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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

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Roberts, C. J., delivered the opinion of the Court, in which Scalia, Kennedy, Thomas, and Alito, JJ., joined. Breyer, J., filed a dissenting opinion, in which Stevens, Ginsburg, and Sotomayor, JJ., joined, *post*, p. 514.

Michael A. Carvin argued the cause for petitioners. With him on the briefs were *Noel J. Francisco*, *Christian G. Vergonis*, *Kenneth W. Starr*, *Viet D. Dinh*, *Sam Kazman*, and *Hans Bader*.

Solicitor General Kagan argued the cause for the United States. With her on the brief were *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Curtis E. Gannon*, *Mark B. Stern*, *Mark R. Freeman*, *David M. Becker*, *Mark D. Cahn*, *Jacob H. Stillman*, and *John W. Avery*.

Jeffrey A. Lamken argued the cause for respondents. With him on the brief were *Robert K. Kry*, *James R. Doty*, *J. Gordon Seymour*, *Jacob N. Lesser*, and *Mary I. Peters*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Rights Union et al. by *Peter Ferrara;* for the Cato Institute et al. by *Gene C. Schaerr*, *Steffen N. Johnson*, *Linda T. Coberly*, and *Ilya Shapiro;* for the Center for Individual Rights by *Michael E. Rosman;* for the Coalition for Fair Lumber Imports by *Kannon K. Shanmugam;* for the Mountain States Legal Foundation by *J. Scott Detamore;* for Stephen Bainbridge et al. by *Donna M. Nagy;* for William P. Barr et al. by *Helgi C. Walker*, *Daniel J. Popeo*, and *Richard A. Samp;* and for Steven G. Calabresi et al. by *Christopher S. Yoo.*

Briefs of *amici curiae* urging affirmance were filed for the Center for Audit Quality by *Douglas R. Cox* and *Michael J. Scanlon;* for Harold H. Bruff et al. by *Caitlin J. Halligan*, *Gillian E. Metzger*, *pro se*, and *Henry Paul Monaghan*, *pro se;* for Former Chairmen of the Securities and Exchange Commission by *Richard H. Pildes*, *Christopher J. Meade*, and *Catherine M. A. Carroll;* and for the National Association of State Boards of Accountancy by *Noel L. Allen.*

Briefs of *amici curiae* were filed for the Claremont Institute Center for Constitutional Jurisprudence by *John C. Eastman;* and for the Council of Institutional Investors et al. by *Gregory S. Coleman*, *Christian J. Ward*, CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Our Constitution divided the "powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial." *INS* v. *Chadha*, 462 U. S. 919, 951 (1983). Article II vests "[t]he executive Power . . . in a President of the United States of America," who must "take Care that the Laws be faithfully executed." Art. II, § 1, cl. 1; *id.*, § 3. In light of "[t]he impossibility that one man should be able to perform all the great business of the State," the Constitution provides for executive officers to "assist the supreme Magistrate in discharging the duties of his trust." 30 Writings of George Washington 334 (J. Fitzpatrick ed. 1939).

Since 1789, the Constitution has been understood to empower the President to keep these officers accountable—by removing them from office, if necessary. See generally *Myers* v. *United States*, 272 U. S. 52 (1926). This Court has determined, however, that this authority is not without limit. In *Humphrey's Executor* v. *United States*, 295 U. S. 602 (1935), we 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. Likewise, in *United States* v. *Perkins*, 116 U. S. 483 (1886), and *Morrison* v. *Olson*, 487 U. S. 654 (1988), the Court sustained similar restrictions on the power of principal executive officers—themselves responsible to the President—to remove their own inferiors. The parties do not ask us to reexamine any of these precedents, and we do not do so.

We are asked, however, to consider a new situation not yet encountered by the Court. The question is whether these separate layers of protection may be combined. May the

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Ira M. Millstein, Harvey J. Goldschmid, Gregory W. Smith, Peter H. Mixon, and *Luke Bierman.*

President be restricted in his ability to remove a principal officer, who is in turn restricted in his ability to remove an inferior officer, even though that inferior officer determines the policy and enforces the laws of the United States?

We hold that such multilevel protection from removal is contrary to Article II's vesting of the executive power in the President. The President cannot "take Care that the Laws be faithfully executed" if he cannot oversee the faithfulness of the officers who execute them. Here the President cannot remove an officer who enjoys more than one level of good-cause protection, even if the President determines that the officer is neglecting his duties or discharging them improperly. That judgment is instead committed to another officer, who may or may not agree with the President's determination, and whom the President cannot remove simply because that officer disagrees with him. This contravenes the President's "constitutional obligation to ensure the faithful execution of the laws." *Id.*, at 693.

I

A

After a series of celebrated accounting debacles, Congress enacted the Sarbanes-Oxley Act of 2002, 116 Stat. 745. Among other measures, the Act introduced tighter regulation of the accounting industry under a new Public Company Accounting Oversight Board. The Board is composed of five members, appointed to staggered 5-year terms 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. Congress created the Board as a private "nonprofit corporation," and Board members and employees are not considered Government "officer[s] or employee[s]" for statutory purposes. 15 U. S. C. §§ 7211(a), (b). The Board can thus recruit its members and employees from the private sector by paying salaries far above the standard Government pay scale. See §§ 7211(f)(4), 7219.[1]

Unlike the self-regulatory organizations, however, the Board is a Government-created, Government-appointed entity, with expansive powers to govern an entire industry. Every accounting firm—both foreign and domestic—that participates in auditing public companies under the securities laws must register with the Board, pay it an annual fee, and comply with its rules and oversight. §§ 7211(a), 7212(a), (f), 7213, 7216(a)(1). The Board is charged with enforcing the Sarbanes-Oxley Act, the securities laws, the Commission's rules, its own rules, and professional accounting standards. §§ 7215(b)(1), (c)(4). To this end, the Board may regulate every detail of an accounting firm's practice, including hiring and professional development, promotion, supervision of audit work, the acceptance of new business and the continuation of old, internal inspection procedures, professional ethics rules, and "such other requirements as the Board may prescribe." § 7213(a)(2)(B).

The Board promulgates auditing and ethics standards, performs routine inspections of all accounting firms, demands documents and testimony, and initiates formal investigations and disciplinary proceedings. §§ 7213–7215 (2006 ed. and Supp. II). The willful violation of any Board rule is treated as a willful violation of the Securities Exchange Act of 1934, 48 Stat. 881, 15 U. S. C. § 78a *et seq.*—a federal crime punishable by up to 20 years' imprisonment or $25 million in fines ($5 million for a natural person). §§ 78ff(a), 7202(b)(1) (2006 ed.). And the Board itself can issue severe sanctions in its disciplinary proceedings, up to and including the permanent revocation of a firm's registration, a permanent ban on a person's associating with any registered firm, and money penalties of $15 million ($750,000 for a natural person). § 7215(c)(4). Despite the provisions specifying that

[1] The current salary for the Chairman is $673,000. Other Board members receive $547,000. Brief for Petitioners 3.

Board members are not Government officials for statutory purposes, 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 (1995), 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 (1976) (*per curiam*) (quoting Art. II, § 2, cl. 2); cf. Brief for Petitioners 9, n. 1; Brief for United States 29, n. 8.

The Act places the Board under the SEC's oversight, particularly with respect to the issuance of rules or the imposition of sanctions (both of which are subject to Commission approval and alteration). §§ 7217(b)–(c). But the individual members of the Board—like the officers and directors of the self-regulatory organizations—are substantially insulated from the Commission's control. The Commission cannot remove Board members at will, but only "for good cause shown," "in accordance with" certain procedures. § 7211(e)(6).

Those procedures require a Commission finding, "on the record" and "after notice and opportunity for a hearing," that the Board member

> "(A) has willfully violated any provision of th[e] Act, the rules of the Board, or the securities laws;
>
> "(B) has willfully abused the authority of that member; or
>
> "(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof." § 7217(d)(3).

Removal of a Board member requires a formal Commission order and is subject to judicial review. See 5 U. S. C. §§ 554(a), 556(a), 557(a), (c)(B); 15 U. S. C. § 78y(a)(1). Similar procedures govern the Commission's removal of officers and directors of the private self-regulatory organizations. See § 78s(h)(4). The parties agree that the Commissioners cannot themselves be removed by the President except under the *Humphrey's Executor* standard of "inefficiency, neglect of duty, or malfeasance in office," 295 U. S., at 620 (internal quotation marks omitted); see Brief for Petitioners 31; Brief for United States 43; Brief for Respondent Public Company Accounting Oversight Board 31 (hereinafter PCAOB Brief); Tr. of Oral Arg. 47, and we decide the case with that understanding.

B

Beckstead and Watts, LLP, is a Nevada accounting firm registered with the Board. The Board inspected the firm, released a report critical of its auditing procedures, and began a formal investigation. Beckstead and Watts and the Free Enterprise Fund, a nonprofit organization of which the firm is a member, then sued the Board and its members, seeking (among other things) a declaratory judgment that the Board is unconstitutional and an injunction preventing the Board from exercising its powers. App. 71.

Before the District Court, petitioners argued that the Sarbanes-Oxley Act contravened the separation of powers by conferring wide-ranging executive power on Board members without subjecting them to Presidential control. *Id.*, at 67–68. Petitioners also challenged the Act under the Appointments Clause, which requires "Officers of the United States" to be appointed by the President with the Senate's advice and consent. Art. II, § 2, cl. 2. The Clause provides an exception for "inferior Officers," whose appointment Congress may choose to vest "in the President alone, in the Courts of Law, or in the Heads of Departments." *Ibid.* Because the Board is appointed by the SEC, petitioners argued that (1) Board members are not "inferior Officers" who may be appointed by "Heads of Departments"; (2) even if they are, the Commission is not a "Departmen[t]"; and (3) even if it is, the several Commissioners (as opposed to the Chairman) are not its "Hea[d]." See App. 68–70. The United States intervened to defend the Act's constitutionality. Both sides moved for summary judgment; the District Court determined that it had jurisdiction and granted summary judgment to respondents. App. to Pet. for Cert. 110a–117a.

A divided Court of Appeals affirmed. 537 F. 3d 667 (CADC 2008). It agreed that the District Court had jurisdiction over petitioners' claims. *Id.*, at 671. On the merits, the Court of Appeals recognized that the removal issue was "a question of first impression," as neither that court nor this one "ha[d] considered a situation where a restriction on removal passes through two levels of control." *Id.*, at 679. It ruled that the dual restraints on Board members' removal are permissible because they do not "render the President unable to perform his constitutional duties." *Id.*, at 683. The majority reasoned that although the President "does not directly select or supervise the Board's members," *id.*, at 681, the Board is subject to the comprehensive control of the Commission, and thus the President's influence over the Commission implies a constitutionally sufficient influence over the Board as well. *Id.*, at 682–683. The majority also held that Board members are inferior officers subject to the Commission's direction and supervision, *id.*, at 672–676, and that their appointment is otherwise consistent with the Appointments Clause, *id.*, at 676–678.

Judge Kavanaugh dissented. He agreed that the case was one of first impression, *id.*, at 698, but argued that "the double for-cause removal provisions in the [Act] . . . combine to eliminate any meaningful Presidential control over the [Board]," *id.*, at 697. Judge Kavanaugh also argued that Board members are not effectively supervised by the Commission and thus cannot be inferior officers under the Appointments Clause. *Id.*, at 709–712.

We granted certiorari. 556 U. S. 1234 (2009).

II

We first consider whether the District Court had jurisdiction. We agree with both courts below that the statutes providing for judicial review of Commission action did not prevent the District Court from considering petitioners' claims.

The Sarbanes-Oxley Act empowers the Commission to review any Board rule or sanction. See 15 U. S. C. §§ 7217(b)(2)–(4), (c)(2). Once the Commission has acted, aggrieved parties may challenge "a final order of the Commission" or "a rule of the Commission" in a court of appeals under § 78y, and "[n]o objection . . . may be considered by the court unless it was urged before the Commission or there was reasonable ground for failure to do so." §§ 78y(a)(1), (b)(1), (c)(1).

The Government reads § 78y as an exclusive route to review. But the text does not expressly limit the jurisdiction that other statutes confer on district courts. See, *e. g.*, 28 U. S. C. §§ 1331, 2201. Nor does it do so implicitly. Provisions for agency review do not restrict judicial review unless the "statutory scheme" displays a "fairly discernible" intent to limit jurisdiction, and the claims at issue "are of the type Congress intended to be reviewed within th[e] statutory structure." *Thunder Basin Coal Co.* v. *Reich,* 510 U. S. 200, 207, 212 (1994) (internal quotation marks omitted). Generally, when Congress creates procedures "designed to permit agency expertise to be brought to bear on particular problems," those procedures "are to be exclusive." *Whitney Nat. Bank in Jefferson Parish* v. *Bank of New Orleans & Trust Co.,* 379 U. S. 411, 420 (1965). But we presume 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, supra,* at 212–213 (internal quotation marks omitted). These considerations point against any limitation on review here.

We do not see how petitioners could meaningfully pursue their constitutional claims under the Government's theory. Section 78y provides only for judicial review of *Commission* action, and not every Board action is encapsulated in a final Commission order or rule.

The Government suggests that petitioners could first have sought Commission review of the Board's "auditing standards, registration requirements, or other rules." Brief for United States 16. But petitioners object to the Board's existence, not to any of its auditing standards. Petitioners' general challenge to the Board is "collateral" to any Commission orders or rules from which review might be sought. Cf. *McNary* v. *Haitian Refugee Center, Inc.*, 498 U. S. 479, 491–492 (1991). Requiring petitioners to select and challenge a Board rule at random is an odd procedure for Congress to choose, especially because only *new* rules, and not existing ones, are subject to challenge. See 15 U. S. C. §§ 78s(b)(2), 78y(a)(1), 7217(b)(4).

Alternatively, the Government advises petitioners to raise their claims by appealing a Board sanction. Brief for United States 16–17. But the investigation of Beckstead and Watts produced no sanction, see *id.*, at 7, n. 5; Reply Brief for Petitioners 29, n. 11, and an uncomplimentary inspection report is not subject to judicial review, see § 7214(h)(2). So the Government proposes that Beckstead and Watts *incur* a sanction (such as a sizable fine) by ignoring Board requests for documents and testimony. Brief for United States 17. If the Commission then affirms, the firm will win access to a court of appeals—and severe punishment should its challenge fail. We normally do not require plaintiffs to "bet the farm . . . by taking the violative action" before "testing the validity of the law," *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U. S. 118, 129 (2007); accord, *Ex parte Young*, 209 U. S. 123 (1908), and we do not consider this a "meaningful" avenue of relief, *Thunder Basin,* 510 U. S., at 212.

Petitioners' constitutional claims are also outside the Commission's competence and expertise. In *Thunder Basin,* the petitioner's primary claims were statutory; "at root . . . [they] ar[o]se under the Mine Act and f[e]ll squarely within the [agency's] expertise," given that the agency had "extensive experience" on the issue and had "recently addressed the precise . . . claims presented." *Id.,* at 214–215. Likewise, in *United States* v. *Ruzicka,* 329 U. S. 287 (1946), on which the Government relies, we reserved for the agency fact-bound inquiries that, even if "formulated in constitutional terms," rested ultimately on "factors that call for [an] understanding of the milk industry," to which the Court made no pretensions. *Id.,* at 294. No similar expertise is required here, and the statutory questions involved do not require "technical considerations of [agency] policy." *Johnson* v. *Robison,* 415 U. S. 361, 373 (1974). They are instead standard questions of administrative law, which the courts are at no disadvantage in answering.

We therefore conclude that § 78y did not strip the District Court of jurisdiction over these claims, which are properly presented for our review.[2]

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[2] The Government asserts that "petitioners have not pointed to any case in which this Court has recognized an implied private right of action directly under the Constitution to challenge governmental action under the Appointments Clause or separation-of-powers principles." Brief for United States 22. The Government does not appear to dispute such a right to relief as a general matter, without regard to the particular constitutional provisions at issue here. See, *e. g., Correctional Services Corp.* v. *Malesko,* 534 U. S. 61, 74 (2001) (equitable relief "has long been recognized as the proper means for preventing entities from acting unconstitutionally"); *Bell* v. *Hood,* 327 U. S. 678, 684 (1946) ("[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution"); see also *Ex parte Young,* 209 U. S. 123, 149, 165, 167 (1908). If the Government's point is that an Appointments Clause or separation-of-powers claim should

III

We hold that the dual for-cause limitations on the removal of Board members contravene the Constitution's separation of powers.

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. As Madison stated on the floor of the First Congress, "if any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws." 1 Annals of Cong. 463 (1789).

The removal of executive officers was discussed extensively in Congress when the first executive departments were created. The view that "prevailed, as most consonant to the text of the Constitution" and "to the requisite responsibility and harmony in the Executive Department," was that the executive power included a power to oversee executive officers through removal; because that traditional executive power was not "expressly taken away, it remained with the President." Letter from James Madison to Thomas Jefferson (June 30, 1789), 16 Documentary History of the First Federal Congress 893 (2004). "This Decision of 1789 provides contemporaneous and weighty evidence of the Constitution's meaning since many of the Members of the First Congress had taken part in framing that instrument." *Bowsher* v. *Synar,* 478 U. S. 714, 723–724 (1986) (internal quotation marks omitted). And it soon became the "settled and well understood construction of the Constitution." *Ex parte Hennen,* 13 Pet. 230, 259 (1839).

The landmark case of *Myers* v. *United States* reaffirmed the principle that Article II confers on the President "the general administrative control of those executing the laws."

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be treated differently than every other constitutional claim, it offers no reason and cites no authority why that might be so.

272 U. S., at 164. It is *his* responsibility to take care that the laws be faithfully executed. The buck stops with the President, in Harry Truman's famous phrase. As we explained in *Myers,* the President therefore must have some "power of removing those for whom he can not continue to be responsible." *Id.,* at 117.

Nearly a decade later in *Humphrey's Executor,* this Court held that *Myers* did not prevent Congress from conferring good-cause tenure on the principal officers of certain independent agencies. That case concerned the members of the Federal Trade Commission, who held 7-year terms and could not be removed by the President except for " 'inefficiency, neglect of duty, or malfeasance in office.' " 295 U. S., at 620 (quoting 15 U. S. C. § 41). The Court distinguished *Myers* on the ground that *Myers* concerned "an officer [who] is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aid he is." 295 U. S., at 627. By contrast, the Court characterized the FTC as "quasi-legislative and quasi-judicial" rather than "purely executive," and held that Congress could require it "to act . . . independently of executive control." *Id.,* at 627–629. Because "one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will," the Court held that Congress had power to "fix the period during which [the Commissioners] shall continue in office, and to forbid their removal except for cause in the meantime." *Id.,* at 629.

Humphrey's Executor did not address the removal of inferior officers, whose appointment Congress may vest in heads of departments. If Congress does so, it is ordinarily the department head, rather than the President, who enjoys the power of removal. See *Myers, supra,* at 119, 127; *Hennen, supra,* at 259–260. This Court has upheld for-cause limitations on that power as well.

In *Perkins,* a naval cadet-engineer was honorably discharged from the Navy because his services were no longer required. 116 U. S. 483. He brought a claim for his salary under statutes barring his peacetime discharge except by a court-martial or by the Secretary of the Navy "for misconduct." Rev. Stat. §§ 1229, 1525. This Court adopted verbatim the reasoning of the Court of Claims, which had held that when Congress " 'vests the appointment of inferior officers in the heads of Departments[,] it may limit and restrict the power of removal as it deems best for the public interest.' " 116 U. S., at 485. Because Perkins had not been " 'dismissed for misconduct . . . [or upon] the sentence of a court-martial,' " the Court agreed that he was " 'still in office and . . . entitled to [his] pay.' " *Ibid.*[3]

We again considered the status of inferior officers in *Morrison.* That case concerned the Ethics in Government Act, which provided for an independent counsel to investigate allegations of crime by high executive officers. The counsel was appointed by a special court, wielded the full powers of a prosecutor, and was removable by the Attorney General only " 'for good cause.' " 487 U. S., at 663 (quoting 28 U. S. C. § 596(a)(1)). We recognized that the independent counsel was undoubtedly an executive officer, rather than " 'quasi-legislative' " or " 'quasi-judicial,' " but we stated as "our present considered view" that Congress had power to impose

[3] When *Perkins* was decided in 1886, the Secretary of the Navy was a principal officer and the head of a department, see Rev. Stat. § 415, and the Tenure of Office Act purported to require Senate consent for his removal. Ch. 154, 14 Stat. 430, Rev. Stat. § 1767. This requirement was widely regarded as unconstitutional and void (as it is universally regarded today), and it was repealed the next year. See Act of Mar. 3, 1887, ch. 353, 24 Stat. 500; *Myers* v. *United States,* 272 U. S. 52, 167–168 (1926); see also *Bowsher* v. *Synar,* 478 U. S. 714, 726 (1986). *Perkins* cannot be read to endorse any such restriction, much less in combination with *further* restrictions on the removal of inferiors. The Court of Claims opinion adopted verbatim by this Court addressed only the authority of the Secretary of the Navy to remove inferior officers.

good-cause restrictions on her removal. 487 U. S., at 689–691. The Court noted that the statute "g[a]ve the Attorney General," an officer directly responsible to the President and "through [whom]" the President could act, "several means of supervising or controlling" the independent counsel—"[m]ost importantly . . . the power to remove the counsel for good cause." *Id.*, at 695–696 (internal quotation marks omitted). Under those circumstances, the Court sustained the statute. *Morrison* did not, however, address the consequences of more than one level of good-cause tenure—leaving the issue, as both the court and dissent below recognized, "a question of first impression" in this Court. 537 F. 3d, at 679; see *id.*, at 698 (dissenting opinion).

B

As explained, we have previously upheld limited restrictions on the President's removal power. In those cases, however, only one level of protected tenure separated the President from an officer exercising executive power. It was the President—or a subordinate he could remove at will—who decided whether the officer's conduct merited removal under the good-cause standard.

The Act before us does something quite different. It 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 instead in other tenured officers—the Commissioners—none of whom is subject to the President's direct control. The result is a Board that is not accountable to the President, and a President who is not responsible for the Board.

The added layer of tenure protection makes a difference. Without a layer of insulation between the Commission and the Board, the Commission could remove a Board member at any time, and therefore would be fully responsible for what the Board does. The President could then hold the Commission to account for its supervision of the Board, to the same extent that he may hold the Commission to account for everything else it does.

A second level of tenure protection changes the nature of the President's review. Now the Commission cannot remove a Board member at will. The President therefore cannot hold the Commission fully accountable for the Board's conduct, to the same extent that he may hold the Commission accountable for everything else that it does. The Commissioners are not responsible for the Board's actions. They are only responsible for their own determination of whether the Act's rigorous good-cause standard is met. And even if the President disagrees with their determination, he is powerless to intervene—unless that determination is so unreasonable as to constitute "inefficiency, neglect of duty, or malfeasance in office." *Humphrey's Executor*, 295 U. S., at 620 (internal quotation marks omitted).

This novel structure does not merely add to the Board's independence, but transforms it. Neither the President, nor anyone directly responsible to him, nor even an officer whose conduct he may review only for good cause, has full control over the Board. The President is stripped of the power our precedents have preserved, and his ability to execute the laws—by holding his subordinates accountable for their conduct—is impaired.

That arrangement is contrary to 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 is not the one who decides whether Board members are abusing their offices or neglecting their duties. He can neither ensure that the laws are faithfully executed, nor be held responsible for a Board member's breach of faith. This violates the basic principle that the President "cannot delegate ultimate responsibility or the active obligation to supervise that goes with it," because Article II "makes a single President responsible for the actions of the Executive Branch." *Clinton* v. *Jones*, 520 U. S. 681, 712–713 (1997) (Breyer, J., concurring in judgment).[4]

Indeed, if allowed to stand, this dispersion of responsibility could be multiplied. If Congress can shelter the bureaucracy behind two layers of good-cause tenure, why not a third? At oral argument, the Government was unwilling to concede that even *five* layers between the President and the Board would be too many. Tr. of Oral Arg. 47–48. The officers of such an agency—safely encased within a Matryoshka doll of tenure protections—would be immune from Presidential oversight, even as they exercised power in the people's name.

Perhaps an individual President might find advantages in tying his own hands. But the separation of powers does not depend on the views of individual Presidents, see *Freytag* v. *Commissioner*, 501 U. S. 868, 879–880 (1991), nor on whether "the encroached-upon branch approves the encroachment," *New York* v. *United States*, 505 U. S. 144, 182 (1992). The President can always choose to restrain himself in his dealings with subordinates. He cannot, however, choose to bind his successors by diminishing their powers, nor can he escape responsibility for his choices by pretending that they are not his own.

The diffusion of power carries with it a diffusion of accountability. The people do not vote for the "Officers of the

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[4] Contrary to the dissent's suggestion, *post*, at 525–527 (opinion of Breyer, J.), the second layer of tenure protection does compromise the President's ability to remove a Board member the Commission wants to retain. Without a second layer of protection, the Commission has no excuse for retaining an officer who is not faithfully executing the law. With the second layer in place, the Commission can shield its decision from Presidential review by finding that good cause is absent—a finding that, given the Commission's own protected tenure, the President cannot easily overturn. The dissent describes this conflict merely as one of four possible "scenarios," see *post*, at 525–526, but it is the central issue in this case: The second layer matters precisely when the President finds it necessary to have a subordinate officer removed, and a statute prevents him from doing so.

United States." Art. II, § 2, cl. 2. They instead look to the President to guide the "assistants or deputies . . . subject to his superintendence." The Federalist No. 72, p. 487 (J. Cooke ed. 1961) (A. Hamilton). Without a clear and effective chain of command, the public cannot "determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures ought really to fall." *Id.*, No. 70, at 476 (same). That is why the Framers sought to ensure that "those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community." 1 Annals of Cong., at 499 (J. Madison).

By granting the Board executive power without the Executive's oversight, this Act subverts the President's ability to ensure that the laws are faithfully executed—as well as the public's ability to pass judgment on his efforts. The Act's restrictions are incompatible with the Constitution's separation of powers.

C

Respondents and the dissent resist this conclusion, portraying the Board as "the kind of practical accommodation between the Legislature and the Executive that should be permitted in a 'workable government.'" *Metropolitan Washington Airports Authority* v. *Citizens for Abatement of Aircraft Noise, Inc.*, 501 U. S. 252, 276 (1991) (*MWAA*) (quoting *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 635 (1952) (Jackson, J., concurring)); see, *e. g., post*, at 519 (opinion of Breyer, J.). According to the dissent, Congress may impose multiple levels of for-cause tenure between the President and his subordinates when it "rests agency independence upon the need for technical expertise." *Post*, at 531. The Board's mission is said to demand both "technical competence" and "apolitical expertise," and its powers may only be exercised by "technical experts." *Ibid.* (internal quotation marks omitted). In this respect the statute creating the Board is, we are told, simply one example of the "vast numbers of statutes governing vast numbers of subjects, concerned with vast numbers of different problems, [that] provide for, or foresee, their execution or administration through the work of administrators organized within many different kinds of administrative structures, exercising different kinds of administrative authority, to achieve their legislatively mandated objectives." *Post,* at 521.

No one doubts Congress's power to create a vast and varied federal bureaucracy. But where, in all this, is the role for oversight by an elected President? The Constitution requires that a President chosen by the entire Nation oversee the execution of the laws. And 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,' " for " '[c]onvenience and efficiency are not the primary objectives—or the hallmarks—of democratic government.' " *Bowsher,* 478 U. S., at 736 (quoting *Chadha,* 462 U. S., at 944).

One can have a government that functions without being ruled by functionaries, and a government that benefits from expertise without being ruled by experts. Our Constitution was adopted to enable the people to govern themselves, through their elected leaders. The growth of the Executive Branch, which now wields vast power and touches almost every aspect of daily life, heightens the concern that it may slip from the Executive's control, and thus from that of the people. This concern is largely absent from the dissent's paean to the administrative state.

For example, the dissent dismisses the importance of removal as a tool of supervision, concluding that the President's "power to get something done" more often depends on "who controls the agency's budget requests and funding, the relationships between one agency or department and another, . . . purely political factors (including Congress' ability to assert influence)," and indeed whether particular *unelected* officials support or "resist" the President's policies. *Post,* at 524, 526 (emphasis deleted). The Framers did not rest our liberties on such bureaucratic minutiae. As we said in *Bowsher, supra,* at 730, "[t]he separated powers of our Government cannot be permitted to turn on judicial assessment of whether an officer exercising executive power is on good terms with Congress."

In fact, the multilevel protection that the dissent endorses "provides a blueprint for extensive expansion of the legislative power." *MWAA, supra,* at 277. In a system of checks and balances, "[p]ower abhors a vacuum," and one branch's handicap is another's strength. 537 F. 3d, at 695, n. 4 (Kavanaugh, J., dissenting) (internal quotation marks omitted). "Even when a branch does not arrogate power to itself," therefore, it must not "impair another in the performance of its constitutional duties." *Loving* v. *United States,* 517 U. S. 748, 757 (1996).[5] Congress has plenary control over the salary, duties, and even existence of executive offices. Only Presidential oversight can counter its influence. That is why the Constitution vests certain powers in the President that "the Legislature has no right to diminish or modify." 1 Annals of Cong., at 463 (J. Madison).[6]

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[5] The dissent quotes *Buckley* v. *Valeo,* 424 U. S. 1, 138 (1976) (*per curiam*), for the proposition that Congress has "broad authority to 'create' governmental '"offices"' and to structure those offices 'as it chooses.'" *Post,* at 515. The *Buckley* Court put "'offices'" in quotes because it was actually describing legislative positions that are not really offices at all (at least not under Article II). That is why the very next sentence of *Buckley* said, "*But* Congress' power . . . is inevitably bounded by the express language" of the Constitution. 424 U. S., at 138–139 (emphasis added).

[6] The dissent attributes to Madison a belief that some executive officers, such as the Comptroller, could be made independent of the President. See *post,* at 530. But Madison's actual proposal, consistent with his view of the Constitution, was that the Comptroller hold office for a term of "years, unless sooner removed by the President"; he would thus be "dependent upon the President, because he can be removed by him," and also "dependent upon the Senate, because they must consent to his [reappointment] for every term of years." 1 Annals of Cong. 612 (1789).

The Framers created a structure in which "[a] dependence on the people" would be the "primary controul on the government." The Federalist No. 51, at 349 (J. Madison). That dependence is maintained, not just by "parchment barriers," *id.*, No. 48, at 333 (same), but by letting "[a]mbition . . . counteract ambition," giving each branch "the necessary constitutional means, and personal motives, to resist encroachments of the others," *id.*, No. 51, at 349. A key "constitutional means" vested in the President—perhaps *the* key means—was "the power of appointing, overseeing, and controlling those who execute the laws." 1 Annals of Cong., at 463. And 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.

Calls to abandon those protections in light of "the era's perceived necessity," *New York*, 505 U. S., at 187, are not unusual. Nor is the argument from bureaucratic expertise limited only to the field of accounting. The failures of accounting regulation may be a "pressing national problem," but "a judiciary that licensed extraconstitutional government with each issue of comparable gravity would, in the long run, be far worse." *Id.*, at 187–188. Neither respondents nor the dissent explains why the Board's task, unlike so many others, requires *more* than one layer of insulation from the President—or, for that matter, why only two. The point is not to take issue with for-cause limitations in general; we do not do that. The question here is far more modest. We deal with the unusual situation, never before addressed by the Court, of two layers of for-cause tenure. And though it may be criticized as "elementary arithmetical logic," *post*, at 535, two layers are not the same as one.

The President has been given the power to oversee executive officers; he is not limited, as in Harry Truman's lament, to "persuad[ing]" his unelected subordinates "to do what they ought to do without persuasion." *Post*, at 524 (internal quotation marks omitted). In its pursuit of a "workable government," Congress cannot reduce the Chief Magistrate to a cajoler-in-chief.

D

The United States concedes that some constraints on the removal of inferior executive officers might violate the Constitution. See Brief for United States 47. It contends, however, that the removal restrictions at issue here do not.

To begin with, the Government argues that the Commission's removal power over the Board is "broad," and could be construed as broader still, if necessary to avoid invalidation. See, *e. g., id.*, at 51, and n. 19; cf. PCAOB Brief 22–23. But the Government does not contend that simple disagreement with the Board's policies or priorities could constitute "good cause" for its removal. See Tr. of Oral Arg. 41–43, 45–46. Nor do our precedents suggest as much. *Humphrey's Executor*, for example, rejected a removal premised on a lack of agreement " 'on either the policies or the administering of the Federal Trade Commission,' " because the FTC was designed to be " 'independent in character,' " "free from 'political domination or control,' " and not " 'subject to anybody in the government' " or " 'to the orders of the President.' " 295 U. S., at 619, 625. Accord, *Morrison*, 487 U. S., at 693 (noting that "the congressional determination to limit the removal power of the Attorney General was essential . . . to establish the necessary independence of the office"); *Wiener* v. *United States*, 357 U. S. 349, 356 (1958) (describing for-cause removal as "involving the rectitude" of an officer). And here there is judicial review of any effort to remove Board members, see 15 U. S. C. § 78y(a)(1), so the Commission will not have the final word on the propriety of its own removal orders. The removal restrictions set forth in the statute mean what they say.

Indeed, this case presents an even more serious threat to executive control than an "ordinary" dual for-cause standard.

Congress enacted an unusually high standard that must be met before Board members may be removed. A Board member cannot be removed except for willful violations of the Act, Board rules, or the securities laws; willful abuse of authority; or unreasonable failure to enforce compliance—as determined in a formal Commission order, rendered on the record and after notice and an opportunity for a hearing. § 7217(d)(3); see § 78y(a). The Act does not even give the Commission power to fire Board members for violations of *other* laws that do not relate to the Act, the securities laws, or the Board's authority. The President might have less than full confidence in, say, a Board member who cheats on his taxes; but that discovery is not listed among the grounds for removal under § 7217(d)(3).[7]

The rigorous standard that must be met before a Board member may be removed was drawn from statutes concerning private organizations like the New York Stock Exchange. Cf. §§ 78s(h)(4), 7217(d)(3). While we need not decide the question here, a removal standard appropriate for limiting Government control over private bodies may be inappropriate for officers wielding the executive power of the United States.

Alternatively, respondents portray the Act's limitations on removal as irrelevant, because—as the Court of Appeals held—the Commission wields "at-will removal power over Board *functions* if not Board members." 537 F. 3d, at 683 (emphasis added); accord, Brief for United States 27–28;

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[7] The Government implausibly argues that § 7217(d)(3) "does not expressly make its three specified grounds of removal exclusive," and that "the Act could be construed to permit other grounds." Brief for United States 51, n. 19. But having provided in § 7211(e)(6) that Board members are to be removed "in accordance with [§ 7217(d)(3)], for good cause shown," Congress would not have specified the necessary Commission finding in § 7217(d)(3)—including formal procedures and detailed conditions—if Board members could also be removed without any finding at all. Cf. PCAOB Brief 6 ("Cause exists where" the § 7217(d)(3) conditions are met).

PCAOB Brief 48. The Commission's general "oversight and enforcement authority over the Board," § 7217(a), is said to "blun[t] the constitutional impact of for-cause removal," 537 F. 3d, at 683, and to leave the President no worse off than "if Congress had lodged the Board's functions in the SEC's own staff," PCAOB Brief 15.

Broad power over Board functions is not equivalent to the power to remove Board members. The Commission may, for example, approve the Board's budget, § 7219(b), issue binding regulations, §§ 7202(a), 7217(b)(5), relieve the Board of authority, § 7217(d)(1), amend Board sanctions, § 7217(c), or enforce Board rules on its own, §§ 7202(b)(1), (c). But altering the budget or powers of an agency as a whole is a problematic way to control an inferior officer. The Commission cannot wield a free hand to supervise individual members if it must destroy the Board in order to fix it.

Even if Commission power over Board activities could substitute for authority over its members, we would still reject respondents' premise that the Commission's power in this regard is plenary. As described above, the Board is empowered to take significant enforcement actions, and does so largely independently of the Commission. See *supra,* at 485–486. Its powers are, of course, subject to some latent Commission control. See *supra,* at 486–487. But the Act nowhere gives the Commission effective power to start, stop, or alter individual Board investigations, executive activities typically carried out by officials within the Executive Branch.

The Government and the dissent suggest that the Commission could govern and direct the Board's daily exercise of prosecutorial discretion by promulgating new SEC rules, or by amending those of the Board. Brief for United States 27; *post,* at 528. Enacting general rules through the required notice and comment procedures is obviously a poor means of micromanaging the Board's affairs. See §§ 78s(c), 7215(b)(1), 7217(b)(5); cf. 5 U. S. C. § 553, 15 U. S. C. § 7202(a), PCAOB

Brief 24, n. 6.[8] So the Government offers another proposal, that the Commission require the Board by rule to "secure SEC approval for any actions that it now may take itself." Brief for United States 27. That would surely constitute one of the "limitations upon the activities, functions, and operations of the Board" that the Act forbids, at least without Commission findings equivalent to those required to fire the Board instead. § 7217(d)(2). The Board thus has significant independence in determining its priorities and intervening in the affairs of regulated firms (and the lives of their associated persons) without Commission preapproval or direction.

Finally, respondents suggest that our conclusion is contradicted by the past practice of Congress. But the Sarbanes-Oxley Act is highly unusual in committing substantial executive authority to officers protected by two layers of for-cause removal—including at one level a sharply circumscribed definition of what constitutes "good cause," and rigorous procedures that must be followed prior to removal.

The parties have identified only a handful of isolated positions in which inferior officers might be protected by two levels of good-cause tenure. See, *e. g.*, PCAOB Brief 43. As Judge Kavanaugh noted in dissent below:

> "Perhaps the most telling indication of the severe constitutional problem with the PCAOB is the lack of historical precedent for this entity. Neither the majority opinion nor the PCAOB nor the United States as intervenor has located any historical analogues for this novel structure. They have not identified any independent agency other than the PCAOB that is appointed by

[8] Contrary to the dissent's assertions, see *post*, at 528–529, the Commission's powers to conduct its own investigations (with its own resources), to remove particular provisions of law from the Board's bailiwick, or to require the Board to perform functions "other" than inspections and investigations, § 7211(c)(5), are no more useful in directing individual enforcement actions.

and removable only for cause by another independent agency." 537 F. 3d, at 699.

The dissent here suggests that other such positions might exist, and complains that we do not resolve their status in this opinion. *Post,* at 536–544. The dissent itself, however, stresses the very size and variety of the Federal Government, see *post,* at 520–521, and those features discourage general pronouncements on matters neither briefed nor argued here. In any event, the dissent fails to support its premonitions of doom; none of the positions it identifies are similarly situated to the Board. See *post,* at 540–543.

For example, many civil servants within independent agencies would not qualify as "Officers of the United States," who "exercis[e] significant authority pursuant to the laws of the United States," *Buckley,* 424 U. S., at 126.[9] The parties here concede that Board members are executive "Officers," as that term is used in the Constitution. See *supra,* at 485–486; see also Art. II, § 2, cl. 2. We do not decide the status of other Government employees, nor do we decide whether "lesser functionaries subordinate to officers of the United States" must be subject to the same sort of control as those who exercise "significant authority pursuant to the laws." *Buckley, supra,* at 126, and n. 162.

Nor do the employees referenced by the dissent enjoy the same significant and unusual protections from Presidential oversight as members of the Board. Senior or policymaking positions in government may be excepted from the competitive service to ensure Presidential control, see 5 U. S. C. §§ 2302(a)(2)(B), 3302, 7511(b)(2), and members of the Senior Executive Service may be reassigned or reviewed by agency heads (and entire agencies may be excluded from that Serv-

[9] One "may be an agent or employé working for the government and paid by it, as nine-tenths of the persons rendering service to the government undoubtedly are, without thereby becoming its office[r]." *United States* v. *Germaine,* 99 U. S. 508, 509 (1879). The applicable proportion has of course increased dramatically since 1879.

ice by the President), see, *e. g.*, §§3132(c), 3395(a), 4312(d), 4314(b)(3), (c)(3); cf. §2302(a)(2)(B)(ii). While the full extent of that authority is not before us, any such authority is of course wholly absent with respect to the Board. Nothing in our opinion, therefore, should be read to cast doubt on the use of what is colloquially known as the civil service system within independent agencies.[10]

Finally, the dissent wanders far afield when it suggests that today's opinion might increase the President's authority to remove military officers. Without expressing any view whatever on the scope of that authority, it is enough to note that we see little analogy between our Nation's armed services and the Public Company Accounting Oversight Board. Military officers are broadly subject to Presidential control through the chain of command and through the President's powers as Commander in Chief. Art. II, §2, cl. 1; see, *e. g.*, 10 U. S. C. §§162, 164(g). The President and his subordinates may also convene boards of inquiry or courts-martial to hear claims of misconduct or poor performance by those officers. See, *e. g.*, §§822(a)(1), 823(a)(1), 892(3), 933–934, 1181–1185. Here, by contrast, the President has no authority to initiate a Board member's removal for cause.

There is no reason for us to address whether these positions identified by the dissent, or any others not at issue in this case, are so structured as to infringe the President's

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[10] For similar reasons, our holding also does not address that subset of independent agency employees who serve as administrative law judges. See, *e. g.*, 5 U. S. C. §§556(c), 3105. Whether administrative law judges are necessarily "Officers of the United States" is disputed. See, *e. g.*, *Landry* v. *FDIC*, 204 F. 3d 1125 (CADC 2000). And unlike members of the Board, many administrative law judges of course perform adjudicative rather than enforcement or policymaking functions, see §§554(d), 3105, or possess purely recommendatory powers. The Government below refused to identify either "civil service tenure-protected employees in independent agencies" or administrative law judges as "precedent for the PCAOB." 537 F. 3d 667, 699, n. 8 (CADC 2008) (Kavanaugh, J., dissenting); see Tr. of Oral Arg. in No. 07–5127 (CADC), pp. 32, 37–38, 42.

constitutional authority. Nor is there any substance to the dissent's concern that the "work of all these various officials" will "be put on hold." *Post,* at 544. As the judgment in this case demonstrates, restricting certain officers to a single level of insulation from the President affects the conditions under which those officers might someday be removed, and would have no effect, absent a congressional determination to the contrary, on the validity of any officer's continuance in office. The only issue in this case is whether Congress may deprive the President of adequate control over the Board, which is the regulator of first resort and the primary law enforcement authority for a vital sector of our economy. We hold that it cannot.

IV

Petitioners' complaint argued that the Board's "freedom from Presidential oversight and control" rendered it "and all power and authority exercised by it" in violation of the Constitution. App. 46. We reject such a broad holding. Instead, we agree with the Government that the unconstitutional tenure provisions are severable from the remainder of the statute.

"Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem," severing any "problematic portions while leaving the remainder intact." *Ayotte* v. *Planned Parenthood of Northern New Eng.,* 546 U. S. 320, 328–329 (2006). 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 (1932), the "normal rule" is "that partial, rather than facial, invalidation is the required course," *Brockett* v. *Spokane Arcades, Inc.,* 472 U. S. 491, 504 (1985). Putting to one side petitioners' Appointments Clause challenges (addressed below), the existence of the Board does not violate the separation of powers, but the substantive removal restrictions imposed by 15 U. S. C. §§ 7211(e)(6) and 7217(d)(3) do. Under the traditional default rule, removal is incident to the power of appointment. See, *e. g., Sampson* v. *Murray,* 415 U. S. 61, 70, n. 17 (1974); *Myers,* 272 U. S., at 119; *Ex parte Hennen,* 13 Pet., at 259–260. Concluding that the removal restrictions are invalid leaves the Board removable by the Commission at will, and leaves the President separated from Board members by only a single level of good-cause tenure. The Commission is then fully responsible for the Board's actions, which are no less subject than the Commission's own functions to Presidential oversight.

The Sarbanes-Oxley Act remains " 'fully operative as a law' " with these tenure restrictions excised. *New York,* 505 U. S., at 186 (quoting *Alaska Airlines, Inc.* v. *Brock,* 480 U. S. 678, 684 (1987)). We therefore must sustain its remaining provisions "[u]nless it is evident that the Legislature would not have enacted those provisions . . . independently of that which is [invalid]." *Ibid.* (internal quotation marks omitted). Though this inquiry can sometimes be "elusive," *Chadha,* 462 U. S., at 932, the answer here seems clear: The remaining provisions are not "incapable of functioning independently," *Alaska Airlines,* 480 U. S., at 684, and nothing in the statute's text or historical context makes it "evident" that Congress, faced with the limitations imposed by the Constitution, would have preferred no Board at all to a Board whose members are removable at will. *Ibid.*; see also *Ayotte, supra,* at 330.

It is true that the language providing for good-cause removal is only one of a number of statutory provisions that, working together, produce a constitutional violation. In theory, perhaps, the Court might blue-pencil a sufficient number of the Board's responsibilities so that its members would no longer be "Officers of the United States." Or we could restrict the Board's enforcement powers, so that it would be a purely recommendatory panel. Or the Board members could in future be made removable by the President, for good cause or at will. But such editorial freedom—far more extensive than our holding today—belongs to the Legislature, not the Judiciary. Congress of course remains free to pursue any of these options going forward.

V

Petitioners raise three more challenges to the Board under the Appointments Clause. None has merit.

First, petitioners argue that Board members are principal officers requiring Presidential appointment with the Senate's advice and consent. We held in *Edmond* v. *United States,* 520 U. S. 651, 662–663 (1997), that "[w]hether one is an 'inferior' officer depends on whether he has a superior," and that " 'inferior officers' are officers whose work is directed and supervised at some level" by other officers appointed by the President with the Senate's consent. In particular, we noted that "[t]he power to remove officers" at will and without cause "is a powerful tool for control" of an inferior. *Id.,* at 664. As explained above, the statutory restrictions on the Commission's power to remove Board members are unconstitutional and void. Given that the Commission is properly viewed, under the Constitution, as possessing the power to remove Board members at will, and given the Commission's other oversight authority, we have no hesitation in concluding that under *Edmond* the Board members are inferior officers whose appointment Congress may permissibly vest in a "Hea[d] of Departmen[t]."

But, petitioners argue, the Commission is not a "Departmen[t]" like the "Executive departments" (*e. g.,* State, Treasury, Defense) listed in 5 U. S. C. § 101. In *Freytag,* 501 U. S., at 887, n. 4, we specifically reserved the question whether a "principal agenc[y], such as . . . the Securities and Exchange Commission," is a "Departmen[t]" under the Appointments Clause. Four Justices, however, would have concluded that the Commission is indeed such a "Departmen[t]," see *id.*, at 918 (SCALIA, J., concurring in part and concurring in judgment), because it is a "free-standing, self-contained entity in the Executive Branch," *id.*, at 915.

Respondents urge us to adopt this reasoning as to those entities not addressed by our opinion in *Freytag,* see Brief for United States 37–39; PCAOB Brief 30–33, and we do. Respondents' reading of the Appointments Clause is consistent with the common, near-contemporary definition of a "department" as a "separate allotment or part of business; a distinct province, in which a class of duties are allotted to a particular person." 1 N. Webster, American Dictionary of the English Language (1828) (def. 2) (1995 facsimile ed.). It is also consistent with the early practice of Congress, which in 1792 authorized the Postmaster General to appoint "an assistant, and deputy postmasters, at all places where such shall be found necessary," § 3, 1 Stat. 234—thus treating him as the "Hea[d] of [a] Departmen[t]" without the title of Secretary or any role in the President's Cabinet. And it is consistent with our prior cases, which have never invalidated an appointment made by the head of such an establishment. See *Freytag, supra,* at 917; cf. *Burnap* v. *United States,* 252 U. S. 512, 515 (1920); *United States* v. *Germaine,* 99 U. S. 508, 511 (1879). Because the Commission is a freestanding component of the Executive Branch, not subordinate to or contained within any other such component, it constitutes a "Departmen[t]" for the purposes of the Appointments Clause.[11]

But petitioners are not done yet. They argue that the full Commission cannot constitutionally appoint Board members, because only the Chairman of the Commission is the Com-

[11] We express no view on whether the Commission is thus an "executive Departmen[t]" under the Opinions Clause, Art. II, § 2, cl. 1, or under Section 4 of the Twenty-Fifth Amendment. See *Freytag* v. *Commissioner,* 501 U. S. 868, 886–887 (1991).

mission's "Hea[d]."[12] The Commission's powers, however, are generally vested in the Commissioners jointly, not the Chairman alone. See, *e. g.,* 15 U. S. C. §§ 77s, 77t, 78u, 78w. The Commissioners do not report to the Chairman, who exercises administrative and executive functions subject to the full Commission's policies. See Reorg. Plan No. 10 of 1950, § 1(b)(1), 64 Stat. 1265. The Chairman is also appointed from among the Commissioners by the President alone, *id.,* § 3, at 1266, which means that he cannot be regarded as "the head of an agency" for purposes of the Reorganization Act. See 5 U. S. C. § 904. (The Commission as a whole, on the other hand, does meet the requirements of the Act, including its provision that "the head of an agency [may] be an individual or a commission or board with more than one member.")[13]

As a constitutional matter, we see no reason why a multimember body may not be the "Hea[d]" of a "Departmen[t]"

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[12] The Board argued below that petitioners lack standing to raise this claim, because no member of the Board has been appointed over the Chairman's objection, and so petitioners' injuries are not fairly traceable to an invalid appointment. See Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss the Complaint in Civil Action No. 1:06–cv–00217–JR (DC), Doc. 17, pp. 42–43; Brief for Appellees PCAOB et al. in No. 07–5127 (CADC), pp. 32–33. We cannot assume, however, that the Chairman would have made the same appointments acting alone; and petitioners' standing does not require precise proof of what the Board's policies might have been in that counterfactual world. See *Glidden Co.* v. *Zdanok,* 370 U. S. 530, 533 (1962) (plurality opinion).

[13] Petitioners contend that finding the Commission to be the head will invalidate numerous appointments made directly by the Chairman, such as those of the "heads of major [SEC] administrative units." Reorg. Plan No. 10, § 1(b)(2), at 1266. Assuming, however, that these individuals are officers of the United States, their appointment is still made "subject to the approval of the Commission." *Ibid.* We have previously found that the department head's approval satisfies the Appointments Clause, in precedents that petitioners do not ask us to revisit. See, *e. g., United States* v. *Smith,* 124 U. S. 525, 532 (1888); *Germaine,* 99 U. S., at 511; *United States* v. *Hartwell,* 6 Wall. 385, 393–394 (1868).

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, too, appoints its officers collectively, see Art. I, § 2, cl. 5; *id.*, § 3, cl. 5. Petitioners argue that the Framers vested the nomination of principal officers in the President to avoid the perceived evils of collective appointments, but they reveal no similar concern with respect to inferior officers, whose appointments may be vested elsewhere, including in multimember bodies. Practice has also sanctioned the appointment of inferior officers by multimember agencies. See *Freytag*, 501 U. S., at 918 (Scalia, J., concurring in part and concurring in judgment); see also Classification Act of 1923, ch. 265, § 2, 42 Stat. 1488 (defining "the head of the department" to mean "the officer *or group of officers* . . . who are not subordinate or responsible to any other officer of the department" (emphasis added)); 37 Op. Atty. Gen. 227, 231 (1933) (endorsing collective appointment by the Civil Service Commission). We conclude that the Board members have been validly appointed by the full Commission.

In light of the foregoing, petitioners are not entitled to broad injunctive relief against the Board's continued operations. But they are entitled to declaratory relief sufficient to ensure that the reporting requirements and auditing standards to which they are subject will be enforced only by a constitutional agency accountable to the Executive. See *Bowsher*, 478 U. S., at 727, n. 5 (concluding that a separation-of-powers violation may create a "here-and-now" injury that can be remedied by a court (internal quotation marks omitted)).

* * *

The Constitution that makes the President accountable to the people for executing the laws also gives him the power to do so. That power includes, as a general matter, the authority to remove those who assist him in carrying out his duties. Without such power, the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else. Such diffusion of authority "would greatly diminish the intended and necessary responsibility of the chief magistrate himself." The Federalist No. 70, at 478.

While we have sustained in certain cases limits on the President's removal power, the Act before us imposes a new type of restriction—two levels of protection from removal for those who nonetheless exercise significant executive power. Congress cannot limit the President's authority in this way.

The judgment of the United States Court of Appeals for the District of Columbia Circuit is affirmed in part and reversed in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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