19 pandemic. Supervisors, she alleged, "regularly and routinely required nurses to stay after hours and work without compensation." She sued for that overtime. Her problem was a piece of paper. The overtime statute, 5 U.S.C. § 5542(a), requires the Government to pay for "hours of work officially ordered or approved in excess of 40 hours in an administrative workweek." An OPM regulation, 5 C.F.R. § 550.111(c), provides that overtime may "be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated." No writing, no pay. The court took the case en banc on its own motion to decide whether that writing requirement still stands now that *Chevron* is not around to hold it up.

Chief Judge Moore, writing for the majority, exercised the "independent judgment" *Loper Bright* demands and found the statute silent on form: Congress "contemplated formalities when it required overtime to be 'officially ordered or approved,' but was silent as to the requisite formalities." So who fills that silence? OPM does, the court held, because a companion provision, 5 U.S.C. § 5548(a), authorizes OPM to "prescribe regulations, subject to the approval of the President, necessary for the administration of this subchapter." That, the majority reasoned, is both a "fill-up-the-details delegation" and a "flexible delegation" — two of the three categories SCOTUS itself identified in *Loper Bright* as real grants of agency discretion. And once a court finds such a delegation, *Loper Bright* leaves it little else to do: ask whether the delegation is constitutional, and whether the agency "engaged in reasoned decision making within the boundaries of its delegated authority." Both yes. Regulation upheld, and Ms. Lesko's claim dismissed.

Judge Stoll, joined by three colleagues, read the same decision and landed nowhere near the same place. Her starting point is also *Loper Bright*: "'[A]mbiguity is not a delegation to anybody,' and courts must 'use every tool at their disposal to determine the best reading of the statute.'" Congress knows how to require a writing when it wants one. It did exactly that in a neighboring subsection of this very statute, § 5542(g)(4)(B), so its silence in § 5542(a) "is telling." On this view the regulation does not administer the statute at all; it "clearly redefines the scope of the overtime liability Congress has authorized." And "in a post-*Chevron* world, the agency's choice of language cannot override the best meaning of Congress's chosen language." Nor could precedent rescue the rule. The circuit's earlier decision upholding it, *Doe v. United States*, 372 F.3d 1347 (Fed. Cir. 2004), had rested on *Chevron* deference, which for the dissent made this "an exemplary situation of when there is a 'special justification,' as contemplated in *Loper Bright*, for a court to review a prior agency interpretation approved under *Chevron*."

Notice what everyone here agrees about. *Chevron* is gone. The court must find the statute's best reading. Eleven judges accepted all of that and still divided 7–4. The reason is that *Loper Bright* left a prior question unanswered: when is a general grant of rulemaking authority itself the best reading of the statute, so that a court must respect the agency's choice instead of substituting its own? That question is going to do a great deal of work in the years ahead, and Lesko is an early look at how differently judges will answer it.

REVIEW QUESTIONS AND COMMENTS

1. What did *Chevron* require of a reviewing court when a statute administered by an agency was ambiguous, and how does *Loper Bright* change that requirement?
2. What reasons does the *Loper Bright* majority give for concluding that *Chevron* deference was inconsistent with the Administrative Procedure Act's directive that courts "decide all relevant questions of law"?
3. Does *Loper Bright* hold that courts may never give any weight to an agency's interpretation of an ambiguous statute? What kinds of statutory delegations does the Court say remain valid even after *Chevron* is overruled?
4. In *Lesko*, both the majority and the dissent agree that Chevron is gone and that the court must find the statute's best reading. What, then, do the two opinions actually disagree about?
5. Why does the majority in *Lesko* treat OPM's writing requirement as filling a statutory silence, while the dissent treats the same silence as evidence that Congress did not intend to impose a writing requirement at all?
6. Based on *Lesko*, what work is *Loper Bright* actually leaving for lower courts to do in the "post-*Chevron*" cases that follow it?

[End.]