1 OPEN EXECUTIVE SESSION TO CONSIDER FAVORABLY REPORTING
2 THE NOMINATION OF HON. MARTIN O'MALLEY, TO BE
3 COMMISSIONER, SOCIAL SECURITY ADMINISTRATION
4 TUESDAY, NOVEMBER 28, 2023
5 U.S. Senate,
6 Committee on Finance,
7 Washington, DC.
8
9 The meeting was convened, pursuant to notice, at
10 10:03 a.m., in Room 215, Dirksen Senate Office Building,
11 Hon. Ron Wyden (chairman of the committee) presiding.
12 Present: Senators Cardin, Casey, Crapo, and Tillis.
13 Also present: Democratic Staff: Sam Conchuratt,
14 Professional Staff Member; Josh Sheinkman, Staff
15 Director; Tiffany Smith, Deputy Staff Director and Chief
16 Counsel; and Ryder Tobin, Senior Investigative Counsel
17 and Nominations Advisor. Republican staff: Becky Cole,
18 Chief Economist; Andrew Dell'Orto, Policy Advisor; John
19 O'Hara, Trade Policy Director and Counsel; and Laura
20 Rosner, Social Security Policy Advisor.

1 OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM
2 OREGON, CHAIRMAN, COMMITTEE ON FINANCE
3
4 The Chairman. The Finance Committee will come to
5 order. We meet today to consider the pending nomination
6 for the Finance Committee of Martin O'Malley to be
7 Commissioner of the Social Security Administration.
8 I am going to use the time now to make statements
9 on the nominees. I am going to make a statement
10 followed by Senator Crapo, then followed by any other
11 Finance Members who wish to make statements. At that
12 point, if we have a quorum, we are going to proceed to
13 the vote.
14 If we do not have a quorum, and that will be my
15 sense this morning, we are going to recess until the
16 next roll call vote on the Senate floor, and the
17 Committee will reconvene in the present from off the
18 floor to have the vote. Senator Crapo, is that
19 acceptable to you?
20 Senator Crapo. Yes.
21 The Chairman. Today, the Committee considers the
22 nomination of Martin O'Malley to be Commissioner of
23 Social Security. When I first met the nominee in my
24 office, I said to him that this position, above all
25 else, is about service, not politics. He agreed.

1 My first question to the nominee at the hearing
2 was whether he agreed that this job was about service,
3 not politics. He responded that improving customer
4 service was the main reason why he said yes to this
5 opportunity. As he noted in his testimony, there is no
6 Republican or Democratic way of fixing customer service
7 problems. You just gotta get them fixed. Service, not
8 politics.
9 Service means tackling the problems that
10 beneficiaries are facing, including long wait times,
11 mile-long ribbons of red tape, outdated technology and a
12 very challenged, if not beleaguered workforce. Like
13 several Members on the Committee, I raised the top issue
14 for Social Security that is in need of urgent reform,
15 overpayments and their impact on beneficiaries.
16 For the millions of Americans who live on a fixed
17 income, and I fought when I was director of the Gray
18 Panthers, these are the folks who walk an economic
19 tightrope every single week, balancing the food bill
20 against the fuel bill, and the fuel bill against the
21 rent bill, on fixed incomes and any change in benefits
22 can have a substantial impact on their daily lives.
23 That is true everywhere from Albany, Oregon to
24 Zionsville, Indiana. Getting a letter from Social
25 Security saying that you owe tens of thousands of

1 dollars through no fault of your own is, and this is an
2 understatement, life-altering. Mistaken overpayment can
3 be the difference between affording the rent, having
4 electricity or heating your home or buying groceries,
5 when your benefits are later cut to make up the
6 difference.
7 When Americans are trying to resolve a problem
8 with a mistaken overpayment, I would just say as we said
9 for our colleagues before, folks who are suffering this
10 way do not give a hoot about the party the Commissioner
11 belongs to. Yesterday's Fox Business story colleagues,
12 had it exactly right in its reporting on Social Security
13 and supplemental income folks who have been hit with
14 overpayments because of the COVID stimulus checks.
15 After recent reports saying some beneficiaries
16 were hit with the Social Security claims of overpayments
17 and even lost their benefits, I and we have written a
18 number of letters. I sent another letter with Senators
19 Brown and Casey to Social Security, finally trying to
20 get to the bottom of the scope of this problem and
21 magnitude of the oversight and work the agency is going
22 to do to fix the problem.
23 We were told in the past, by the way, as Members
24 of this Committee know, that Social Security was fixing
25 the problem. Based on the latest problem, that clearly

1 is not the case. This Committee on a bipartisan basis
2 is going to watchdog Social Security’s overpayment
3 program, and we intend to meet with Social Security
4 every single month until this is fixed.
5 Tackling this along with Social Security, the
6 other challenges, is going to take a fresh approach to
7 leading the agency and working hand in hand with
8 Congress to improve this bedrock program for all
9 Americans. Martin O’Malley has spent the bulk of his
10 career in public service, transforming government
11 organizations from bureaucratic morasses into more
12 efficient machines that better serve the public.
13 I believe Martin O’Malley is the right person for
14 the job at the right time. I will support his
15 nomination and I would just close by way of saying that
16 I base my support for Martin O’Malley on the fact that
17 every single time we have talked, he has emphasized one
18 matter and one matter only, and that is service above
19 politics. I urge my colleagues to support him this
20 morning.
21 Senator Crapo?

1 OPENING STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR
2 FROM IDAHO
3
4 Senator Crapo. Thank you, Mr. Chairman. Today we
5 will vote on the nomination of Martin O'Malley to serve
6 as the next Commissioner of Social Security. During
7 this nomination before this Committee, Governor O'Malley
8 acknowledged the serious operational and customer
9 service challenges facing the Social Security
10 Administration.
11 If confirmed, he will need to take the steps
12 necessary to address these challenges, including
13 improving wait times for disability decisions and
14 updating disability program rules, reducing wait times
15 for callers seeking assistance through the SSA's
16 national 800 number; ensuring that if someone wants an
17 in-person appointment with the SSA they can get one in a
18 timely manner; improving the agency's information
19 technology and online service offerings; and taking
20 additional steps to prevent overpayments before they
21 occur, which protects both beneficiaries and taxpayers.
22 I appreciate the commitments Governor O'Malley
23 made during his hearing, and his responses to questions
24 submitted for the record. For example, he committed
25 that he would make customer service improvements at the

1 SSA a top priority, and would not weigh in on policy
2 decisions beyond providing Congress with the data and
3 information it needs to evaluate policy options.
4 However, I will not be supporting his nomination
5 today. When the Biden administration removed the last
6 Senate-confirmed Commissioner prior to the completion of
7 his six-year term, I expressed strong concern that this
8 decision politicized the SSA to the detriment of Social
9 Security beneficiaries.
10 It is important for Commissioners have sufficient
11 time and certainty to implement real changes. Now that
12 the precedent has been set to shorten the Commissioner's
13 term, future administrations could follow it. Although
14 I will not be voting in favor of Governor O'Malley's
15 nomination today, we do share the goal of getting the
16 Social Security Administration back on track, so that it
17 can provide the public with the level of service they
18 expect and deserve.
19 If confirmed, I will work with Governor O'Malley
20 on this and other issues in a bipartisan manner. Thank
21 you for holding this executive session, Mr. Chairman.
22 The Chairman. Thank you, Senator Crapo and let me
23 just make one point and then recognize my colleague. In
24 three cases, Collins v. Yellen and Seila Law v. CFPB and
25 Free Enterprise Fund v. Public Accounting Oversight

1 Board, the Supreme Court ruled that single agency heads
2 serve at the pleasure of the President.
3 And I would just say to our Clerk we will -- I
4 have written documentation of those precedents that show
5 that there is the authority for the President to replace
6 an individual.
7 [The documents appear at the end of the
8 transcript.]
9 All right. Let’s go now to our colleagues in
10 order of appearance.
11 Senator Cardin?

1 STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR
2 FROM MARYLAND
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4 Senator Cardin. Thank you very much, Mr.
5 Chairman. Thank you for scheduling this session, so we
6 can vote on Governor O'Malley. I have known Governor
7 O'Malley his whole professional life. I knew him as a
8 City Councilperson in Baltimore, where he could be
9 depended upon by his constituents to raise their
10 concerns in City Hall and get results.
11 I knew him when he was Mayor of Baltimore, and I
12 am going to relay a story about what he instituted in
13 Baltimore known as CitiStat, because it responds
14 directly to the Chairman and Ranking Member's comments
15 of what they expect from the Social Security
16 Administrator and from the Social Security system.
17 What he did as a Mayor of Baltimore in CitiStat
18 was revolutionary. He established a system where he had
19 individual accountability for Department heads. They
20 would have to appear before him personally on a regular
21 basis, and see the charts before them as to how well
22 they are performing.
23 I was there one time when we were dealing with
24 local trash collection, and he showed the charts of how
25 long it took for a city resident to get a response to a

1 trash problem, and what the expectations would be during
2 the next time that agency head would be before the
3 Mayor, and if there were steps to relieve the problem
4 taken. There were improvements, steady improvements at
5 each one of these meetings, because the Mayor himself
6 was directly involved in accountability.
7 So, Senator Crapo, when you mention the wait time
8 for disability determinations or how long it takes on an
9 800 call, or the difficulty of getting an in-person
10 meeting at Social Security Administration, I can assure
11 you that Governor O'Malley as Administrator O'Malley
12 will have the responsible parties meeting with him
13 personally with charts.
14 He loves charts, sort of like Senator Conrad. He
15 loves charts, and they will have charts there --
16 The Chairman. We know Conrad's charts around
17 here.
18 Senator Cardin. He will show the progress being
19 made on a monthly basis, what the expectations are, and
20 we all know that budgets are going to be tight. You
21 have got to do what the budget setters that you have,
22 and you have got to do better. Governor O'Malley would
23 demand that there be better customer service at the
24 Social Security Administration.
25 So I just really want my colleagues to know that

1 we need a confirmed administrator, for reasons that
2 Senator Crapo is referring to. We need someone
3 responsible to report to us as to why it takes so long
4 for our constituents to get the services they need from
5 the Social Security Administration.
6 Governor O'Malley will take that responsibility as
7 the accountable person in reporting to us, showing the
8 progress he's made and being held accountable. So, I
9 urge my colleagues to vote for his confirmation.
10 The Chairman. In order of appearance, we will go
11 to Senator Casey and then Senator Tillis.
12 Senator Casey?

1 STATEMENT OF HON. ROBERT P. CASEY, JR., A U.S. SENATOR
2 FROM PENNSYLVANIA
3
4 Senator Casey. Mr. Chairman, thanks very much for
5 calling this hearing, and I appreciate the time you are
6 spending on this nomination. I have had the pleasure of
7 knowing Governor O'Malley for many years, and had the
8 recent opportunity to sit with him in my office back in
9 September, and then again before the Committee earlier
10 this month.
11 As I indicated earlier, the Social Security
12 Administration touches every single American life at
13 some point. Social Security is a lifeline. We all know
14 that; it is a blessing for many of my constituents in
15 Pennsylvania and millions of Americans across the
16 country that use these benefits to help them afford rent
17 or pay for food or other basic costs in their lives.
18 And yet the program has struggled. Employee
19 morale is low, retention is low. Technology has lagged,
20 and too many families and individuals with disabilities
21 are unaware of the benefits that are available to them.
22 I know that Governor O'Malley shares my concerns
23 and I know the concerns of many on this Committee on
24 both sides of the aisle, and I also know that he has a
25 commitment to overcoming these challenges at the Social

1 Security Administration.
2 I was heartened by our conversation about ABLE
3 accounts, which is as a result of a measure passed
4 through this Committee nine years ago, to allow families
5 to save for a disability in a tax-advantaged manner,
6 just like you save for college. That was not available
7 before nine years ago.
8 I was encouraged by our conversation about those
9 accounts and the importance as well of children’s
10 benefits, as well as the Governor’s demonstrated
11 commitment to improving morale at the, at the SSA. We
12 all want to preserve and protect Social Security. We
13 must do that. I think we have a moral obligation to do
14 that.
15 We are going to need a leader to ensure that the
16 American people can continue to receive the benefits
17 they have earned and the quality service that they need
18 and support. I have no doubt that Governor O’Malley is
19 that kind of leader. Both his experience as Mayor as
20 well as Governor prepares him well for that.
21 He has the expertise needed to strengthen the
22 agency and program delivery for Americans. So I urge
23 all my colleagues to advance Governor O’Malley’s
24 nomination. I look forward to working with him as
25 Commissioner.

1 The Chairman. I thank my colleague, the Chairman
2 of the Senate Aging Committee, and particularly
3 appreciate your mentioning kids with disabilities. That
4 is an area that, as you know, has been a bipartisan
5 concern here in the Finance Committee, and we appreciate
6 leading your effort.
7 Senator Tillis?

1 OPENING STATEMENT OF HON. THOM TILLIS, A U.S. SENATOR
2 FROM NORTH CAROLINA
3
4 Senator Tillis. Thank Mr. Chairman for the
5 opportunity to speak in support of Governor O'Malley for
6 the head of the Social Security Administration. I got a
7 call from a former governor, a very conservative former
8 governor that all of you all would know back early
9 summer, raving over Martin O'Malley and how good he was
10 to work with.
11 They were contemporaries. They served together as
12 governors, and since that first phone call, I have
13 received so many more, and really speaking to his
14 willingness to hear both sides of an issue, to focus on
15 efficiency. I spent most of my career with
16 activity-based accounting and all the nerdy things that
17 makes businesses run well.
18 That is why when we met together, I felt good
19 about his insight. I felt good about what he did to
20 reduce crime in Baltimore. He has a very systematic
21 method, I think, to his approach, which I believe will
22 serve him well in the Social Security Administration.
23 We also in my office, I spent about an hour with
24 him, we talked about the reality. I agree with Senator
25 Casey. We have a moral obligation to make sure that the

1 Social Security safety net exists. We also have a moral
2 obligation to recognize that at current course and
3 speed, we are going to break a promise seven to ten
4 years from now, if we do not figure out how to fix it,
5 and not changing the promise that we have made to those
6 on it, those who are within reach of getting on it.
7 As somebody who made my first payment to Social
8 Security in 1973 at the age of 12, $33. I looked it up
9 on the website. I have not missed a Social Security
10 payment since I was age 12. Do I necessarily need the
11 same benefit that someone else who may not have been
12 blessed over the years to get out of a trailer park and
13 live independently?
14 Maybe not. But we need to start having that
15 discussion about means testing. We need to have that
16 discussion about how we index for eligibility going
17 forward. We need to have a discussion that any
18 reasonable person outside of the political pressure
19 cooker that we call Capitol Hill, almost all of us would
20 agree that makes sense.
21 I know that Martin O'Malley is not going to be in
22 a position to change the structure of the Social
23 Security system, but I do believe he will have the
24 insight, once he gets in there, to understand that
25 Congress needs to act, and we need an expert there to

1 help us advise on the best way to actually make sure
2 that that promise gets fulfilled.
3 But on an immediate basis, things that he can deal
4 with, I think he will go into the Social Security
5 Administration to make it lean, remember again who the
6 customer is, and hopefully take down what has tended to
7 be over the nine years that I have been in the U.S.
8 Senate one of the single largest sources of case work
9 that my staff have to deal with in North Carolina every
10 single day.
11 I believe when we confirm Governor O'Malley, that
12 I am going to be measuring that. I am going to see how
13 those results go. There should be a direct correlation
14 between his results and making the Social Security
15 Administration lean, customer-focused and we will able
16 to measure -- every one of us will be able to measure
17 that by the satisfaction of our constituents back home.
18 So I am going to support him, and in full
19 disclosure, I told Martin this in my office. It would
20 have been my recommendation, I would have picked on with
21 a more conservative stripe. But I think we have got one
22 of the best candidates that the administration could put
23 forward, and for those reasons I am going to support him
24 wholeheartedly.
25 Thank you, Mr. Chairman.

1 The Chairman. Thank you, Senator Tillis, and I
2 think this is reflective of the kind of approach you
3 brought to the Committee. We appreciate the way you are
4 tackling these issues, and you know in particular, the
5 focus of separating out policy from actually
6 implementing laws passed by Congress. That is a
7 distinction sometimes is not really made around here,
8 and I think Martin O'Malley really gets the difference.
9 So I look forward to working with you and let
10 me -- because Senator Crapo and I are going to be
11 working very closely on the question of overpayments.
12 We would be very interested in your input. We are going
13 to get from the new Commissioner a report every single
14 month on the progress with respect to overpayments.
15 I invite colleagues on both sides of the aisle to
16 participate in this effort, and I think it highlights
17 the distinction you are making. I have some ideas, you
18 know, with respect to taxes and how we fund services
19 around here. I am pretty upset about the fact that
20 firefighters and nurses pay taxes with every single
21 paycheck, and a billionaire, if they use the buy, borrow
22 and die system, can pay little or nothing for years on
23 end.
24 But that is not what this nomination is about.
25 This nomination is about how we are going to tackle the

1 issues you mentioned, Senator Crapo mentioned, a couple
2 of Democrats mentioned, and that is how we run the
3 system. On a monthly basis, we are going to be tracking
4 one of the biggest issues, which is overpayments.
5 I just want to thank my colleague for the way he
6 has approached this and other issues. You mentioned it
7 gets kind of nerdy. We have been doing nerd around here
8 for a long time, and fortunately people understand that
9 the nuts and bolts of running these programs is
10 essential. So, I thank my colleague.
11 Senator Tillis. Mr. Chair, I should have said
12 this in my comments. I also want to thank Senator
13 Cassidy because Senator Cassidy and Senator King have
14 sat many of the Members in this Committee in a room, and
15 we have talked about the art of the possible in getting
16 Social Security on sound footing.
17 I really do hope that that is a discussion -- we
18 can get away from the fear of talking about reforming
19 Social Security so that we can fulfill the promise and
20 get to the fact that it can be done with little or no
21 disruption. And it will be a promise my grandchildren
22 will be able to count on because today they cannot.
23 And so Senator Casey, Senator King have a
24 framework that I hope Members will step up, dispense
25 with the concern over the pushback from the electorate

1 and give the folks what they need, and that is with
2 serious, sweeping Social Security reform and maintaining
3 a promise that we have made not only for the generation
4 on it today but for future generations.
5 The Chairman. I thank my colleague, and let me
6 just go through the procedure of what is going to happen
7 next. Obviously, there is not a quorum present, so at
8 this point unless there is an objection, the Finance
9 Committee is going to recess and reconvene to vote on
10 the nomination during an upcoming vote off the Senate
11 floor.
12 That we expect to be at 11:30 a.m., and we will be
13 voting in Room 219 of the Capitol, and at this point the
14 Committee stands in recess.
15 [Whereupon, at 10:25 a.m., the meeting was
16 recessed.]
17
18 The open executive session was reconvened,
19 pursuant to notice, on Thursday, November 28, 2023, at
20 11:30 a.m., in Room S-219, U.S. Capitol, Hon. Ron Wyden
21 (chairman of the committee) presiding.
22
23 The Chairman. The committee will come to order.
24 We now have a quorum. I move that we favorably report
25 the nomination of the Honorable Martin O'Malley.

1 Senator Stabenow. Seconded.
2 The Chairman. The Clerk will call the roll.
3 The Clerk. Ms. Stabenow?
4 Senator Stabenow. Aye.
5 The Clerk. Ms. Cantwell?
6 Senator Cantwell. Aye.
7 The Clerk. Mr. Menendez?
8 Senator Menendez. Aye.
9 The Clerk. Mr. Carper?
10 Senator Carper. Aye.
11 The Clerk. Mr. Cardin?
12 Senator Cardin. Aye.
13 The Clerk. Mr. Brown?
14 Senator Brown. Aye.
15 The Clerk. Mr. Bennet?
16 Senator Bennet. Aye.
17 The Clerk. Mr. Casey?
18 Senator Casey. Aye.
19 The Clerk. Mr. Warner?
20 Senator Warner. Aye.
21 The Clerk. Mr. Whitehouse?
22 Senator Whitehouse. Aye.
23 The Clerk. Ms. Hassan?
24 Senator Hassan. Aye.
25 The Clerk. Ms. Cortez Masto?

1 Senator Cortez Masto. Aye.

2 The Clerk. Ms. Warren?

3 The Chairman. Aye by proxy.

4 The Clerk. Mr. Crapo?

5 Senator Crapo. Nay.

6 The Clerk. Mr. Grassley?

7 Senator Grassley. Aye.

8 The Clerk. Mr. Cornyn?

9 Senator Cornyn. Nay.

10 The Clerk. Mr. Thune?

11 Senator Thune. Nay.

12 The Clerk. Mr. Scott?

13 Senator Crapo. Nay by proxy.

14 The Clerk. Mr. Cassidy?

15 Senator Cassidy. Aye.

16 The Clerk. Mr. Lankford?

17 Senator Lankford. Nay.

18 The Clerk. Mr. Daines?

19 Senator Crapo. Nay by proxy.

20 The Clerk. Mr. Young?

21 Senator Young. Nay.

22 The Clerk. Mr. Barrasso?

1 Senator Crapo. Nay by proxy.

2 The Clerk. Mr. Johnson?

3 Senator Johnson. Nay.

4 The Clerk. Mr. Tillis?

5 Senator Crapo. Aye by proxy.

6 The Clerk. Mrs. Blackburn?

7 Senator Crapo. Nay by proxy.

8 The Clerk. Mr. Chairman?

9 The Chairman. Aye.

10 The Clerk will announce the vote.

11 The Clerk. Mr. Chairman, the final tally is 17

12 ayes and 10 nays.

13 The Chairman. The "ayes" have it.

14 I thank my colleagues for their time. The

15 committee is adjourned.

16 [Whereupon, at 11:32 a.m., the meeting was

17 adjourned.]

1 STATEMENT OF: PAGE

2 Hon. Ron Wyden, 2
3 a U.S. Senator from Oregon,
4 chairman, Committee on Finance
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6 Hon. Mike Crapo, 6
7 a U.S. Senator from Idaho
8
9 Hon. Benjamin L. Cardin, 9
10 a U.S. Senator from Maryland
11
12 Hon. Robert P. Casey, Jr., 12
13 a U.S. Senator from Pennsylvania
14
15 Hon. Thom Tillis, 15
16 a U.S. Senator from North Carolina

SUBMITTED BY CHAIRMAN WYDEN

FREE ENTERPRISE FUND ET AL. *v.* PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08–861. Argued December 7, 2009—Decided June 28, 2010

Respondent, the Public Company Accounting Oversight Board, was created as part of a series of accounting reforms in the Sarbanes-Oxley Act of 2002. The Board is composed of five members appointed by the Securities and Exchange Commission. It was modeled on private self-regulatory organizations in the securities industry—such as the New York Stock Exchange—that investigate and discipline their own members subject to Commission oversight. Unlike these organizations, the Board is a Government-created entity with expansive powers to govern an entire industry. Every accounting firm that audits public companies under the securities laws must register with the Board, pay it an annual fee, and comply with its rules and oversight. The Board may inspect registered firms, initiate formal investigations, and issue severe sanctions in its disciplinary proceedings. The parties agree that the Board is "part of the Government" for constitutional purposes, *Lebron* v. *National Railroad Passenger Corporation,* 513 U. S. 374, 397, and that its members are " 'Officers of the United States' " who "exercis[e] significant authority pursuant to the laws of the United States," *Buckley* v. *Valeo,* 424 U. S. 1, 125–126. While the SEC has oversight of the Board, it cannot remove Board members at will, but only "for good cause shown," "in accordance with" specified procedures. 15 U. S. C. §§ 7211(e)(6), 7217(d)(3). The parties also agree that the Commissioners, in turn, cannot themselves be removed by the President except for " 'inefficiency, neglect of duty, or malfeasance in office.' " *Humphrey's Executor* v. *United States,* 295 U. S. 602, 620.

The Board inspected petitioner accounting firm, released a report critical of its auditing procedures, and began a formal investigation. The firm and petitioner Free Enterprise Fund, a nonprofit organization of which the firm is a member, sued the Board and its members, seeking, *inter alia,* a declaratory judgment that the Board is unconstitutional and an injunction preventing the Board from exercising its powers. Petitioners argued that the Sarbanes-Oxley Act contravened the separation of powers by conferring executive power on Board members without subjecting them to Presidential control. The basis for petitioners'

challenge was that Board members were insulated from Presidential control by two layers of tenure protection: Board members could only be removed by the Commission for good cause, and the Commissioners could in turn only be removed by the President for good cause. Petitioners also challenged the Board's appointment as violating the Appointments Clause, which requires officers to be appointed by the President with the Senate's advice and consent, or—in the case of "inferior Officers"—by "the President alone, . . . the Courts of Law, or . . . the Heads of Departments," Art. II, § 2, cl. 2. The United States intervened to defend the statute. The District Court found it had jurisdiction and granted summary judgment to respondents. The Court of Appeals affirmed. It first agreed that the District Court had jurisdiction. It then ruled that the dual restraints on Board members' removal are permissible, and that Board members are inferior officers whose appointment is consistent with the Appointments Clause.

Held:

1. The District Court had jurisdiction over these claims. The Commission may review any Board rule or sanction, and an aggrieved party may challenge the Commission's "final order" or "rule" in a court of appeals under 15 U. S. C. § 78y. The Government reads § 78y as an exclusive route to review, but the text does not expressly or implicitly limit the jurisdiction that other statutes confer on district courts. It is presumed that Congress does not intend to limit jurisdiction if "a finding of preclusion could foreclose all meaningful judicial review"; if the suit is " 'wholly "collateral" ' to a statute's review provisions"; and if the claims are "outside the agency's expertise." *Thunder Basin Coal Co.* v. *Reich*, 510 U. S. 200, 212–213.

These considerations point against any limitation on review here. Section 78y provides only for review of *Commission* action, and petitioners' challenge is "collateral" to any Commission orders or rules from which review might be sought. The Government advises petitioners to raise their claims by appealing a Board sanction, but petitioners have not been sanctioned, and it is no "meaningful" avenue of relief, *id.*, at 212, to require a plaintiff to *incur* a sanction in order to test a law's validity, *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U. S. 118, 129. Petitioners' constitutional claims are also outside the Commission's competence and expertise, and the statutory questions involved do not require technical considerations of agency policy. Pp. 489–491.

2. The dual for-cause limitations on the removal of Board members contravene the Constitution's separation of powers. Pp. 492–508.

(a) The Constitution provides that "[t]he executive Power shall be vested in a President of the United States of America." Art. II, § 1, cl. 1. Since 1789, the Constitution has been understood to empower the

President to keep executive officers accountable—by removing them from office, if necessary. See generally *Myers* v. *United States*, 272 U. S. 52. This Court has determined that this authority is not without limit. In *Humphrey's Executor*, *supra*, this Court held that Congress can, under certain circumstances, create independent agencies run by principal officers appointed by the President, whom the President may not remove at will but only for good cause. And in *United States* v. *Perkins*, 116 U. S. 483, and *Morrison* v. *Olson*, 487 U. S. 654, the Court sustained similar restrictions on the power of principal executive officers—themselves responsible to the President—to remove their own inferiors. However, this Court has not addressed the consequences of more than one level of good-cause tenure. Pp. 492–495.

(b) Where this Court has upheld limited restrictions on the President's removal power, only one level of protected tenure separated the President from an officer exercising executive power. The President—or a subordinate he could remove at will—decided whether the officer's conduct merited removal under the good-cause standard. Here, the Act not only protects Board members from removal except for good cause, but withdraws from the President any decision on whether that good cause exists. That decision is vested in other tenured officers—the Commissioners—who are not subject to the President's direct control. Because the Commission cannot remove a Board member at will, the President cannot hold the Commission fully accountable for the Board's conduct. He can only review the Commissioner's determination of whether the Act's rigorous good-cause standard is met. And if the President disagrees with that determination, he is powerless to intervene—unless the determination is so unreasonable as to constitute "'inefficiency, neglect of duty, or malfeasance in office.'" *Humphrey's Executor*, *supra*, at 620.

This arrangement contradicts Article II's vesting of the executive power in the President. Without the ability to oversee the Board, or to attribute the Board's failings to those whom he *can* oversee, the President is no longer the judge of the Board's conduct. He can neither ensure that the laws are faithfully executed, nor be held responsible for a Board member's breach of faith. If this dispersion of responsibility were allowed to stand, Congress could multiply it further by adding still more layers of good-cause tenure. Such diffusion of power carries with it a diffusion of accountability; without a clear and effective chain of command, the public cannot determine where the blame for a pernicious measure should fall. The Act's restrictions are therefore incompatible with the Constitution's separation of powers. Pp. 495–498.

(c) The "'fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will

not save it if it is contrary to the Constitution." *Bowsher* v. *Synar*, 478 U. S. 714, 736. The Act's multilevel tenure protections provide a blueprint for the extensive expansion of legislative power. Congress controls the salary, duties, and existence of executive offices, and only Presidential oversight can counter its influence. The Framers created a structure in which "[a] dependence on the people" would be the "primary controul on the government," and that dependence is maintained by giving each branch "the necessary constitutional means, and personal motives, to resist encroachments of the others." The Federalist No. 51, p. 349. A key "constitutional means" vested in the President was "the power of appointing, overseeing, and controlling those who execute the laws." 1 Annals of Cong. 463. While a government of "opposite and rival interests" may sometimes inhibit the smooth functioning of administration, The Federalist No. 51, at 349, "[t]he Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty," *Bowsher*, *supra*, at 730. Pp. 498–502.

(d) The Government errs in arguing that, even if some constraints on the removal of inferior executive officers might violate the Constitution, the restrictions here do not. There is no construction of the Commission's good-cause removal power that is broad enough to avoid invalidation. Nor is the Commission's broad power over Board *functions* the equivalent of a power to remove Board *members*. Altering the Board's budget or powers is not a meaningful way to control an inferior officer; the Commission cannot supervise individual Board members if it must destroy the Board in order to fix it. Moreover, the Commission's power over the Board is hardly plenary, as the Board may take significant enforcement actions largely independently of the Commission. Enacting new SEC rules through the required notice and comment procedures would be a poor means of micromanaging the Board, and without certain findings, the Act forbids any general rule requiring SEC preapproval of Board actions. Finally, the Sarbanes-Oxley Act is highly unusual in committing substantial executive authority to officers protected by two layers of good-cause removal. Pp. 502–508.

3. The unconstitutional tenure provisions are severable from the remainder of the statute. Because "[t]he unconstitutionality of a part of an Act does not necessarily defeat or affect the validity of its remaining provisions," *Champlin Refining Co.* v. *Corporation Comm'n of Okla.*, 286 U. S. 210, 234, the "normal rule" is "that partial . . . invalidation is the required course," *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 504. The Board's existence does not violate the separation of powers, but the substantive removal restrictions imposed by §§ 7211(e)(6) and 7217(d)(3) do. Concluding that the removal restrictions here are invalid

leaves the Board removable by the Commission at will. With the tenure restrictions excised, the Act remains " 'fully operative as a law,' " *New York* v. *United States*, 505 U. S. 144, 186, and nothing in the Act's text or historical context makes it "evident" that Congress would have preferred no Board at all to a Board whose members are removable at will, *Alaska Airlines, Inc.* v. *Brock*, 480 U. S. 678, 684. The consequence is that the Board may continue to function as before, but its members may be removed at will by the Commission. Pp. 508–510.

4. The Board's appointment is consistent with the Appointments Clause. Pp. 510–513.

(a) The Board members are inferior officers whose appointment Congress may permissibly vest in a "Hea[d] of Departmen[t]." Inferior officers "are officers whose work is directed and supervised at some level" by superiors appointed by the President with the Senate's consent. *Edmond* v. *United States*, 520 U. S. 651, 662–663. Because the good-cause restrictions discussed above are unconstitutional and void, the Commission possesses the power to remove Board members at will, in addition to its other oversight authority. Board members are therefore directed and supervised by the Commission. P. 510.

(b) The Commission is a "Departmen[t]" under the Appointments Clause. *Freytag* v. *Commissioner*, 501 U. S. 868, 887, n. 4, specifically reserved the question whether a "principal agenc[y], such as" the SEC, is a "Departmen[t]." The Court now adopts the reasoning of the concurring Justices in *Freytag*, who would have concluded that the SEC is such a "Departmen[t]" because it is a freestanding component of the Executive Branch not subordinate to or contained within any other such component. This reading is consistent with the common, near-contemporary definition of a "department"; with the early practice of Congress, see §3, 1 Stat. 234; and with this Court's cases, which have never invalidated an appointment made by the head of such an establishment. Pp. 510–511.

(c) The several Commissioners, and not the Chairman, are the Commission's "Hea[d]." The Commission's powers are generally vested in the Commissioners jointly, not the Chairman alone. The Commissioners do not report to the Chairman, who exercises administrative functions subject to the full Commission's policies. There is no reason why a multimember body may not be the "Hea[d]" of a "Departmen[t]" that it governs. The Appointments Clause necessarily contemplates collective appointments by the "Courts of Law," Art. II, §2, cl. 2, and each House of Congress appoints its officers collectively, see, *e. g.*, Art. I, §2, cl. 5. Practice has also sanctioned the appointment of inferior officers by multimember agencies. Pp. 511–513.

537 F. 3d 667, affirmed in part, reversed in part, and remanded.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SEILA LAW LLC *v.* CONSUMER FINANCIAL PROTECTION BUREAU

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19–7. Argued March 3, 2020—Decided June 29, 2020

In the wake of the 2008 financial crisis, Congress established the Consumer Financial Protection Bureau (CFPB), an independent regulatory agency tasked with ensuring that consumer debt products are safe and transparent. See Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), 124 Stat. 1376. Congress transferred the administration of 18 existing federal statutes to the CFPB, including the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Truth in Lending Act; and Congress enacted a new prohibition on unfair and deceptive practices in the consumer-finance sector. 12 U. S. C. §5536(a)(1)(B). In doing so, Congress gave the CFPB extensive rulemaking, enforcement, and adjudicatory powers, including the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, prosecute civil actions in federal court, and issue binding decisions in administrative proceedings. The CFPB may seek restitution, disgorgement, injunctive relief, and significant civil penalties for violations of the 19 federal statutes under its purview. So far, the agency has obtained over $11 billion in relief for more than 25 million consumers.

Unlike traditional independent agencies headed by multimember boards or commissions, the CFPB is led by a single Director, §5491(b)(1), who is appointed by the President with the advice and consent of the Senate, §5491(b)(2), for a five-year term, during which the President may remove the Director only for "inefficiency, neglect of duty, or malfeasance in office," §§5491(c)(1), (3). The CFPB receives its funding outside the annual appropriations process from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments.

In 2017, the CFPB issued a civil investigative demand to Seila Law LLC, a California-based law firm that provides debt-related legal services to clients. The civil investigative demand (essentially a subpoena) sought information and documents related to the firm's business practices. Seila Law asked the CFPB to set aside the demand on the ground that the agency's leadership by a single Director removable only for cause violated the separation of powers. When the CFPB declined, Seila Law refused to comply with the demand, and the CFPB filed a petition to enforce the demand in District Court. Seila Law renewed its claim that the CFPB's structure violated the separation of powers, but the District Court disagreed and ordered Seila Law to comply with the demand. The Ninth Circuit affirmed, concluding that Seila Law's challenge was foreclosed by *Humphrey's Executor* v. *United States*, 295 U. S. 602, and *Morrison* v. *Olson*, 487 U. S. 654.

Held: The judgment is vacated and remanded.

923 F. 3d 680, vacated and remanded.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Parts I, II, and III, concluding:

1. Appointed *amicus* raises three threshold arguments for why this Court may not or should not reach the merits of petitioner's constitutional challenge, but they are unavailing. Pp. 8–11.

2. The CFPB's leadership by a single individual removable only for inefficiency, neglect, or malfeasance violates the separation of powers. Pp. 11–30.

(a) Article II vests the entire "executive Power" in the President alone, but the Constitution presumes that lesser executive officers will assist the President in discharging his duties. The President's executive power generally includes the power to supervise—and, if necessary, remove—those who exercise the President's authority on his behalf. The President's removal power has long been confirmed by history and precedent. It was recognized by the First Congress in 1789, confirmed by this Court in *Myers* v. *United States*, 272 U. S. 52, and reiterated in *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477. In *Free Enterprise Fund*, the Court recognized that it had previously upheld certain congressional limits on the President's removal power. But the Court declined to extend those limits to "a new situation not yet encountered by the Court." 561 U. S., at 483. *Free Enterprise Fund* left in place only two exceptions to the President's unrestricted removal power. First, *Humphrey's Executor* permitted Congress to give for-cause removal protection to a multimember body of experts who were balanced along partisan lines, appointed to staggered terms, performed only "quasi-legislative" and "quasi-judicial functions," and were said not to exercise any executive power. Second, *Morrison* approved for-cause removal protection for an

inferior officer—the independent counsel—who had limited duties and no policymaking or administrative authority. Pp. 11–16.

(b) Neither *Humphrey's Executor* nor *Morrison* resolves whether the CFPB Director's insulation from removal is constitutional. The New Deal-era FTC upheld in *Humphrey's Executor* bears little resemblance to the CFPB. Unlike the multiple Commissioners of the FTC, who were balanced along partisan lines and served staggered terms to ensure the accumulation of institutional knowledge, the CFPB Director serves a five-year term that guarantees abrupt shifts in leadership and the loss of agency expertise. In addition, the Director cannot be dismissed as a mere legislative or judicial aid. Rather, the Director possesses significant administrative and enforcement authority, including the power to seek daunting monetary penalties against private parties in federal court—a quintessentially executive power not considered in *Humphrey's Executor*.

The logic of *Morrison* also does not apply. The independent counsel approved in *Morrison* was an inferior officer who lacked policymaking or administrative authority and exercised narrow authority to initiate criminal investigations and prosecutions of Governmental actors identified by others. By contrast, the CFPB Director is a principal officer whose duties are far from limited. The Director promulgates binding rules fleshing out 19 consumer-protection statutes that cover everything from credit cards and car payments to mortgages and student loans. And the Director brings the coercive power of the state to bear on millions of private citizens and businesses, imposing potentially billion-dollar penalties through administrative adjudications and civil actions.

The question here is therefore whether to extend the *Humphrey's Executor* and *Morrison* exceptions to a "new situation." *Free Enterprise Fund*, 561 U. S., at 433. Pp. 16–18.

(c) The Court declines to extend these precedents to an independent agency led by a single Director and vested with significant executive power. Pp. 18–30.

(1) The CFPB's structure has no foothold in history or tradition. Congress has provided removal protection to principal officers who alone wield power in only four isolated instances: the Comptroller of the Currency (for a one-year period during the Civil War); the Office of Special Counsel; the Administrator of the Social Security Administration; and the Director of the Federal Housing Finance Agency. Aside from the one-year blip for the Comptroller of the Currency, these examples are modern and contested; and they do not involve regulatory or enforcement authority comparable to that exercised by the CFPB. Pp. 18–21.

(2) The CFPB's single-Director configuration is also incompatible with the structure of the Constitution, which—with the sole exception of the Presidency—scrupulously avoids concentrating power in the hands of any single individual. The Framers' constitutional strategy is straightforward: divide power everywhere except for the Presidency, and render the President directly accountable to the people through regular elections. In that scheme, individual executive officials may wield significant authority, but that authority remains subject to the ongoing supervision and control of the elected President. The CFPB's single-Director structure contravenes this carefully calibrated system by vesting significant governmental power in the hands of a single individual who is neither elected by the people nor meaningfully controlled (through the threat of removal) by someone who is. The Director may *unilaterally*, without meaningful supervision, issue final regulations, oversee adjudications, set enforcement priorities, initiate prosecutions, and determine what penalties to impose on private parties. And the Director may do so without even having to rely on Congress for appropriations. While the CFPB's independent, single-Director structure is sufficient to render the agency unconstitutional, the Director's five-year term and receipt of funds outside the appropriations process heighten the concern that the agency will "slip from the Executive's control, and thus from that of the people." *Free Enterprise Fund*, 561 U. S., at 499. Pp. 21–25.

(3) *Amicus* raises three principal arguments in the agency's defense. First, *amicus* challenges the textual basis for the President's removal power and highlights statements from individual Framers expressing divergent views on the subject. This Court's precedents, however, make clear that the President's removal power derives from the "executive Power" vested exclusively in the President by Article II. And this Court has already discounted the founding-era statements cited by *amicus* in light of their context. Second, *amicus* claims that *Humphrey's Executor* and *Morrison* establish a general rule that Congress may freely constrain the President's removal power, with only two limited exceptions not applicable here. But text, first principles, the First Congress's decision in 1789, *Myers*, and *Free Enterprise Fund* all establish that the President's removal power is the rule, not the exception. Finally, *amicus* submits that this Court can cure any constitutional defect in the CFPB's structure by interpreting the language "inefficiency, neglect of duty, or malfeasance in office," 12 U. S. C. §5491(c)(3), to reserve substantial discretion to the President. But *Humphrey's Executor* implicitly rejected this position, and the CFPB's defenders have not advanced any workable standard derived from the statutory text. Nor have they explained how a lenient removal standard can be squared with the Dodd-Frank Act as a whole, which makes

plain that the CFPB is an "independent bureau." §5491(a).

The dissent advances several additional arguments in the agency's defense, but they have already been expressly considered and rejected by the Court in *Free Enterprise Fund*. Pp. 25–30.

THE CHIEF JUSTICE, joined by JUSTICE ALITO and JUSTICE KAVANAUGH, concluded in Part IV that the Director's removal protection is severable from the other provisions of the Dodd-Frank Act that establish the CFPB and define its authority. Pp. 30–37.

ROBERTS, C. J., delivered the opinion of the Court with respect to Parts I, II, and III, in which THOMAS, ALITO, GORSUCH, and KAVANAUGH, JJ., joined, and an opinion with respect to Part IV, in which ALITO and KAVANAUGH, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which GORSUCH, J., joined. KAGAN, J., filed an opinion concurring in the judgment with respect to severability and dissenting in part, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COLLINS ET AL. *v.* YELLEN, SECRETARY OF THE TREASURY, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19–422. Argued December 9, 2020—Decided June 23, 2021*

When the national housing bubble burst in 2008, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), two of the Nation's leading sources of mortgage financing, suffered significant losses that many feared would imperil the national economy. To address that concern, Congress enacted the Housing and Economic Recovery Act of 2008 (Recovery Act), which, among other things, created the Federal Housing Finance Agency (FHFA)—an independent agency tasked with regulating the companies and, if necessary, stepping in as their conservator or receiver. See 12 U. S. C. §4501 *et seq.* At the head of the Agency, Congress installed a single Director, removable by the President only "for cause." §§4512(a), (b)(2).

Soon after the FHFA's creation, the Director placed Fannie Mae and Freddie Mac into conservatorship and negotiated agreements for the companies with the Department of Treasury. Under those agreements, Treasury committed to providing each company with up to $100 billion in capital, and in exchange received, among other things, senior preferred shares and quarterly fixed-rate dividends. In the years that followed, the agencies agreed to a number of amendments, the third of which replaced the fixed-rate dividend formula with a variable one that required the companies to make quarterly payments consisting of their entire net worth minus a small specified capital reserve.

A group of the companies' shareholders challenged the third amend-

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*Together with No. 19–563, *Yellen, Secretary of the Treasury, et al.* v. *Collins et al.*, also on certiorari to the same court.

ment on both statutory grounds—that the FHFA exceeded its authority as a conservator under the Recovery Act by agreeing to the new variable dividend formula—and constitutional grounds—that the FHFA's structure violates the separation of powers because the Agency is led by a single Director, removable by the President only for cause. The District Court dismissed the statutory claim and granted summary judgment in the FHFA's favor on the constitutional claim. The Fifth Circuit reversed the District Court's dismissal of the statutory claim, held that the FHFA's structure violates the separation of powers, and concluded that the appropriate remedy for the constitutional violation was to sever the removal restriction from the rest of the Recovery Act, but not to vacate and set aside the third amendment.

Held:

1. The shareholders' statutory claim must be dismissed. The "anti-injunction clause" of the Recovery Act provides that unless review is specifically authorized by one of its provisions or is requested by the Director, "no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver." §4617(f). Where, as here, the FHFA's challenged actions did not exceed its "powers or functions" "as a conservator," relief is prohibited. Pp. 12–17.

(a) The Recovery Act grants the FHFA expansive authority in its role as a conservator and permits the Agency to act in what it determines is "in the best interests of the regulated entity *or the Agency*." §4617(b)(2)(J)(ii) (emphasis added). So when the FHFA acts as a conservator, it may aim to rehabilitate the regulated entity in a way that, while not in the best interests of the regulated entity, is beneficial to the Agency and, by extension, the public it serves. This feature of an FHFA conservatorship is fatal to the shareholders' statutory claim. The third amendment was adopted at a time when the companies had repeatedly been unable to make their fixed quarterly dividend payments without drawing on Treasury's capital commitment. If things had proceeded as they had in the past, there was a possibility that the companies would have consumed some or all of the remaining capital commitment in order to pay their dividend obligations. The third amendment's variable dividend formula eliminated that risk, and in turn ensured that all of Treasury's capital was available to backstop the companies' operations during difficult quarters. Although the third amendment required the companies to relinquish nearly all of their net worth, the FHFA could have reasonably concluded that this course of action was in the best interests of members of the public who rely on a stable secondary mortgage market. Pp. 13–15.

(b) The shareholders argue that the third amendment did not actually serve the best interests of the FHFA or the public because it did

not further the asserted objective of protecting Treasury's capital commitment. First, they claim that the FHFA agreed to the amendment at a time when the companies were on the precipice of a financial uptick which would have allowed them to pay their cash dividends and build up capital buffers to absorb future losses. Thus, the shareholders assert, sweeping all the companies' earnings to Treasury increased rather than decreased the risk that the companies would make further draws and eventually deplete Treasury's commitment. But the success of the strategy that the shareholders tout was dependent on speculative projections about future earnings, and recent experience had given the FHFA reasons for caution. The nature of the conservatorship authorized by the Recovery Act permitted the Agency to reject the shareholders' suggested strategy in favor of one that the Agency reasonably viewed as more certain to ensure market stability. Second, the shareholders claim that the FHFA could have protected Treasury's capital commitment by ordering the companies to pay the dividends in kind rather than in cash. This argument rests on a misunderstanding of the agreement between the companies and Treasury. Paying Treasury in kind would not have satisfied the cash dividend obligation; it would only have delayed that obligation, as well as the risk that the companies' cash dividend obligations would consume Treasury's capital commitment. Choosing to forgo this option in favor of one that eliminated the risk entirely was not in excess of the FHFA's authority as a conservator. Finally, the shareholders argue that because the third amendment left the companies unable to build capital reserves and exit conservatorship, it is best viewed as a step toward liquidation, which the FHFA lacked the authority to take without first placing the companies in receivership. This characterization is inaccurate. Nothing about the third amendment precluded the companies from operating at full steam in the marketplace, and all available evidence suggests that they did. The companies were not in the process of winding down their affairs. Pp. 15–17.

2. The Recovery Act's restriction on the President's power to remove the FHFA Director, 12 U. S. C. §4512(b)(2), is unconstitutional. Pp. 17–36.

(a) The threshold issues raised in the lower court or by the federal parties and appointed *amicus* do not bar a decision on the merits of the shareholders' constitutional claim. Pp. 17–26.

(i) The shareholders have standing to bring their constitutional claim. See *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 560–561. First, the shareholders assert that the FHFA transferred the value of their property rights in Fannie Mae and Freddie Mac to Treasury, and that sort of pocketbook injury is a prototypical form of injury in fact. See *Czyzewski* v. *Jevic Holding Corp.*, 580 U. S. ___, ___. Second, the

shareholders' injury is traceable to the FHFA's adoption and implementation of the third amendment, which is responsible for the variable dividend formula. For purposes of traceability, the relevant inquiry is whether the plaintiffs' injury can be traced to "allegedly unlawful conduct" of the defendant, not to the provision of law that is challenged. *Allen* v. *Wright*, 468 U. S. 737, 751. Finally, a decision in the shareholders' favor could easily lead to the award of at least some of the relief that the shareholders seek. Pp. 17–19.

(ii) The shareholders' constitutional claim is not moot. After oral argument was held in this case, the FHFA and Treasury agreed to amend the stock purchasing agreements for a fourth time. That amendment eliminated the variable dividend formula that caused the shareholders' injury. As a result, the shareholders no longer have any ground for prospective relief, but they retain an interest in the retrospective relief they have requested. That interest saves their constitutional claim from mootness. P. 19.

(iii) The shareholders' constitutional claim is not barred by the Recovery Act's "succession clause." §4617(b)(2)(A)(i). That clause effects only a limited transfer of stockholders' rights, namely, the rights they hold "with respect to the regulated entity" and its assets. *Ibid.* Here, by contrast, the shareholders assert a right that they hold in common with all other citizens who have standing to challenge the removal restriction. The succession clause therefore does not transfer to the FHFA the constitutional right at issue. Pp. 20–21.

(iv) The shareholders' constitutional challenge can proceed even though the FHFA was led by an Acting Director, as opposed to a Senate-confirmed Director, at the time the third amendment was adopted. The harm allegedly caused by the third amendment did not come to an end during the tenure of the Acting Director who was in office when the amendment was adopted. Rather, that harm is alleged to have continued after the Acting Director was replaced by a succession of confirmed Directors, and it appears that any one of those officers could have renegotiated the companies' dividend formula with Treasury. Because confirmed Directors chose to continue implementing the third amendment while insulated from plenary Presidential control, the survival of the shareholders' constitutional claim does not depend on the answer to the question whether the Recovery Act restricted the removal of an Acting Director. The answer to that question could, however, have a bearing on the *scope* of relief that may be awarded to the shareholders. If the statute does not restrict the removal of an Acting Director, any harm resulting from actions taken under an Acting Director would not be attributable to a constitutional violation. Only harm caused by a confirmed Director's implementation of the third amendment could then provide a basis for relief. In the Recovery Act,

Congress expressly restricted the President's power to remove a confirmed Director but said nothing of the kind with respect to an Acting Director. When a statute does not limit the President's power to remove an agency head, the Court generally presumes that the officer serves at the President's pleasure. See *Shurtleff* v. *United States*, 189 U. S. 311, 316. Seeing no grounds for departing from that presumption here, the Court holds that the Recovery Act's removal restriction does not extend to an Acting Director and proceeds to the merits of the shareholders' constitutional argument. Pp. 21–26.

(b) The Recovery Act's for-cause restriction on the President's removal authority violates the separation of powers. In *Seila Law LLC* v. *Consumer Financial Protection Bureau*, 591 U. S. ___, the Court held that Congress could not limit the President's power to remove the Director of the Consumer Financial Protection Bureau (CFPB) to instances of "inefficiency, neglect, or malfeasance." *Id.*, at ___. In so holding, the Court observed that the CFPB, an independent agency led by a single Director, "lacks a foundation in historical practice and clashes with constitutional structure by concentrating power in a unilateral actor insulated from Presidential control." *Id.*, at ___–___. A straightforward application of *Seila Law*'s reasoning dictates the result here. The FHFA (like the CFPB) is an agency led by a single Director, and the Recovery Act (like the Dodd-Frank Act) restricts the President's removal power. The distinctions Court-appointed *amicus* draws between the FHFA and the CFPB are insufficient to justify a different result. First, *amicus* argues that Congress should have greater leeway to restrict the President's power to remove the FHFA Director because the FHFA's authority is more limited than that of the CFPB. But the nature and breadth of an agency's authority is not dispositive in determining whether Congress may limit the President's power to remove its head. Moreover, the test that *amicus* proposes would lead to severe practical problems. Courts are not well-suited to weigh the relative importance of the regulatory and enforcement authority of disparate agencies. Second, *amicus* contends that Congress may restrict the removal of the FHFA Director because when the Agency steps into the shoes of a regulated entity as its conservator or receiver, it takes on the status of a private party and thus does not wield executive power. But the Agency does not always act in such a capacity, and even when it does, the Agency must implement a federal statute and may exercise powers that differ critically from those of most conservators and receivers. Third, *amicus* asserts that the FHFA's structure does not violate the separation of powers because the entities it regulates are Government-sponsored enterprises that have federal charters, serve public objectives, and receive special privileges. This argument fails because the President's removal power

serves important purposes regardless of whether the agency in question affects ordinary Americans by directly regulating them or by taking actions that have a profound but indirect effect on their lives. Finally, *amicus* contends that there is no constitutional problem in this case because the Recovery Act offers only "modest" tenure protection. But the Constitution prohibits even "modest restrictions" on the President's power to remove the head of an agency with a single top officer. *Id.*, at ___. Pp. 26–32.

(c) The shareholders seek an order setting aside the third amendment and requiring that all dividend payments made pursuant to that amendment be returned to Fannie Mae and Freddie Mac. In support of this request, they contend that the third amendment was adopted and implemented by officers who lacked constitutional authority and that their actions were therefore void *ab initio*. This argument is neither logical nor supported by precedent. All the officers who headed the FHFA during the time in question were properly *appointed*. There is no basis for concluding that any head of the FHFA lacked the authority to carry out the functions of the office or that actions taken by the FHFA in relation to the third amendment are void. That does not necessarily mean, however, that the shareholders have no entitlement to retrospective relief. Although an unconstitutional provision is never really part of the body of governing law, it is still possible for an unconstitutional provision to inflict compensable harm. The possibility that the unconstitutional restriction on the President's power to remove a Director of the FHFA could have such an effect cannot be ruled out. The parties' arguments on this point should be resolved in the first instance by the lower courts. Pp. 32–36.

938 F. 3d 553, affirmed in part, reversed in part, vacated in part, and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, KAVANAUGH, and BARRETT, JJ., joined in full; in which KAGAN and BREYER, JJ., joined as to all but Part III–B; in which GORSUCH, J., joined as to all but Part III–C; and in which SOTOMAYOR, J., joined as to Parts I, II, and III–C. THOMAS, J., filed a concurring opinion. KAGAN, J., filed an opinion concurring in part and concurring in the judgment, in which BREYER and SOTOMAYOR, JJ., joined as to Part II. GORSUCH, J., filed an opinion concurring in part. SOTOMAYOR, J., filed an opinion concurring in part and dissenting in part, in which BREYER, J., joined.