

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Jocelyn Samuels,

Plaintiff,

v.

Civil Action No. 1:25-cv-01069

Donald J. Trump, et al.,

Defendants,

and

**Choices Pregnancy Centers of
Greater Phoenix; and Christian
Employers Alliance, on behalf of
itself and its members,**

Proposed Intervenor-Defendants.

**Proposed Intervenor-Defendants Choices Pregnancy Centers of Greater
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INTRODUCTION

The President has the constitutional power to fire unelected officials who go beyond the law. That removal authority extends to former EEOC Commissioner Samuels, who imposed harmful gender-identity and abortion mandates on the nation’s employers. EEOC’s Democrat majority sought to act as independent agents, forcing their own views on citizens—and on the President—with no oversight. If the President cannot exercise his constitutional duty to supervise and remove officers in “independent” agencies like EEOC, there is no democratic accountability when these officials stray from the will of the people.

Based on a misreading of federal civil rights statutes, EEOC Commissioner Jocelyn Samuels used her terms in office to impose unlawful gender-identity and abortion mandates on employers. Shortly after his inauguration, President Trump ordered EEOC to rescind its gender-identity mandate. Commissioner Samuels refused. So the president removed her from office. Samuels now sues for reinstatement, trying to stop the president from appointing a new commissioner who aligns with his policy positions. The Court should dismiss her claims.

STATEMENT OF FACTS

I. EEOC exercises significant executive power.

EEOC administers, interprets, and enforces numerous civil-rights statutes, including the sex-discrimination provisions of Title VII, 42 U.S.C. §§ 2000e et seq., and the pregnancy-accommodation provisions of the Pregnant Workers Fairness Act (PWFA), *id.* §§ 2000gg to 2000gg-6. These statutes apply to virtually every employer in America. *See id.* § 2000e(b) (Title VII applies to “a person engaged in an industry affecting commerce who has fifteen or more employees”); *id.* § 2000gg(2)(B) (similar). And these are just two of the many statutes enforced by EEOC.

Title VII and the PWFA give EEOC broad powers, remedies, and procedures to pursue violations. *Id.* § 2000gg-2 (providing the same remedies for the PWFA as Title VII). EEOC has investigatory authority for alleged violations, power to serve notices of charges of discrimination, and “shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.” *Id.* § 2000e-5(b). EEOC also may bring a civil action against an employer. *Id.* § 2000e-5(f).

When EEOC brings a civil enforcement action, it can seek an injunction preventing the defending employer from engaging in the unlawful practice, mandatory relief requiring the employer to take “affirmative action as may be appropriate,” or “any other equitable relief” that a court finds “appropriate.” *Id.* § 2000e-5(g)(1). Employers can be liable for compensatory damages, as well as punitive damages. *Id.* § 2000e-5(e)(3)(B); *see also id.* § 1981a. Employers found liable under Title VII may have to pay the opposing party’s costs and attorney’s fees. *Id.* § 2000e-5(k), § 1988(b).

EEOC also has rulemaking powers. EEOC issues rules to enforce equal employment opportunity among federal employees. *See id.* § 2000e-16. The Age Discrimination in Employment Act of 1967 similarly confers rulemaking authority, 29 U.S.C. § 633a, including for enforcement of disability nondiscrimination under the Rehabilitation Act of 1973, 29 U.S.C. § 794a(a)(1). Congress also gave EEOC rulemaking authority under the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff-10. For decades, EEOC has been authorized to issue regulations under Section 303 of the Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR Act). Pub. L. No. 107-174, 116 Stat. 566. EEOC also issues procedural regulations under Title VII. 42 U.S.C. § 2000e-12(a).

The PWFA, too, authorizes and requires EEOC to adopt implementing regulations, which were required to include examples of reasonable workplace accommodations for pregnancy. *Id.* § 2000gg-3(a).

II. Commissioner Samuels used EEOC’s executive power to impose gender-identity and abortion mandates on American employers.

A. Commissioner Samuels was a Democrat EEOC member from 2020 until she was removed from office by President Trump on January 27, 2025. Errata Compl. ¶¶ 3, 5, Dkt. No. 3 (Compl.). Under the controlling vote of Commissioner Samuels, EEOC misinterpreted Title VII and the PWFA to impose unlawful gender-identity and abortion mandates on employers.

While controlled by a Democrat majority, EEOC issued a final rule that twists the PWFA, a statute intended to protect mothers in the workplace, to impose a nationwide abortion mandate forcing employers to promote and facilitate elective abortion. EEOC Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096 (Apr. 19, 2024) (PWFA Rule). EEOC’s PWFA Rule states that “pregnancy, childbirth, or related medical conditions” includes “termination of pregnancy ... via ... abortion.” 89 Fed. Reg. at 29183 (codified at 29 C.F.R. § 1636.3(b)). The PWFA Rule promulgated by Samuels required employers to facilitate abortions, whether or not the procedure is medically necessary, and even if the abortion is illegal under state law. It also prevented employers from speaking their pro-life beliefs, required employers to knowingly give employees special leave to obtain abortions, and precluded employers from enforcing life-affirming workplace policies.¹

¹ A federal court recently vacated the PWFA Rule’s unlawful abortion requirement. *See Louisiana v. EEOC*, No. 2:24-cv-00629, 2025 WL 1462583, at *10–12 (W.D. La. May 21, 2025).

The Democrat-controlled EEOC also applied Title VII to force employers to affirm and facilitate employees' gender-transition efforts. *See Tennessee v. U.S. Dep't of Educ.*, 615 F. Supp. 3d 807, 833 (E.D. Tenn. 2022) (explaining that EEOC "requires employers to comply with its stated positions to avoid liability"). EEOC claims employers are discriminating if they do not use employees' self-selected pronouns based on gender identity, if they do not allow males to access female single-sex restrooms, locker rooms, and lactation rooms, and if they do not fund so-called "gender transition" procedures in employee health insurance plans. This mandate has been reflected in requirements published on EEOC's website, in a history of enforcement actions, and in "guidance" published in 2024.²

B. On Inauguration Day, President Trump issued an executive order directing EEOC to cease promoting gender ideology in its enforcement of workplace anti-discrimination laws. Exec. Order No. 14,168 of Jan. 20, 2025, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (Jan. 30, 2025). The President explained that EEOC's interpretation of Title VII is "legally untenable" for employers "and has harmed women." *Id.* at 8616.

So the President ordered EEOC to "rescind all guidance documents inconsistent with the requirements of this order," including its "'Enforcement Guidance on Harassment in the Workplace' (April 29, 2024)." *Id.* at 8617–18. The President also ordered EEOC to "remove all statements, policies, regulations, forms,

² *See, e.g.*, EEOC, *Enforcement Guidance on Harassment in the Workplace* (Apr. 29, 2024), <https://perma.cc/7V7L-PN7P> (2024 Guidance). A district court recently vacated portions of this 2024 Guidance. *Texas v. EEOC*, No. 2:24-CV-173-Z, 2025 WL 1414332, at *16 (N.D. Tex. May 15, 2025).

Proposed Intervenor CEA has a pending lawsuit under the APA to challenge EEOC's workplace gender-identity mandate and the PWFA Rule. *See Complaint for Injunctive & Declaratory Relief* ¶¶ 37–75, *Christian Employers Alliance v. EEOC*, No. 1:25-cv-00007 (D.N.D. Jan. 15, 2025), Dkt. No. 1.

communications, or other internal and external messages that promote or otherwise inculcate gender ideology.” *Id.* at 8616. He also rescinded the prior Administration’s executive orders on which EEOC relied for its gender-identity mandate. *Id.* at 8617; *see also* Exec. Order No. 14,148 of Jan. 20, 2025, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025) (same).

The President next ordered EEOC to “enforce laws governing sex-based rights, protections, opportunities, and accommodations” so that those laws “protect men and women as biologically distinct sexes.” 90 Fed. Reg. at 8616. In particular, he ordered EEOC to “prioritize investigations and litigation to enforce” the right and freedom “to express the binary nature of sex and the right to single-sex spaces in workplaces.” *Id.* at 8617.

The next day, the three Democrat EEOC Commissioners—Samuels, Charlotte Burrows, and Kalpana Kotagal—responded with a joint statement under EEOC’s logo disagreeing with the President’s Title VII position and refusing to comply with his executive orders. They said that “yesterday’s slate of civil rights related Executive Orders and reccissions undermines [EEOC’s] goals and ignores the day-to-day reality of discrimination.”³ In their view, Title VII addresses gender identity.⁴ So they promised to “continue to fulfill this important Congressional mandate” because they think that the President’s position “contravenes both the law and this mandate.”⁵

³ Jocelyn Samuels (@JSamuelsEEOC), *Statement of EEOC Commissioners Charlotte A Burrows, Jocelyn Samuels, and Kalpana Kotagal on Trump Administration Day-One Executive Orders*, X (Jan. 21, 2025, at 4:33 PM ET), <https://x.com/JSamuelsEEOC/status/1881817519188795700>.

⁴ *Id.*

⁵ *Id.*

Since then, the President has issued more executive orders reaffirming his position on gender identity. *E.g.*, Exec. Order No. 14,202 of Feb. 6, 2025, Eradicating Anti-Christian Bias, 90 Fed. Reg. 9365 (Feb. 12, 2025); Exec. Order No. 14,201 of Feb. 5, 2025, Keeping Men Out of Women’s Sports, 90 Fed. Reg. 9279 (Feb. 11, 2025); Exec. Order No. 14,187 of Jan. 29, 2025, Protecting Children From Chemical and Surgical Mutilation, 90 Fed. Reg. 8771 (Feb. 3, 2025); Exec. Order No. 14,190 of Jan. 29, 2025, Ending Radical Indoctrination in K-12 Schooling, 90 Fed. Reg. 8853 (Feb. 3, 2025).

III. The President removed Samuels from office, citing EEOC’s harmful gender-identity mandate.

EEOC has long claimed that it is independent of the President, and that claim is the basis of Samuels’s lawsuit. *See* Compl. ¶¶ 1–2.⁶ This lack of accountability led to EEOC’s refusal to implement the president’s executive orders. So, on January 27, the President removed Commissioners Samuels and Burrows from office. Neither Commissioner’s term had expired. *See* Compl. ¶ 3.

Commissioners Samuels and Burrows’ removal shifted control within EEOC from a 3-1 majority that had imposed gender-identity and abortion mandates to a new 1-1 split (with three vacancies).⁷ The removals mean EEOC is deadlocked 1-1 between the new Acting Chair, Republican Andrea Lucas, who supports the President’s executive orders (and who voted against the aforementioned mandates),⁸ and

⁶ Cheyanne M. Daniels, *Trump Fires Democratic Commissioners at Civil Rights Enforcement Agency*, *The Hill* (Jan. 29, 2025, at 10:46 AM ET), <https://thehill.com/homenews/administration/5113039-trump-fires-democrats-eo-commissioners/>.

⁷ *Id.*

⁸ *See, e.g.*, Claire Savage & Alexandra Olson, *EEOC Seeks to Drop Transgender Discrimination Cases, Citing Trump’s Executive Order*, Associated Press (Feb. 15, 2025, updated at 1:22 PM PDT), <https://apnews.com/article/eeoc-trump-gender-identity-discrimination-alabama-73a065c8aa5e0060472e1cac1ecd8212>.

Democrat Commissioner Kalpana Kotagal, who opposes the President’s executive orders (and who voted for those mandates).⁹

Acting Chair Lucas seeks to rescind EEOC’s workplace gender-identity mandate once EEOC regains a quorum.¹⁰ Lucas quickly “announced that one of her priorities ... is to defend the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work.”¹¹ She opposes the 2024 Guidance’s “enforcement position that harassing conduct under Title VII includes denial of access to a bathroom or other sex-segregated facility consistent with an individual’s gender identity; and that harassing conduct includes repeated and intentional use of a name or pronoun inconsistent with an individual’s known gender identity.”¹²

Since Samuels and Burrows were removed on January 27, Acting Chair Lucas has been able to take many steps toward implementing the President’s executive orders and removing gender ideology from EEOC enforcement. These include removing, or adding disclaimers to, EEOC’s informal guidance, websites, and workplace posters reflecting gender ideology and DEI; as well as moving to

⁹ *The State of EEOC: Frequently Asked Questions*, EEOC, <https://www.eeoc.gov/wysk/state-eeoc-frequently-asked-questions> (last visited July 17, 2025); *The Commission and the General Counsel*, EEOC, <https://www.eeoc.gov/commission> (last visited July 17, 2025); *Commission Votes: April 2024*, EEOC, <https://perma.cc/G5V2-SJ2G> (*Commission Votes*); Ashraf Khalil, *Dismissed EEOC Commissioner Warns That Trump Plans to ‘Erase the Existence of Trans People,’* Associated Press (Feb. 12, 2025, updated at 3:30 PM PDT), <https://apnews.com/article/discrimination-equal-employment-opportunity-trump-trans-samuels-00de2a3c8d5068e83f6ac1d9a073fc02>.

¹⁰ Press Release, EEOC, Removing Gender Ideology and Restoring EEOC’s Role of Protecting Women in the Workplace (Jan. 28, 2025), <https://www.eeoc.gov/newsroom/removing-gender-ideology-and-restoring-eeocs-role-protecting-women-workplace> (last visited July 17, 2025) (Removing Gender Ideology).

¹¹ *Id.*

¹² *Id.* (citation modified).

dismiss cases that the EEOC brought to enforce its gender-identity mandate.¹³ None of this would be possible if Samuels remained an EEOC Commissioner. When asked to comment, Samuels said that “EEOC’s response to [the executive orders] ‘is truly regrettable.’”¹⁴

Even so, without a voting quorum of the Commission, Acting Chair Lucas lacks authority to remove the core of EEOC’s workplace gender identity mandate, which is reflected in several documents promulgated through a majority vote of the Commission,¹⁵ and EEOC’s unlawful PWFA abortion rule. Acting Chair Lucas intends to revisit the PWFA Rule once the Commission regains a quorum.¹⁶ But Samuels voted for the harmful 2024 Guidance on gender identity and the PWFA Rule, so her reinstatement as a Commissioner would restore a quorum with a Democrat majority, making it even harder for EEOC to implement the President’s

¹³ Plaintiff EEOC’s Motion to Dismiss EEOC Litigation, *EEOC v. Starboard Group, Inc.*, No. 3:24-cv-02260 (S.D. Ill. Feb. 14, 2025), Dkt. No. 12; Stipulation to Stay Pending Deadlines & Dismiss with Prejudice, *EEOC v. Lush Handmade Cosmetics, LLC*, No. 5:24-cv-06859 (N.D. Cal. Feb. 14, 2025), Dkt. No. 25; Unopposed Motion to Dismiss the EEOC’s Complaint, *EEOC v. Boxwood Hotels, LLC*, No. 1:24-cv-00902 (W.D.N.Y. Feb. 14, 2025), Dkt. No. 32; Plaintiff EEOC’s Motion to Dismiss EEOC Litigation, *EEOC v. Reggio’s Pizza, Inc.*, No. 1:24-cv-08910 (N.D. Ill. Feb. 14, 2025), Dkt. No. 20; Plaintiff EEOC’s Motion to Dismiss EEOC Litigation, *EEOC v. Sis-Bro, Inc.*, No. 3:24-cv-00968 (S.D. Ill. Feb. 14, 2025), Dkt. No. 63; Joint Motion to Dismiss EEOC Litigation, *EEOC v. Harmony Hospitality, LLC*, No. 1:24-cv-00357 (M.D. Ala. Feb. 13, 2025), Dkt. No. 23.

¹⁴ Savage & Olson, *supra* note 8.

¹⁵ Removing Gender Ideology, *supra* note 10 (acknowledging that a quorum is needed to revoke “the Commission’s Enforcement Guidance on Harassment in the Workplace (issued by a 3-2 vote in 2024); the EEOC Strategic Plan 2022–2026 (issued by a 3-2 vote in 2023); and the EEOC Strategic Enforcement Plan Fiscal Years 2024–2028 (issued by a 3-2 vote in 2023).”

¹⁶ *What You Should Know: Position of Acting Chair Lucas Regarding the Commission’s Final Regulations Implementing the Pregnant Workers Fairness Act*, EEOC, <https://www.eeoc.gov/wysk/position-acting-chair-lucas-regarding-commissions-final-regulations-implementing-pregnant> (last visited July 17, 2025).

policies.¹⁷ If Samuels is reinstated, the President could not appoint a quorum to implement his policies unless two more commissioners are nominated and successfully confirmed.

IV. Samuels insists she remains an EEOC Commissioner.

Samuels sued the President, EEOC, and Acting Chair Lucas, demanding reinstatement. Compl. at 14. Rather than acknowledge any presidential policy control over EEOC Commissioners, Samuels claims a right to “insulation from political pressure exerted by the president.” *Id.* ¶ 4. In her view, it is “inherent in the structure and duties of a bipartisan independent agency such as the EEOC” that “Commissioners are not subject to at-will removal by the president.” *Id.* ¶ 25.

Samuels admits that the President “purported to adopt positions of the federal government” on Title VII and the “binary definition of sex.” *Id.* ¶ 28. But she says that EEOC has “historic independence” that frees it from serving as “a vehicle for any president’s political agenda.” *Id.* ¶¶ 1–2. She thus stands by her refusal to comply with the President’s executive orders, explaining that she was “objecting to” what she sees as “the Administration’s incorrect interpretation of Title VII.” *Id.* ¶ 32. She acknowledges that the President’s reason for removing her was “her involvement in ‘enacting or enforcing the Biden Administration’s radical Title VII guidance.’” *Id.* ¶ 37. In her view, the President just has to live with such “policy differences between the president and some Commissioners.” *Id.* ¶ 48.

¹⁷ *Commission Votes*, supra note 9.

ARGUMENT

I. **EEOC Commissioners do not enjoy for-cause protection from removal by the President.**

Samuels contends the President lacked authority to remove her from her position as an EEOC Commissioner. That is wrong. The Constitution requires presidential control over executive branch officials. And even if Congress can limit removal, for EEOC Commissioners no statute says removal is limited to situations involving cause or wrongdoing. By default, the President may remove an officer at will, and that is “the rule, not the exception.” *Seila Law LLC v. CFPB*, 591 U.S. 197, 228 (2020). Without an express statutory limitation on presidential removal power, EEOC Commissioners are subject to the general rule. And courts should hesitate before assuming Congress has interfered with the President’s inherent and long-recognized authority to remove officers who are delegated the President’s executive power. Samuels’s claim to wrongful removal from office fails as a matter of law.

A. **Title VII does not limit the President’s removal power.**

When Congress wishes to require cause for the removal of an executive official, it does so expressly. For example, the National Labor Relations Act, passed in 1935, says “[a]ny member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.” 29 U.S.C. § 153(a). This shows that at the time Congress enacted Title VII, it knew exactly how to attempt to limit removal to situations of cause.

EEOC’s organic statute is different. Title VII does not expressly restrict removal by the President. *See* 42 U.S.C. § 2000e-4. It does not mention cause, and in setting a term of office, it says “[m]embers of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years.” *Id.* § 2000e-4(a). There is no for-cause limitation on removal. And “[w]hen a statute does *not* limit the President’s power to remove an agency head, [courts]

generally presume[] that the officer serves at the President’s pleasure.” *Collins v. Yellen*, 594 U.S. 220, 248 (2021) (emphasis added).

That is the default rule for good reason. Article II places executive power in the President, and it allows for no exceptions. The “‘executive Power’—all of it—is ‘vested in a President.’” *Seila Law*, 591 U.S. at 203 (quoting U.S. Const. Art. II, § 1, cl. 1); see *Myers v. United States*, 272 U.S. 52, 135 (1926). And “[b]ecause the Constitution vests the executive power in the President, he may remove without cause executive officers who exercise that power on his behalf, subject to narrow exceptions recognized by our precedents.” *Trump v. Wilcox*, 145 S. Ct. 1415 (2025) (per curiam).

The President relies on “subordinate officers” for help. *Seila Law*, 591 U.S. at 204; accord *Collins*, 594 U.S. at 252. But those officers cannot wield executive power apart from the President. He must be able to “supervise” those “who wield executive power on his behalf.” *Id.*; see also *PHH Corp. v. CFPB*, 881 F.3d 75, 164 (D.C. Cir. 2018) (Kavanaugh, J., dissenting) (“To carry out the executive power and be accountable for the exercise of that power, the President must be able to supervise and direct those subordinate officers.”). The inferior officer’s exercise of executive power is traceable to the President, who must have the final say.

Under Article II’s plain language, the “buck stops with the President.” *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 493 (2010). Otherwise, the “entire ‘executive Power’” would not “belong[] to the President alone.” *Seila Law*, 591 U.S. at 213. So the President must directly or indirectly “by chain of command” control all officers wielding the executive power. *Morrison v. Olson*, 487 U.S. 654, 721 (1988) (Scalia, J., dissenting). As the Supreme Court continues to emphasize, removal authority holds this chain together. See *Kennedy v. Braidwood Mgmt., Inc.*, No. 24-316, 2025 WL 1773628, at *9 (U.S. June 27, 2025) (citation modified) (observing that “the authority to remove an officer at will is a powerful

tool for control”). Officers “must fear and, in the performance of their functions, obey,” only “the authority that can remove” them from office. *Seila Law*, 591 U.S. at 213–14 (citation modified). So the “removal power helps the President maintain a degree of control over the subordinates he needs to carry out his duties as the head of the Executive Branch.” *Collins*, 594 U.S. at 252.

The Supreme Court recently emphasized that “Congress must use ‘very clear and explicit language’” if it wants “to ‘take away’ the power of at-will removal from an appointing officer.” *Braidwood Mgmt.*, 2025 WL 1773628, at *13 (quoting *Shurtleff v. United States*, 189 U.S. 311, 315 (1903)). When Congress wishes to require cause for the removal of an executive official, it does so expressly by setting out removal conditions. Compare 42 U.S.C. § 2000e-4(a), with 15 U.S.C. § 41 (commissioners of the FTC “may be removed by the President for inefficiency, neglect of duty, or malfeasance in office”); 12 U.S.C. § 5491(c)(3) (same regarding the Director of the CFPB). It did not do that for EEOC Commissioners.

Lacking any express removal conditions to rely on, Samuels’s theory seems to be either: that any “independent agency” headed by a multimember board inherently has for-cause protection from removal, see Compl. ¶¶ 46–47; or that a term of office implicitly prohibits removal without cause during the term, see Compl. ¶¶ 46b–46c. Both theories are incorrect.

First, the fact that EEOC is a “five-member bipartisan commission” that must include members with “different political affiliations,” Compl. ¶ 46a, is not an imposition of for-cause removal. It says nothing about cause. And even if it impacted the President’s power to remove a commissioner, removing Samuels and Burrows did not violate the requirement that the EEOC include commissioners with different political affiliations. President Trump did not fire another Democrat, Commissioner Kotagal, and if she were to depart, the President could nominate a Democrat to fill that seat. A cap on members of the same political party does not

limit removal because the President can appoint—and remove—commissioners from a political party not his own.

Nor do the general “structural components of the EEOC ... qualify it as an independent agency and thus provide removal protections for its Commissioners,” as Samuels claims. Compl. ¶ 46. General agency structures that could be framed as creating “independence” cannot overcome the presumption that officers serve at the will of the President “[w]hen a statute does not limit the President’s power to remove.” *Collins*, 594 U.S. at 248; *see also Braidwood Mgmt.*, 2025 WL 1773628, at *13 (rejecting the argument “that the term ‘independent’ in [a] statute suffices to displace the default of at-will removal”).

Second, EEOC’s “Commissioners serve five-year, staggered terms,” and “shall continue to serve until their successors are appointed and qualified,” Samuels says, which means the “statute does not grant the president the right to remove a Commissioner.” Compl. ¶¶ 46b, 46c. But a term of office is not a limitation on the President’s removal authority. As the D.C. Circuit recently explained, “[w]hen used in federal appointment statutes, the word ‘term’ has a long-settled meaning of limiting a person’s tenure in office, not investing the person with a guaranteed minimum period of service.” *Severino v. Biden*, 71 F.4th 1038, 1045 (D.C. Cir. 2023). Other courts agree that a statutory term of office does not, on its own, change the default rule that the power to appoint brings with it authority to remove. “[A] fixed term of office, without any additional limitation, does not impact the President’s discretionary removal power.” *Rieth-Riley Constr. Co. v. NLRB*, 114 F.4th 519, 530 (6th Cir. 2024) (citing *Parsons v. United States*, 167 U.S. 324, 338–39 (1897)). “It is a long-standing rule in the federal courts that a fixed term merely provides a time for the term to end.” *Pievsky v. Ridge*, 98 F.3d 730, 734 (3d Cir. 1996); *accord NLRB v. Aakash, Inc.*, 58 F.4th 1099, 1103 (9th Cir. 2023); *Exela Enter. Sols., Inc. v. NLRB*, 32 F.4th 436, 442 (5th Cir. 2022). When Congress structured EEOC with

staggered, five-year terms, it legislated against “the backdrop” of this settled meaning. *Severino*, 71 F.4th at 1045.

That EEOC Commissioners “serve until their successors are appointed and qualified” is holdover language, not a removal limitation. 42 U.S.C. § 2000e-4(a). The language allows commissioners to continue serving for a limited time until their successors are confirmed. Without this provision, their “tenure in office” would end at the five-year mark, *Severino*, 71 F.4th at 1045, even without a successor in place. The holdover provision allows a commissioner to instead remain in office for a limited time after the “time [her] term ... end[s].” *Pievsky*, 98 F.3d at 734. But it is not framed as affecting removal or imposing for-cause limitations.

Other statutes have similar holdover language separate from provisions dealing with removal. For example, the Federal Agricultural Mortgage Corporation’s organic statute says a board member serves “until the successor of the member has taken office.” 12 U.S.C. § 2279aa-2(a)(5)(D). And, in a separate section, that “[t]he members appointed by the President shall serve at the pleasure of the President.” *Id.* § 2279aa-2(a)(5)(A). Similarly, the statute governing the Federal Reserve System’s board of governors says, in separate clauses, that members “shall continue to serve until their successors are appointed and have qualified,” and that they serve specific terms of office “unless sooner removed for cause by the President.” *Id.* § 242. Congress addresses the topic of holdover separately from the topic of conditions for removal.

None of the other features of the EEOC is an express limitation on removal authority. The default rule is at-will removal, and Title VII’s silence on removal leaves that default in place. At bottom, Samuels “invites the Court to read a for-cause removal restriction into a statute that does not explicitly provide for one.” *Braidwood Mgmt.*, 2025 WL 1773628, at *13. The Court should not do so. *See id.*

B. *Humphrey’s Executor* does not support a for-cause removal requirement for EEOC Commissioners, who exercise substantial executive power.

Gesturing toward *Humphrey’s Executor*, 295 U.S. 602 (1935), Samuels claims the EEOC’s “quasi-legislative” and “quasi-judicial functions” make it “an independent agency and thus provide removal protections.” Compl. ¶ 47. That theory fails, too. In *Humphrey’s Executor*, the Supreme Court upheld a statute limiting the President’s authority to remove commissioners of the Federal Trade Commission. 295 U.S. at 631–32. In the Court’s view, the 1935 FTC was “an administrative body” that functioned “as a legislative or as a judicial aid.” *Id.* at 628. It could not “be characterized as an arm or an eye of the executive.” *Id.* So the Court concluded that presidential power of removal would amount to “coercive influence” over the independence of a commission “created by Congress as a means of carrying into operation legislative and judicial powers, and as an agency of the legislative and judicial departments.” *Id.* at 630.

Humphrey’s Executor does not help Samuels. This “narrow exception[]” to the general rule, *Wilcox*, 145 S. Ct. at 1415, is limited to “multimember expert agencies that do *not* wield substantial executive power.” *Seila Law*, 591 U.S. at 218 (emphasis added). In *Seila Law*, the Supreme Court read *Humphrey’s Executor* narrowly—it permitted “Congress to give for-cause removal protections to a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions and was said not to exercise *any* executive power.” *Id.* at 216 (emphasis added).

EEOC may be “a bipartisan, multi-member ... commission of experts,” as Samuels says, Compl. ¶ 2, but it cannot be said that EEOC “exercises ‘no part of the executive power.’” *Severino*, 71 F.4th at 1047 (quoting *Humphrey’s Ex’r*, 295 U.S. at 628).

To the contrary, EEOC “exercise[s] considerable executive power.” *Wilcox*, 145 S. Ct. 1415. Its “quintessentially executive power[s],” *Seila Law*, 591 U.S. at 199, include investigating violations of the law and pursuing enforcement actions in court on behalf of the government. EEOC is tasked with investigating civil rights violations in employment under numerous civil rights statutes, including Title VII and the PWFA. *E.g.*, 29 U.S.C. § 626, 42 U.S.C. § 2000e-8. Like other law enforcement agencies, EEOC can bring a civil action in federal court if it concludes there has been a civil rights violation. *E.g.* 42 U.S.C. §§ 12117(a), 2000e-5(f)(1). When EEOC files an enforcement action in federal court, it does so like other law enforcement agencies: in its own name and “to implement the public interest.” *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 326 (1980). Investigating violations of the law and bringing enforcement actions are “quintessentially executive function[s].” *Trump v. United States*, 603 U.S. 593, 620–21 (2024) (citation modified); *accord Morrison*, 487 U.S. at 691 (“law enforcement functions” traditionally are executive); *id.* at 706 (Scalia, J., dissenting) (“Governmental investigation and prosecution of crimes is a quintessentially executive function.”).

EEOC also implements the law through binding regulations. Congress has given EEOC authority to promulgate substantive regulations under the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, the Genetic Information Nondiscrimination Act of 2008, and the PWFA. Agency rulemaking to enforce nondiscrimination statutes is an executive function. *See Bowsher v. Synar*, 478 U.S. 714, 733 (1986) (“Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of ‘execution’ of the law.”).

Finally, EEOC adjudicates certain employment discrimination claims, including claims brought by federal employees. *See* 5 U.S.C. § 7702(b)(1); 29 U.S.C.

§§ 791, 794(a); 29 C.F.R. §§ 1614.109, 1614.401. Contrary to Samuels’s characterization, *see* Compl. ¶¶ 24, 47b, overseeing employment within the executive branch is best understood as an executive function. *Cf. Seila Law*, 591 U.S. at 213 (citation modified) (quoting 1 Annals of Cong. 463 (1789)) (“If any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws.”). Because these adjudications concern federal employment, they are executive (not judicial) in character for purposes of the President’s authority under Article II.

There is no historical or structural support for executive officials like EEOC Commissioners wielding such power while operating outside the chief executive’s control. Even when agency actions “take ‘legislative’ [or] ‘judicial’ forms, ... they are exercises of—indeed, under our constitutional structure they *must be* exercises of—the ‘executive Power.’” *Seila Law*, 591 U.S. at 216 n.2 (citation modified) (quoting *City of Arlington v. FCC*, 569 U.S. 290, 304 n.4 (2013)). So if some of EEOC’s function can be described as “quasi legislative” or “quasi judicial,” in the words of *Humphrey’s Executor*, EEOC also has “substantial executive power,” *Seila Law*, 591 U.S. at 217–18. So even if *Humphrey’s Executor*’s constitutional justification for statutory for-cause removal limitations were enough to create such limitations in the first place—though that’s wrong—the *Humphrey’s Executor* exception would not include EEOC Commissioners.¹⁸

¹⁸ As “quasi-legislative functions,” Samuels points to “conducting hearings, issuing reports to Congress and the public, issuing guidance to help EEOC investigators and the public understand Congressional enactments, and performing and disseminating technical employment-related studies.” Compl. ¶ 47a. And she says EEOC “has quasi-judicial functions such as adjudicating federal government employees’ discrimination claims and claims involving employment under the Rehabilitation Act.” Compl. ¶ 47b.

Samuels’s claim to for-cause protection finds no support in *Wiener v. United States*, 357 U.S. 349 (1958), either. As the Government points out (Dkt. No. 24-1 at 16–17), this is the only case in which the Supreme Court has ever found an implicit limitation on presidential removal power. Wiener was a member of the War Claims Commission, “a three-member ‘adjudicatory body’ tasked with resolving claims for compensation arising from World War II.” *Seila Law*, 591 U.S. at 216 (quoting *Wiener*, 357 U.S. at 356). After President Eisenhower removed him from the position, he sued in the Court of Claims to recover his lost salary. *Wiener*, 357 U.S. at 350. Because the statute “precluded the President from influencing the Commission in passing on a particular claim,” the Supreme Court reasoned, “it [must] be inferred that Congress did not wish to have hang over the Commission the Damocles’ sword of removal by the President.” *Id.* at 356; *see id.* at 354–55 (quoting War Claims Act of 1948, 62 Stat. 1240 § 11)).

That would not follow today. When *Wiener* was decided, federal courts saw themselves duty-bound “to make effective the congressional purpose”—through implied statutory terms, if necessary. *J. I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964). As the Supreme Court emphasized just weeks ago, “what Congress (possibly) expected matters much less than what it (certainly) enacted,” and it would be a “mistake[] to assume that any interpretation of a law that does more to advance a statute’s putative goal must be the law.” *Stanley v. City of Sanford*, 145 S. Ct. 2058, 2067 (2025) (citation modified). When it comes to displacing the default of at-will removal, “mere inference or implication does not suffice.” *Braidwood Mgmt.*, 2025 WL 1773628, at *13 (citation modified).

Nor did *Wiener* uphold removal restrictions for executive officials with “substantial executive power,” *Seila Law*, 591 U.S. at 218, like EEOC’s. The War Claims Commission would best be described as an Article I tribunal, not an executive agency. It determined claimants’ right to funds held by the United States

Treasury. *See Wiener*, 357 U.S. at 355. That is not an executive function. It is Congress, not the President, that has the responsibility to “examine and determine claims for money against the United States.” *Williams v. United States*, 289 U.S. 553, 569 (1933) (citation modified). So the Supreme Court has long recognized that “[t]he mode of determining” such claims “is completely within congressional control.” *Ex parte Bakelite Corp.*, 279 U.S. 438, 451 (1929). And the executive branch cannot interfere with Congress’s “control over public funds.” *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 428 (1990).

Even if EEOC Commissioners had statutory removal protection (they don’t), it would be unconstitutional—the *Humphrey’s Executor* exception cannot extend to EEOC Commissioners, and the other exception (dealing with inferior officers, *see Seila Law*, 591 U.S. at 217) is undisputedly irrelevant to EEOC Commissioners.

* * *

Nothing about EEOC’s organic statute or its functions justifies—much less requires—an implied limitation on the President’s inherent power to remove executive-branch officers. The President had authority to remove Samuels for any reason or no reason at all. That means her claim fails as a matter of law.

C. Constitutional avoidance prohibits extending *Humphrey’s Executor* to the EEOC.

Time and again, the Supreme Court has refused to expand *Humphrey’s Executor* beyond its narrow confines. *E.g. Collins*, 594 U.S. at 250–51; *Seila Law*, 591 U.S. at 204; *Free Enter. Fund*, 561 U.S. at 498. After all, restricting the President’s removal authority undermines the separation of powers. “The President cannot ‘take Care that the Laws be faithfully executed’ if he cannot oversee the faithfulness of the officers who execute them.” *Free Enter. Fund*, 561 U.S. at 484. To do that, the President must be able to “hold[] his subordinates accountable for their conduct.” *Id.* at 498.

“Courts [should] not assume Congress legislated a potential separation of powers problem unless the statutory text makes Congress’s intent to test constitutional lines apparent.” *Severino*, 71 F.4th at 1044; *see also Calcutt v. FDIC*, 37 F.4th 293, 338–39 (6th Cir. 2022) (Murphy, J., dissenting), *rev’d on other grounds*, 598 U.S. 623 (2023) (per curiam). The EEOC’s organic statute reflects no such intent. As a matter of constitutional avoidance, then, the Court should reject Samuels’s theory of for-cause removal protection.

As discussed above, Samuels is wrong to claim that EEOC Commissioners have for-cause protection from removal. But even if she’s right, *Humphrey’s Executor* was wrongly decided, and stare decisis principles do not “counsel[its] continued acceptance.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 263 (2022). We recognize that doing so is not open to this Court, but preserve the issue for further review. In brief, the concept of an executive-branch agency that cannot “be characterized as an arm or an eye of the executive,” *Humphrey’s Ex’r*, 295 U.S. at 628, is untenable, and the decision failed to address constitutional structure, like Article II’s vesting clause. The exception has also proved unworkable, as lower courts have for nearly a century struggled to apply it while respecting other separation-of-powers doctrines. *Compare, e.g., Consumers’ Rsch. v. Consumer Prod. Safety Comm’n*, 98 F.4th 646, 647–50 (5th Cir. 2024) (Willett, J., concurring in the denial of rehearing en banc), *with id.* at 651–57 (Oldham, J., dissenting from same). “[S]tare decisis is ... at its weakest when the Court interprets the Constitution.” *Dobbs*, 597 U.S. at 263 (citation modified). It does not require retaining *Humphrey’s Executor* any longer.

II. Injunctive relief is foreclosed by Samuels’s other avenues for relief.

Samuels’s sole cause of action is precluded. By way of a cause of action, she claims the President acted ultra vires when he removed her from office without cause. Compl. ¶ 44. That fails as a matter of law. As the Supreme Court just explained, non-statutory ultra vires claims are improper when there is “an alternative path to judicial review.” *Nuclear Reg. Comm’n v. Texas*, 145 S. Ct. 1762, 1776 (2025); see also *Bd. of Governors of Fed. Rsrv. Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 43–44 (1991). Samuels has other paths to judicial review.

Samuels could obtain review of her removal from office the same way the former War Claims Commissioner did in *Wiener*—through a suit under the Tucker Act in the Court of Federal Claims. See 357 U.S. at 350–51. That is the proper avenue for a suit alleging breach of “any express or implied contract with the United States.” 28 U.S.C. § 1491(a)(1); see *id.* § 1346(a)(2). The gravamen of Samuels’s claim is that she has a right to work as an EEOC Commissioner until July 1, 2026, the end of her five-year statutory term. See Compl. ¶¶ 3, 5. Such a claim can be remedied by damages and therefore belongs in the Court of Federal Claims. Cf. *Dep’t of Educ. v. California*, 145 S. Ct. 966, 968 (2025) (per curiam) (staying a preliminary injunction because the alleged violation was cognizable under the Tucker Act, not the Administrative Procedure Act).

To be sure, a Tucker Act claim would not give Samuels the injunctive relief she seeks here. The Court of Claims generally “cannot entertain claims for injunctive relief or specific performance.” *Kanemoto v. Reno*, 41 F.3d 641, 644–45 (Fed. Cir. 1994). Instead, a successful Tucker Act claim would likely result in a monetary damages award. But that is yet another reason Samuels’s claim fails: Equitable relief is available only when there is no adequate remedy at law. See, e.g., *Richards v. Delta Air Lines, Inc.*, 453 F.3d 525, 531 n.6 (D.C. Cir. 2006). Monetary damages for lost wages would compensate Samuels for the loss of her job as an

EEOC Commissioner. (And if she seeks something more than compensation—like the opportunity to exercise the powers of an EEOC Commissioner in opposition to the President’s policies, *see* Compl. ¶¶ 7–8—that is why the constitutional default is at-will removal.)

Another legal remedy foreclosing Samuels’s ultra vires claim could be a quo warranto action—the procedure for an “incumbent of th[e] office” who claims he was “unlawfully ousted before his term expired.” *Newman v. United States ex rel. Frizzell*, 238 U.S. 537, 547 (1915); *see* D.C. Code § 16-3501. Samuels has not tried to bring such an action.

Because she has at least one adequate remedy at law, Samuels cannot obtain the equitable relief she seeks. That, too, means her claim fails as a matter of law.

CONCLUSION

The Court should grant the Government’s motion to dismiss, Dkt. No. 24, and enter judgment for Defendants.

Respectfully submitted this 23rd day of July, 2025.

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