

No. 25-332

IN THE
Supreme Court of the United States

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, *et al.*
Petitioners,

v.

REBECCA KELLY SLAUGHTER, *et al.*
Respondents

*On Writ of Certiorari Before Judgment
to the United States Court of Appeals
for the District of Columbia Circuit*

**BRIEF OF AMICI CURIAE
BIPARTISAN FORMER COMMISSIONERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION
(FERC) IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*

We are bipartisan former Commissioners of the Federal Energy Regulatory Commission (FERC).¹ *Amici* include FERC Chairs appointed by Presidents Clinton, Bush, Obama, Trump, and Biden. *Amici* are:

Elizabeth Anne Moler (1988-1997)
 Donald F. Santa (1993-1997)
 Linda K. Breathitt (1997-2002)
 Patrick H. Wood III (2001-2005)
 Nora Mead Brownell (2001-2006)
 Joseph T. Kelliher (2003-2009)
 Jon Wellinghoff (2006-2013)
 John Norris (2010-2014)
 Cheryl A. LaFleur (2010-2019)
 Neil Chatterjee (2017-2021)
 Richard Glick (2017-2022)

FERC is one of several commissions created by Congress to oversee rates and services of capital-intensive networked industries. FERC-set rates finance \$40 billion of new energy delivery infrastructure each year. In 2024, more than \$1 trillion of oil, natural gas, and electricity flowed through pipelines and power lines that depend on FERC-set rates.

Amici believe that for-cause removal protections and staggered terms foster regulatory stability for industries investing in essential infrastructure. We seek to preserve Congress's authority to create and maintain bipartisan ratemaking commissions.

¹ This brief was not authored in whole or in part by counsel for any party. No person or entity other than *amici* or their counsel made a monetary contribution to this brief's preparation or submission.

SUMMARY OF ARGUMENT

Since 1887, Congress has entrusted ratemaking authority to multimember, bipartisan agencies with commissioners who serve staggered terms and may be removed by the President only for “inefficiency, neglect of duty, or malfeasance in office.” Interstate Commerce Act, Pub. L. No. 49-41, § 11, 24 Stat. 379, 383 (1887). Ratemaking commissions, such as FERC, have facilitated investment in strategically important industries while protecting American consumers from monopoly power endemic to those industries. Commissions’ bipartisan compositions, reinforced by for-cause removal protections, tie the exercise of Congress’s ratemaking power to a deliberative body.

The President now seeks a license to fire commissioners at will, permitting him to dictate agency action. *See Bowsheer v. Synar*, 478 U.S. 714, 726 (1986) (explaining that an appointed official “must fear and, in the performance of his functions, obey” an authority that can fire him) (citation omitted). The nearly 140-year history of Congressional ratemaking bears firmly against this sudden shift in authority. “In separation-of-powers cases,” such as this, “th[e] Court has often put significant weight upon historical practice.” *Zivotofsky v. Kerry*, 576 U.S. 1, 23 (2015); cf. *Seila Law v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 220 (2020) (noting that the agency at issue “ha[d] no basis in history” and no “historical precedent”).

Overturing *Humphrey’s Executor* would bulldoze the structural supports that Congress built into ratemaking commissions to protect its price-setting power from abuse. Across ratemaking statutes, Congress codified common-law ratemaking standards that empower commissions to “balanc[e] the investor and the consumer interests” in each case. *FPC v. Hope*

Natural Gas Co., 320 U.S. 591, 603 (1944). By shielding agency action from political control, for-cause removal protections allow ratemaking commissions to sustain stable policies for the long-term benefit of regulated companies and American consumers. Congress’s 140-year-old model of setting rates through bipartisan commissions stands as a “longstanding practice of the government’ [that] can inform [the 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) and then *Marbury v. Madison*, 1 Cranch 137, 177 (1803)). Upholding *Humphrey’s Executor* would respect Congress’s plenary power over interstate commerce under Article I.

Should the Court overturn or clarify *Humphrey’s Executor*, amici urge the Court to consider ratemaking commissions’ “special historical status.” *Seila Law*, 591 U.S. at 222 n.8 (suggesting that the Federal Reserve is distinct from other multimember agencies). As a ratemaking commission, FERC exercises legislative power “guided and constrained” by standards that date back to English common law. *See FCC v. Consumers’ Rsch.*, 606 U.S. 656, 664 (2025); *id.* at 740 (Gorsuch, J., dissenting) (stating that the just and reasonable standard “incorporates ‘concepts with a long history at common law’” when it is used to set utility rates (citations omitted)).

Ratemaking commissions wield “legislative power” to set prices charged by for-profit investor-owned companies. *ICC v. Alabama Midland Ry. Co.*, 168 U.S. 144, 162 (1897). Among all multimember agencies, only the Federal Reserve Board plays such a direct role in our economy and does so with similar “legislative discretion.” *See, e.g., Northern Pac. Ry. Co.*

v. North Dakota ex rel. McCue, 236 U.S. 585, 604 (1915) (stating that a ratemaking commission enjoys legislative discretion); *Permian Basin Area Rate Cases*, 390 U.S. 747, 776 (1968) (citations omitted) (same); *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 313 (1989) (citations omitted) (same).

Unwinding Congress's ratemaking model is fraught with risk for the American economy. Overturning *Humphrey's Executor* without acknowledging ratemaking commissions' special status would green-light one-party ratemaking bodies and allow Presidents to eliminate staggered terms by firing holdover commissioners nominated by a previous President. Permitting the President to seize control over ratemaking could adversely affect how regulated companies perceive FERC and therefore increase the risk of financing pipelines and power lines. Ultimately, American consumers would pay higher energy prices.

A stable FERC is vital to our economy. Reliable energy delivery is at the heart of our nation's prosperity. Interstate energy delivery infrastructure depends on cost-of-service rates set by FERC. Our energy system simply cannot function without sustained investment in these long-term assets.

Amici contend that eliminating for-cause removal protections would risk transforming FERC into a partisan political body whose priorities flip every election cycle. Such volatility, which has infected certain federal agencies under direct executive control, would conflict with FERC's historic focus on the long-term interests of American consumers and regulated companies and would increase the entire economy's exposure to political risks.

This case is not an appropriate vehicle for upending Congress’s ratemaking model. Ratemaking commissions’ for-cause removal protections raise economic, legal, and practical issues that are beyond the scope of this proceeding. Regardless of how the Court resolves the first question presented in this case, *amici* respectfully request that the Court specify that its decision does not reach the distinct history and tradition of ratemaking commissions.

ARGUMENT

I. Under Separation of Powers Principles, the Court Should Defer to Congress’s Decisions to Tie Its Ratemaking Power to Bipartisan Commissions

Starting in 1887, Congress created several ratemaking commissions to fix prices charged by railroad, shipping, telecommunications, motor transportation, aviation, and energy companies. Applying common-law standards, a ratemaking commission sets rates, terms, and conditions of service that facilitate investment in vital industries while protecting the public from monopoly power.

Ratemaking’s complexities are myriad and esoteric, and Congress empowered ratemaking commissions to do more than simply “fill up the details” of Congress’s legislative acts. *Wayman v. Southard*, 10 Wheat. 1, 42-43 (1825). Congress affords commissions wide discretion as they balance competing interests to find a just and reasonable rate. The bipartisan composition of ratemaking commissions is Congress’s antidote against abuse of that discretion. For-cause removal protections, staggered terms, and partisan limits temper agency

discretion by ensuring that decisions are informed by diverse and balanced perspectives.

This Court has reviewed and given meaning to each element of Congress’s ratemaking model. *See, e.g., ICC v. Baltimore & Ohio R.R. Co.*, 145 U.S. 263, 281-282 (1892) (defining ‘unjust discrimination’); *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935) (sanctioning bipartisan commissions); *Hope*, 320 U.S. at 603 (providing guidance on the ‘just and reasonable’ standard); *American Tel. & Tel. Co. v. Cent. Off. Tel., Inc.*, 524 U.S. 214, 221-222 (1998) (summarizing the filed-rate doctrine that applies to regulated companies’ tariffs). Removing any of these core components—common-law ratemaking standards, filed tariffs, and bipartisan commissions—would undermine Congress’s legislative design.

Congress created FERC atop a century of precedent about ratemaking and in reliance on *Humphrey’s Executor*. Generations of Congressional acts signed into law by several Presidents warrant consideration by this Court. “[H]istorical practice matters to separation of powers analysis.” *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 179 (D.C. Cir. 2018) (Kavanaugh, J., dissenting).

Bipartisan commissions safeguard liberty interests that are at the heart of separation of powers cases. *See id.* at 183. Discretion to price essential services invites abuse. Congress shielded ratemaking power from direct executive control to protect the public from exploitation and regulated companies from coercive power. Maintaining *Humphrey’s Executor* preserves Congress’s defense against abuse of discretion and respects the history and tradition of Congressional ratemaking.

**A. Congress Created Numerous Bipartisan
Ratemaking Commissions and Rejected
Direct Presidential Control of Energy
Ratemaking**

One month after the Golden Spike was ceremoniously hammered in to complete the first transcontinental railroad, the Massachusetts Legislature created a three-member commission to “have the general supervision of all railroads in the Commonwealth.” An Act to Establish a Board of Railroad Commissioners, ch. 408, 1869 Mass. Acts 699. Massachusetts’ act sparked a nationwide wave of lawmaking aimed at “securing the public against unreasonable and unjust discriminations” by the rapidly expanding railroad industry. *Baltimore & Ohio R.R. Co.*, 145 U.S. at 276.

Amidst this burst of legislative activity, the Court held that ratemaking by states was deeply rooted in the common law and did not violate the recently ratified Fourteenth Amendment. *See generally Munn v. Illinois*, 94 U.S. 113 (1877). Quoting Lord Hale’s seventeenth century writing, Justices unanimously agreed that when a company enjoys a monopoly or other state-granted privilege, the state may set prices the company charges for its services. *Id.* at 126-132, 148-151 (Field, J., dissenting).

A decade later, following the Court’s decision that a state may not regulate interstate service, Congress empowered the Interstate Commerce Commission (ICC) to check the extraordinary power that railroads exerted over the American economy. *See Wabash, St. L. & P. Ry. Co. v. Illinois*, 118 U.S. 557 (1886). For Congress, the potential for “one-sided partisan control [of the ICC] was a matter of great moment.” Robert E. Cushman, *Independent Regulatory Commissions* 61

(1941) (summarizing the Congressional Record). Congress was also concerned that corrupt commissioners might exploit their office for personal gain. *Id.* at 61-63. To mitigate these two risks, Congress imposed five constraints on the hiring and firing of commissioners:

- 1) no more than three of the five commissioners may be from the same political party;
- 2) commissioners serve staggered terms;
- 3) commissioners may not hold other jobs;
- 4) commissioners may not have a pecuniary interest in regulated companies; and
- 5) commissioners may “be removed by the President for inefficiency, neglect of duty, or malfeasance in office.” Interstate Commerce Act, § 11, 24 Stat. at 383.

According to the Congressional debates prior to the ICC’s founding, bipartisan composition would support the ICC’s “impartiality, or at least neutrality” and its “honesty and fairness so essential to adequate railroad regulation.” Cushman, *supra*, at 61, 63. Fostering objectivity and evenhandedness at the ICC would mitigate the potential for abuse of the body’s ratemaking power in favor of particular interests. Deciding whether railroad charges were reasonable or whether terms of service were unduly discriminatory “necessarily impl[ied] that . . . all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers, and consumers, should be considered.” *Texas & P. Ry. Co. v. ICC*, 162 U.S. 197, 219 (1896). Because Congress did not provide the Commission with a formula for applying common-law ratemaking standards, the ICC enjoyed discretion to choose from among reasonable options when it set a

lawful rate or imposed non-discriminatory terms of service. *Cf. Texas & P. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 444 (1907) (noting it was “peculiarly within the province of the Commission to primarily consider and pass upon a controversy concerning the unreasonableness per se of [] rates”).

The five constraints on the hiring and firing of ICC commissioners were structural safeguards to limit abuse of discretion inherent in ratemaking. The constraints, later applied to other ratemaking commissions, reflect Congress’s effort to institutionalize deliberative decisionmaking. They promote compromise and moderate extreme positions to provide stability to regulated industries and certainty to customers. An “impartial[], or at least neutral[]” collegial body best achieves Congress’s ultimate goal of “balancing [] the investor and the consumer interests” when setting rates. Cushman, *supra*, at 63; *Hope*, 320 U.S. at 603.

The ICC’s structure proved durable. While Congress amended the Interstate Commerce Act (ICA) at least twenty-five times by 1940, it never altered the five constraints it imposed on the hiring and firing of ICC Commissioners.² As new strategically important, capital-intensive networked industries emerged over the ensuing decades, Congress used the ICA as a template for creating and empowering additional ratemaking commissions.

In 1916, Congress passed “a comprehensive measure bearing a relation to common carriers by

² In 1906, 1917, and 1920, Congress added two additional commissioners to the ICC. Each time, Congress maintained the constraint that only a bare majority of commissioners could be from a single party.

water substantially the same as that borne by the Interstate Commerce Act to interstate common carriers by land.” *United States Navigation Co. v. Cunard S.S. Co.*, 284 U.S. 474, 480-481 (1932). Congress imposed the ICC’s five constraints on the hiring and firing of Shipping Board members and charged the Board with regulating rates and services under the same common-law standards codified by Congress in the ICA. *See* Shipping Act of 1916, Pub. L. No. 64-260, §§ 3, 17-18, 39 Stat. 728, 729, 734-735.

In 1930, Congress modified the Federal Power Commission’s (FPC) composition from three cabinet secretaries to five full-time members. At the time of Congress’ modification, the FPC was not a ratemaking commission, and its main task was licensing hydroelectric dams. We discuss the FPC’s transition into a ratemaking commission, as well as its subsequent evolution into FERC, in Part II.

In 1934, Congress created the Federal Communications Commission (FCC) and tasked it with ensuring that the rates charged by “common carrier[s] engaged in interstate or foreign communication by wire or radio” were just and reasonable and not unduly discriminatory. *See* Communications Act of 1934, Pub. L. No. 73-416, § 201, 48 Stat. 1064, 1070. In creating the FCC, Congress imposed four of the ICC’s five constraints. During the nine-year period between the Court’s 1926 decision in *Myers* and its 1935 decision in *Humphrey’s Executor*, Congress did not provide for-cause removal protections to any new commission it established, including the FCC. *See* Jane Mannes & Lev Menand, *The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence*, 121 COLUMBIA L. REV. 1, Appendix B (2021).

After the Court issued *Humphrey's Executor*, Congress again included for-cause removal protections in statutes establishing ratemaking commissions. In 1938, Congress created the Civil Aeronautics Authority to regulate rates charged and service provided by air carriers. *See generally* Civil Aeronautics Act of 1938, Pub. L. No. 75-706, 52 Stat. 973. Congress included all five of the ICC's constraints on commissioners' hiring and firing and charged the Authority with ensuring just and reasonable prices, as well as preventing discriminatory service. *See id.* at §§ 201, 404.

Congress did not create another ratemaking commission until it established FERC in 1977. Congress assigned to FERC the ratemaking responsibilities that it had delegated to the FPC in the 1930s and added jurisdiction over oil pipeline rates. Congress imposed all five ICC constraints on FERC. *See* Department of Energy Organization Act, Pub. L. No. 95-91, §§ 401, 602, 91 Stat. 567, 582, 592-593.

During the legislative process, Congress rejected the President's plan to empower the proposed Department of Energy with the FPC's ratemaking authority. *See* Clark Byse, *The Department of Energy Organization Act: Structure and Procedure*, 30 ADMIN. L. REV. 193, 198 (Spring 1978). In the House, a "liberal Democrat" and a "conservative Republican" worked together to preserve the long-standing link between ratemaking and bipartisan commissions. *Id.* at 199. They argued to their colleagues that ratemaking power should be assigned to a "collegial" body and not handed to the new Department of Energy "where only one viewpoint, the administration's viewpoint, comes in." 123 Cong. Rec. 17305 (1977). As Representative Dingell, a Michigan Congressman from the President's

own party, put it, “The age of the kings expired with the French revolution. I plead with this body, do not set up a new king here in Washington.” Byse, *supra*, at 200 (quoting the Congressional record).

The Congressman’s rhetorical flourish focused his colleagues on threats to liberty, a core concern in separation of powers cases. *See, e.g., Mistretta v. United States*, 488 U.S. 361, 380 (1989) (“[T]he separation of governmental powers into three coordinate Branches is essential to the preservation of liberty.”); *Noel Canning*, 573 U.S. at 570 (Scalia, J., concurring) (“[T]he Constitution’s core, government-structuring provisions are no less critical to preserving liberty than are the later adopted provisions of the Bill of Rights.”).

By seizing ratemaking authority, “one of the great functions conferred on Congress by the Federal Constitution,” the President would secure vast direct control over the economy. *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 407 (1928). Price-setting power would allow the President to increase profits of favored companies at the expense of consumers who would face higher prices for goods and services. The President could also punish companies that oppose his policies or even raise energy prices in states that support his political rivals.

Congress understood, however, that because rates “touch many interests [and] . . . have great consequences,” its ratemaking power should “be exercised in the coldest neutrality” rather than unilaterally by the Executive. *ICC v. Chicago, R. I. & P. Ry. Co.*, 218 U.S. 88, 102 (1910). Overturning *Humphrey’s Executor* would run roughshod over Congress’s decisions to assign its ratemaking power to bipartisan multimember agencies.

B. Bipartisan Commissions Are a Cornerstone of Congress’s 140-Year-Old Ratemaking Model

From 1887 to 1938, Congress created five bipartisan ratemaking commissions to oversee industries that controlled channels of interstate commerce.³ Congress’s ratemaking statutes share a common core: they require regulated companies to file tariffs with the commission that detail rates and terms of service for various customer classes. Commissions exercise ratemaking authority primarily by preventing a filed tariff from ever going into effect and modifying the terms of an effective filed tariff. A ratemaking commission can trigger either power only after finding that the filed tariff provides ‘unjust and unreasonable’ rates or ‘unduly discriminatory’ service. Absent such a finding, a regulated company’s tariff is “treated as though it [is] a statute, binding as such upon” the utility, its customers, and courts. *Pennsylvania R.R. Co. v. Int’l Coal Mining Co.*, 230 U.S. 184, 197 (1913).

Courts have recognized that ratemaking statutes follow a template modeled after the Interstate Commerce Act. *United States Navigation Co.*, 284 U.S. at 480-481; *American Tel. & Tel. Co.*, 524 U.S. at 221-222; *Northwestern Pub. Serv. Co. v. Montana-Dakota Utils. Co.*, 181 F.2d 19, 22 (8th Cir. 1950) (“The plan or scheme of the Federal Power Act is analogous to that of the Interstate Commerce Act . . .”); *Lichten v. E. Airlines*, 189 F.2d 939, 941 (2d Cir. 1951) (“In its

³ Congress also expanded the jurisdiction of existing ratemaking commissions. For instance, in 1935, Congress tasked the ICC with setting rates charged for various interstate motor transportation services. See Motor Carrier Act of 1935, Pub. L. 74-255, 49 Stat. 543 (1935).

purpose, as in its general statutory provisions, the Civil Aeronautics Act is similar to the Interstate Commerce Act.”).

In 1977, Congress again drew from the same well when it created FERC. FERC inherited its ratemaking powers from the FPC and ICC. These predecessor commissions regulated interstate sales and services under statutes enacted in 1906 and the 1930s that codified common-law ratemaking standards. *See, e.g., ICC v. Cincinnati, N.O. & T. P.R. Co.*, 167 U.S. 479, 505 (1897) (noting that the ICA incorporated “the common-law obligation resting upon the carrier to make all its charges reasonable and just”).

As the Court refined the statutes’ standards over 140 years of caselaw, it emphasized that “[t]he rate-making power is a legislative power and necessarily implies a range of legislative discretion.” *See, e.g., Barasch*, 488 U.S. at 313 (quoting *Minnesota Rate Cases*, 230 U.S. 352, 433 (1913)). Rates account for “factors that must be valued as well as weighed.” *Board of Trade v. United States*, 314 U.S. 534, 546 (1942). Ratemaking commissions therefore enjoy “great deference” from courts reviewing whether a commission properly balanced competing interests. *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 532 (2008).

The five ICC constraints—staggered terms, partisan limits, for-cause removal protections, and restrictions on commissioners’ investments and employment—reflect Congress’s intent to entrust its ratemaking power to collegial and deliberative multimember bodies. *Amici* explain that the constraints support expert decisionmaking, maintain agency continuity, reinforce policy stability by

tempering agency discretion, and promote the long-term interests of consumers. *See infra* Part II.D.

Elevating executive control over bipartisan deliberation, as petitioners urge, misunderstands Congress’s ratemaking statutes and threatens to destabilize an economic model that has stood the test of time. But this Court recently advised that “[i]n deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability.” *Seven Cnty. Infrastructure Coalition v. Eagle Cnty., Colorado*, 605 U.S. 168, 192 (2025). Reaffirming *Humphrey’s Executor* would uphold Congress’s established approach for exercising its ratemaking powers.

II. FERC’s Bipartisan Composition Raises Legal, Economic, and Practical Issues that Are Beyond the Scope of this Proceeding

For more than a century, the Court has repeatedly characterized commissions’ ratemaking power as “legislative.” *See, e.g., Stone v. Farmers’ Loan & Trust Co.*, 116 U.S. 307, 330-331 (1886); *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908); *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945); *FPC v. Texaco Inc.*, 417 U.S. 380, 389 (1974); *Barasch*, 488 U.S. at 313. Should this Court overturn or clarify *Humphrey’s Executor*, we urge the Court not to foreclose the possibility that ratemaking commissions remain immune from direct Executive control. Separation of powers principles ought to allow Congress to create deliberative ratemaking bodies.

Ratemaking commissions may enjoy a special historical status and warrant separate consideration from the agency at issue in this proceeding. *See Seila Law*, 591 U.S. at 222 n.8 (suggesting that the Federal

Reserve may enjoy “special historical status”). FERC plays a direct role in our economy that, among the multimember agencies, is matched only by the Federal Reserve Board. Prices set by FERC are essential inputs across the economy that directly affect the cost of living and doing business. Maintaining for-cause removal protections for ratemaking commissions exercising legislative power would appropriately defer to Congress’s powers over interstate commerce.

Amici explain that for-cause removal protections serve the interests of American consumers and producers. The ICC’s five constraints tend to moderate FERC’s actions, allowing for predictable and stable policies that appropriately balance competing interests. The President can set FERC’s agenda, but Congress wisely gave FERC its “legislative power of prescribing rates.” *Alabama Midland Ry. Co.*, 168 U.S. at 162.

A. FERC Is a Ratemaking Commission that Exercises Legislative Power

FERC issues nearly all of its orders pursuant to just a few statutory provisions that endow the Commission with ratemaking power. FERC has other duties that closely relate to its ratemaking expertise.

The Court has explained that ratemaking was historically, and continues to be, an exercise of legislative power. “In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation.” *Munn*, 94 U.S. at 133. In England and its colonies, rate-regulated businesses and trades included “ferries, common carriers, hackmen, bakers, millers, wharfingers, [and]

innkeepers.” *Id.* at 125. Starting in the mid-nineteenth century, states and then Congress codified common-law ratemaking standards that prohibited railroads, and later other industries, from providing unduly discriminatory service and required them to charge reasonable rates. *See Atchison, T. & S. F. R. Co. v. Denver & N.O. R. Co.*, 110 U.S. 667, 678-679 (1884); *Cincinnati, N.O. & T. P. R. Co.*, 167 U.S. at 501, 505 (tying the Interstate Commerce Act to common-law requirements); *supra* at Parts I.A-B.

Fourteenth Amendment challenges to railroad and utility rates led the Court to establish economic benchmarks for commissions’ rate orders. To pass constitutional muster, a rate had to provide at least “a fair return” to utility investors as measured by the value of the utility’s property used to provide public service. *Smyth v. Ames*, 169 U.S. 466, 547 (1898). Whether a return is fair would depend on comparisons to the earnings of other businesses that “are attended by corresponding risks and uncertainties.” *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679, 692 (1923).

These standards required courts to determine whether a commission’s valuation methods resulted in appropriate compensation. But such scrutiny proved to be “exceedingly difficult” as it forced courts to wade through “conjectures, speculations, estimates, and guesses” about a utility’s present value. *McCart v. Indianapolis Water Co.*, 302 U.S. 419, 428-429 (1938). To extricate itself from the “maze of formulas and the jungle of metaphysical concepts” that underlie utility valuations, *id.*, the Court fell back on the “legislative discretion implied in the rate-making power.” *Los Angeles Gas & Elec. Corp. v. R.R. Comm’n*, 289 U.S. 287, 304 (1933) (emphasis added).

Ultimately, the Court concluded that “[t]he Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this *legislative power* has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.” *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942) (emphasis added).

The centerpiece of Congress’s ratemaking statutes is the requirement that regulated companies file tariffs with the commission. *See New York, N.H. & H. R. Co. v. ICC*, 200 U.S. 361, 391 (1906). A filed tariff sets the “only lawful charge” and provides notice of the company’s rates, terms, and conditions. *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915). By establishing a baseline for evaluating the company’s service, the filed tariff enables consumers to assess whether they are receiving discriminatory service and provides customers with a basis for complaining to the commission about the tariff filer’s service.

When the commission approves a filed tariff, “it speaks as the Legislature, and its pronouncement has the force of a statute.” *Arizona Grocery Co. v. Atchison T. & S. F. Ry. Co.*, 284 U.S. 370, 386 (1932). *See American Tel. & Tel. Co.*, 524 U.S. at 221-222 (1998) (summarizing the filed-rate doctrine). In effect, a regulated company’s rates and terms of service are made legally binding through a commission’s “legislative order.” *Oklahoma Operating Co. v. Love*, 252 U.S. 331, 339 (1920).

Under the Federal Power Act (FPA), FERC sets rates charged by electric utilities for their wholesale sales of electric energy in interstate commerce and for

transmission in interstate commerce. All rates must be just and reasonable, 16 U.S.C. § 824d, and FERC must remedy any rate it finds unjust and unreasonable or unduly discriminatory by prescribing a rate that meets the statute’s standards. 16 U.S.C. § 824e. Under the Natural Gas Act (NGA), FERC has analogous ratemaking authority over the interstate transportation of natural gas. 15 U.S.C. §§ 717c, 717d. FERC also has similar authority over rates charged by interstate oil pipelines. *See* 42 U.S.C. § 7172(b) (transferring oil pipeline rates from the ICC to FERC).

Two sections of the FPA and two comparable sections of the NGA comprise FERC’s ratemaking powers under those Acts. *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348, 350-351 (1956) (“The pertinent provisions of the Federal Power Act . . . are substantially identical to . . . [the provisions] of the Natural Gas Act.”). These provisions, largely unchanged since the 1930s, are based on early twentieth-century amendments to the ICA. Pursuant to this authority, FERC reviews rate proposals, prescribes just and reasonable rates, remedies unduly discriminatory tariff provisions, adjudicates tariff disputes, and promulgates rules that set minimum terms and conditions for filed tariffs. When it performs these functions, whether under the FPA, NGA, or ICA, FERC is exercising ratemaking power. *See, e.g., FERC v. Elec. Power Supply Ass’n.*, 577 U.S. 260, 272-273 (2016) (noting that FERC’s “rule attempts to ensure ‘just and reasonable’ wholesale rates”); *Farmers Union Cent. Exch. v. FERC*, 734 F.2d 1486, 1490, 1498 (D.C. Cir. 1984) (reviewing a FERC order that specified a “generic ratemaking methodology to be applied to all oil pipelines,” and stating that the order “is an exercise of [FERC’s] general ratemaking authority . . .”).

Congress also assigned to FERC several tasks that are closely connected to its ratemaking power. For instance, the FPA requires regulated companies to receive FERC authorization for various corporate transactions, such as mergers. 16 U.S.C. § 824b. To guide FERC's decisions, Congress instructed the Commission to determine whether a proposed transaction would subsidize a company affiliated with the applicant. *Id.* at (a)(4). Assessing the potential for such subsidies requires understanding the applicant's corporate structure and parsing its accounting and financial records for relevant evidence. Due to its ratemaking responsibilities, FERC has the requisite competence and experience.

Similarly, FERC's ratemaking expertise is intertwined with its plenary authority over natural gas pipeline construction. Under the NGA, a developer may not construct an interstate pipeline without FERC's approval. 15 U.S.C. § 717f. To grant permission, FERC must find that the pipeline "is or will be required by the present or future public convenience and necessity." *Id.* at (e). FERC's decision hinges, in part, on whether the pipeline's service will be economically beneficial for the consuming public that ultimately pays for the pipeline's construction via the developer's FERC-set rates. See William K. Jones, *Origins of the Certificate of Public Convenience and Necessity: Developments in the States, 1870-1920*, 79 COLUMBIA L. REV. 426 (1979). When it issues a certificate, FERC may attach conditions that it "deems necessary to afford consumers the 'complete, permanent and effective bond of protection from excessive rates and charges' for which . . . the Act was framed." *FPC v. Hunt*, 376 U.S. 515, 521 (1964) (citation omitted). FERC's jurisdiction over pipeline rates is therefore necessary to protect the public from

the economic consequences of new pipeline service approved by the Commission.

Other responsibilities may seem farther afield from FERC's ratemaking role but could nonetheless be characterized as exercises of legislative power. For instance, in 2005 Congress instructed FERC to review electric reliability rules proposed by an industry-run organization and oversee industry's compliance with approved rules. 16 U.S.C. § 824o. Prior to the 2005 law, utility industry norms and standards generally kept power flowing reliably. FERC-regulated tariffs implemented many of the industry's approaches. Tariffs assigned responsibilities among utilities for keeping the interstate power system within stable limits and set rates for sharing backup power sources and trading emergency energy.

By the late 1990s, that voluntary approach was being tested by the power industry's embrace of competitive wholesale markets. To facilitate competition, FERC approved transmission tariffs that centralized energy trading and allowed new power plants to enter the market. Some market participants expressed concerns to FERC that novel market-friendly approaches to operating transmission might clash with the industry's tried-and-true methods for keeping the lights on.

An industry task force convened in 1998 by the U.S. Department of Energy recommended that Congress empower FERC to enforce mandatory reliability rules. Enforceable rules would conform to the needs of competitive markets while ensuring that new market entrants were held to the same standards as incumbent utilities. The task force cautioned, however, that reliability rules might subtly interact with transmission terms of service enshrined in

FERC-regulated tariffs to block fair competition. Only FERC had the requisite jurisdiction and expertise to guard against unduly discriminatory abuse of reliability standards. With its duty to ensure just and reasonable rates, FERC was also the only agency that could facilitate efficient compliance with reliability standards. The task force hypothesized that tariffs could enable markets for reliability services. *See* U.S. Department of Energy, *Maintaining Reliability in a Competitive U.S. Electricity Industry: Final Report on Electric System Reliability* (Sep. 29, 1998).

When Congress acted on the task force's recommendation by designating FERC as the reliability regulator, it had no reason to consider whether this new role might jeopardize FERC commissioners' for-cause removal protections. *See Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 528 (1989) (Scalia, J., concurring) (courts assume that Congress passes laws with an understanding of the "surrounding body of law into which the provision must be integrated"). FERC was Congress' obvious choice to oversee reliability given the Commission's jurisdiction over utility tariffs that had been at the center of the industry's voluntary reliability scheme and the inevitable interactions between utility tariffs and new reliability rules.

Even with its role overseeing reliability, FERC remains a ratemaking commission that exercises legislative power. The transition from a tariff-based to a rules-based reliability regime need not transform FERC into an agency that exercises significant executive power. Without the benefit of full briefing from FERC, this Court should refrain from suggesting a contrary conclusion. *See* 42 U.S.C. § 7171(i) (authorizing FERC to represent itself in court).

B. FERC Is Essential for Maintaining and Expanding Our Nation's Energy Supplies

FERC-set rates sustain 200,000 miles of interstate natural gas pipelines, 120,000 miles of high-voltage power lines, and 85,000 miles of interstate crude oil pipelines. Each year, FERC-set rates finance \$40 billion of investment in networks of high-capacity pipelines and power lines that transport more than \$1 trillion of oil, natural gas, and electricity. Eliminating for-cause removal protections would expose energy investors to political uncertainty and policy volatility, risking higher costs for consumers and producers. With FERC currently sitting at the center of the nation's energy renaissance, discarding its structure could damage America's global economic position.

FERC's predecessor, the FPC, played a more modest role. Congress created the FPC to license hydroelectric dams and tasked three cabinet secretaries with leading the Commission. *See Federal Water Power Act*, Pub. L. No. 66-280, 41 Stat. 1063 (1920). Because the secretaries were not devoting sufficient time to the FPC, Congress reconstituted the Commission in 1930 as a five-member body modeled after the ICC. *See An Act to Reorganize the Federal Power Commission*, Pub. L. No. 71-412, 46 Stat. 797 (1930); S. Rep. No. 378, 71st Cong., 2d Sess., 2 (1930).

In the 1930s, Congress enacted the FPA and NGA, which transformed the FPC into a ratemaking commission. Throughout its existence, the FPC priced just a small fraction of the nation's power production. Meanwhile, the FPC struggled to regulate natural gas sales. *See generally Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

The abolishment of the FPC and creation of FERC in 1977 marked a turning point for the role of federal ratemaking in the energy industry. Congress established FERC as the only energy ratemaking commission by consolidating, into a single agency, the FPC's day-to-day responsibilities and the ICC's jurisdiction over interstate oil pipelines. Next, Congress simplified natural gas ratemaking, which focused FERC on interstate power markets, energy delivery services, and infrastructure expansion. *See* Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350. These moves positioned FERC to oversee several related energy industry transformations.

Over the ensuing decades, regulatory, technological, and economic factors propelled the United States from the energy crisis of the 1970s to its current position as the world's top producer of oil and gas, as well as a leading exporter of fuels around the globe. Meanwhile, a series of reforms by Congress, states, and FERC restructured the power industry into several regional markets that allowed new companies to compete with incumbent electric utilities. By the mid-2000s, technological innovation enabled drillers to tap new fossil resources, which allowed power generators to shift from coal to increasingly abundant natural gas and reduced the nation's dependency on imported oil.

FERC was central to these developments. Power industry restructuring relied on FERC to police unduly discriminatory transmission service. *See New York v. FERC*, 535 U.S. 1 (2002). Open transmission access ordered by FERC facilitated the creation of regional power markets governed by FERC-regulated utility tariffs. These new markets incentivized

hundreds of billions of dollars in investment backed by revenue from FERC-regulated interstate wholesale power sales. *See Hughes v. Talen*, 578 U.S. 150 (2016) (describing FERC’s regulation of one such market). New high-voltage transmission financed by FERC-set rates made markets larger and more efficient. Meanwhile, as natural gas drillers exploited shale resources, they needed new FERC-regulated pipelines to bring their product to market. Finally, a related boom in oil production relied on interstate pipelines backed by FERC-set rates.

As the nation’s energy renaissance continues, FERC remains vital. New high-voltage power lines are meeting growing power demand from artificial intelligence and reshoring of manufacturing. Interstate pipelines and liquefied natural gas terminals permitted by FERC are bringing the nation’s surging natural gas production to international markets. FERC is more important than ever to American energy producers and consumers. Any change to FERC’s structure should follow careful deliberations in Congress that weigh the potential benefits of reform against the possible harms caused by transforming FERC into a politically partisan body.

C. Like the Federal Reserve Board, FERC Has a Direct and Significant Role in Our Economy

Because FERC sets the prices, terms, and conditions of essential services provided by for-profit companies, it exercises unique authority over our national economy that is analogous to the role of the Federal Reserve Board. FERC has broad authority over one of the nation’s most economically consequential industries. As former Fed Chair Alan Greenspan summarized, “energy markets will remain

central in determining the long[]-run health of our nation's economy." Alan Greenspan, Remarks before the Economic Club of New York (May 20, 2005).

Energy is "special," according to former Fed Chair Ben Bernanke, in part because it is a "critical input[] to a very wide variety of production processes of modern economies." Ben S. Bernanke, Remarks before the Economic Club of Chicago (Jun. 15, 2006). Energy therefore "has an influence [in our economy] that is disproportionate to its share in real gross domestic product," and "a significant increase in energy prices can simultaneously slow economic growth while raising inflation." *Id.*

FERC is to the nation's energy system what the Federal Reserve is to its banking system. FERC-regulated tariffs establish the terms on which the majority of energy produced in the country is transacted at wholesale. These tariffs, which govern interstate pipelines and power lines that are financed through FERC-set rates, establish rules for energy system planning, operations, and trading that significantly affect prices of energy commodities. Taken together, FERC shapes our physical energy system and influences the quantity and types of energy produced in our country and delivered around the world.

Like interest rates set by the Federal Reserve Board, energy prices impact costs across the economy and have material effects on total investment and consumption. Congress charged FERC and the Federal Reserve with promoting stable prices, which provide households and businesses with confidence to invest. *See* 12 U.S.C. § 225(a) ("The Board of Governors . . . shall . . . promote effectively the goals of maximum employment, stable prices, and moderate

long-term interest rates.”); *Pennsylvania Water & Power Co. v. FPC*, 343 U.S. 414, 418 (1952) (“A major purpose of the [FPA] is to protect power consumers against excessive prices.”). Both FERC and the Federal Reserve enjoy broad rate-setting discretion when they fulfill Congress’s mission. *See, e.g., Elec. Power Supply Ass’n.*, 577 U.S. at 295 (“The Commission, not this or any other court, regulates electricity rates.”).

Former public officials and scholars have explained why for-cause removal protections are vital for monetary policy. *See* Brief of *Amici Curiae* Former Treasury Secretaries, *et al.*, Case No. 25A312 (Sep. 25, 2025); Brief of *Amici Curiae* Experts on Law, Finance, and Economics, Case No. 25A312 (Sep. 25, 2025). In the next section, *amici* show that for-cause removal protections are critical for energy investors and consumers.

D. FERC Commissioners’ For-Cause Removal Protections Foster Private Investment and Safeguard Consumers’ Long-Term Interests

Based on our experiences, *amici* conclude that constraints on the hiring and firing of commissioners support “balanced” decisionmaking that is required by this Court. *See Hope*, 320 U.S. at 603. FERC’s bipartisan composition, reinforced by for-cause removal protections and staggered terms, engenders a collegial environment at FERC that is conducive to resolving the technical and esoteric matters within the Commission’s jurisdiction. Bipartisanship contributes to policy stability, which is critical for a ratemaking commission that supports the development of costly and long-lived infrastructure.

For-cause removal protections preserve commissioners' staggered terms, which contribute to FERC's continuity. Staggered terms maintain agency norms and values that promote FERC's tradition of bipartisan compromise. Political pressures and ideological differences among commissioners are mediated through deliberation, as commissioners communicate with, listen to, and influence one another when they consider proposed decisions. Bipartisan membership tends to moderate extreme positions and leads to more predictable and legally durable agency actions.

The bipartisan unanimity of most FERC orders attests to the agency's stability and the predictability of its orders. *Amici* contend that consensus is often possible because FERC's structure allows economic and engineering expertise, rather than partisan politics or each individual commissioner's policy preferences, to guide decisionmaking.

Party affiliation is an imperfect but adequate proxy for the myriad factors that shape a commissioner's views on energy industry issues. While a five-member commission cannot possibly reflect the full spectrum of interests and opinions, FERC's bipartisan composition ensures that FERC orders are informed by diverse perspectives and account for industry and interest group positions.

This mix of viewpoints prevents a particular industry segment or interest group from unduly influencing FERC's decisionmaking. Ultimately, FERC's bipartisan composition facilitates compromise. Consensus contributes to policy stability, which provides certainty to investors who deploy

capital in reliance on FERC-set rates. Regulated companies depend on predictable revenues and consistent policies to finance capital-intensive infrastructure. Consumers benefit from investment that provides reliable delivery of affordable energy.

Eliminating for-cause removal protections would risk compromising the “seasoned wisdom of the expert body” that Congress endowed with its ratemaking power. *Board of Trade*, 314 U.S. at 547. If FERC becomes a one-party body that resets every four or eight years, it would lose the organizational and policy continuity that fosters industry stability.

For-cause removal protections reduce the risk of politically motivated decisionmaking. *Amici* are concerned that a commission whose members can be fired at will would tend to rule in favor of politically influential industries or even specific companies allied with the President. At-will employment would threaten the decisionmaking processes that protect American consumers from unjust and unreasonable charges and unduly discriminatory service.

E. The President Already Influences FERC But May Not—and Should Not—Directly Control Ratemaking

FERC Commissioners’ for-cause-removal restrictions do not “impermissibly interfere with the President’s authority under Article II.” *Morrison v. Olson*, 487 U.S. 654, 660 (1988). FERC’s organic act provides two mechanisms for the President to set FERC’s agenda. First, the President designates a commissioner as Chair. 42 U.S.C. § 7171(b)(1). Second, the Secretary of Energy may propose rules that would constrain FERC’s discretion when it sets rates. 42 U.S.C. § 7173(a)-(b). These two avenues for

Presidential influence preserve the “chain of dependence” between the President and FERC. *Seila Law*, 591 U.S. at 224 (quoting 1 Annals of Cong. 499 (J. Madison)).

First, FERC’s Chair selects key personnel, sets staff priorities, and controls the Commission’s agenda. With these powers, the Chair can direct FERC resources to investigate issues of his choosing, propose to his colleagues that filed tariffs are unjust and unreasonable or unduly discriminatory, and offer remedies to deficient tariffs. The Chair can also choose not to act. For instance, FERC has no statutory deadline for responding to a complaint about a filed tariff. Even if a majority of commissioners support granting relief, the Chair could direct staff resources to other matters.

Second, the Secretary of Energy may “propose rules, regulations, and statements of policy of general applicability with respect to” FERC’s ratemaking authority. 42 U.S.C. § 7173(a)-(b). To become effective, the Secretary’s proposal must be approved by a majority of FERC Commissioners. *Id.* This statutory division between the Secretary of Energy and FERC presumes that the Secretary acts pursuant to the President’s instruction while Commissioners exercise discretion. Subjecting FERC to direct executive control would subvert Congress’s clearly expressed legislative design.

Despite an ability to do so, Secretaries of Energy or FERC Chairs rarely attempt to jam through a partisan agenda along party lines. Rather, FERC Chairs typically try to realize policy goals through FERC’s deliberative processes. On many issues, commissioners moderate the Chair’s ambitions through compromise. Occasionally, commissioners

overrule the Chair's invitation to open formal inquiries into particular rates or services. In rare cases, FERC makes significant policy changes along party lines. *Amici* observe that even in those unusual instances, the Commission's bipartisan composition typically moderates FERC's partisan actions.

Amici are concerned that eliminating for-cause removal protections will ultimately harm American consumers and regulated parties by destabilizing FERC. A one-party FERC would be more likely to aggressively pursue partisan agendas initiated by the Secretary or Chair. For instance, a President might order a one-party FERC to hamstring politically disfavored energy resources, but that policy might then be abruptly reversed under the next President.

Such policy volatility will erode investor confidence and increase the risks and costs of financing energy projects. In effect, invalidating Congress's model of bipartisan ratemaking commissions will tax the American public by raising energy prices, reducing investment in critical industries, and degrading the reliability of energy services.

CONCLUSION

Humphrey's Executor is integral to Congress's 140-year-old ratemaking model. This case is not an appropriate vehicle for upending economic regulation that is vital for our nation's security and well-being. Regardless of how this Court resolves the first question presented in this case, *amici* respectfully request that the Court safeguard ratemaking commissions' for-cause removal protections.

Respectfully submitted,

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