

New Rules for the FTC: How *Trump v. Slaughter* Could Remake the Agency

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Introduction

The FTC was formed in 1914 because Congress found that the DOJ's enforcement of the Sherman Act of 1890 was not powerful enough to address anticompetitive practices it observed in the American economy, and that supplemental enforcement was required.¹ They believed we needed a dynamic and knowledgeable independent agency. Decisions made by the FTC were meant to emerge from a reasoned and expert-led process, and the agency was meant to be democratic and populist in nature.²

The FTC was structured to be as nonpartisan as possible, helping avoid any co-opting by the executive in order to wield raw political power. The FTC board contains five commissioners, with a maximum of three from each political party. Appointments are staggered to avoid one president packing the board with favorable appointees. FTC commissioners enjoyed for-cause firing insulation and were only able to be removed for "inefficiency, neglect of duty, or malfeasance in office." The FTC's chief objective was to quash "unfair or deceptive acts or practices," both in relation to products being sold to consumers, and in the competition between business competitors.³

*Humphrey's Executor*⁴ was a landmark case that held that FTC Commissioners could only be fired by the President with cause. It endorsed the independence of the FTC from the executive,

¹ Shaoul Sussman, *The Revival of Section 5: A Return to the FTC's Roots in a Time of Democratic Crisis*, 94 *FORDHAM L. REV.* 1705, 1707 (2026).

² *Id.* at 1718–19.

³ *Id.*

⁴ *Humphrey's Executor v. U.S.*, 295 U.S. 602 (1935).

solidifying its ability to function in a non-political manner, and allowing the FTC to provide rigorous economic oversight, creating the chance for an even playing field for all economic competitors and helping instill trust in the American economy.

Trump v. Slaughter broke that system by eliminating critical checks on executive power. Without the FTC's formidable independent structure, it seems inevitable that the U.S. will lose this sense of stability and prosperity. Politicizing the FTC strips away the protections against executive misuse and abuse that were central to the establishment of the FTC, allowing the agency to be co-opted for personal and/or political gain, and impacting the economic lives of everyday Americans.⁵

The History of Firing Protections

There is a rich history that establishes a degree of separation between the executive and independent agencies, the FTC included. While there was no Founding-Era Constitutional framework for independent agencies, Congress, through its oversight, created a structure for independent agencies, which the courts (until recently) endorsed, in a process called "Constitutional liquidation." This process looks at post-Founding Era practices in order to settle Constitutional interpretation and disputes (more to come on the disputes).⁶

The power through which the independent agencies were created is derived from Article II of the U.S. Constitution. It states that executive power rests with president and that they "shall take care that the laws be faithfully executed."⁷ Because it would be impossible for a single individual to execute all the laws the nation has to offer, Congress established subordinate levels of the executive branch were established to help carry out those duties, and the President was tasked with

⁵ Matthew Strada, *The Shareholder President: Government Ownership of Private Companies in the Unitary Executive Era*, 2025 U. ILL. L. REV. 196, 206 (2025).

⁶ William Baude, *Constitutional Liquidation*, 71 STAN. L. REV. 1, 4 (2019).

⁷ See Alex Zhang, *Humphrey's Eulogy: A Functionalist View of Trump V. Slaughter and The Role of the FTC*, 21:73 DUKE J. CONST. L. & PUB. POL'Y 73, 75 (2026) (quoting U.S. Const. art. II, § 3, cl. 1.).

oversight. As a check on the executive's power, Congress has the authority to enact laws that specify powers of these executive agencies and establish removal procedures for agency officers appointed by the President.

Nearly 150 years later, *Myers v. U.S.* held that a USPS postmaster could be fired at-will, finding a law that provided them with for-cause insulation to be unconstitutional.⁸ The Court said that any political officer appointed by the President should be removable at-will, essentially placing political officers under the president's direct control.⁹ It also stated that lower-ranking appointees are empowered by statutes, and therefore retain independence, and are only able to be fired for cause.¹⁰ This made *Myers* a narrow compromise, giving the President power over those at the tops of the agencies, but enforcing their independence amongst lower ranking officers and members of the civil service, and maintaining Congress's power to check the President, preventing a full-scale politization of the administrative state.

Tensions between President Roosevelt and Commissioner Humphrey led to a testing of *Myers*. Humphrey was serving on the FTC, and was a known supporter of former President Hoover, calling him "the foremost figure of the world," who fought against "the demagogue, the fanatic, the reformer, and the fool."¹¹ Humphrey saw his role as Commissioner in the same vein, constantly demeaning the FTC during his service under President Roosevelt, referring to the FTC as a "publicity bureau. . . gone insane" that spread "Socialistic propaganda."¹² This, unsurprisingly, led to Humphrey's firing. Roosevelt's crucial mistake, however, was firing Humphrey without specific cause.

⁸ *Myers v. U.S.*, 272, U.S. 52, 176 (1926).

⁹ *Id.* at 186; Zhang, *supra* note 7, at 77.

¹⁰ Zhang, *supra* note 7, at 77.

¹¹ *Trump v. Slaughter*, 2026 WL 1855613, 16 (U.S. June 29, 2026), *aff'g* 804 F. Supp. 3d 14 (D.D.C. 2025).

¹² *Id.* at 17.

This error led all the way up to the Supreme Court, in *Humphrey's Executor v. U.S.*, where the Court found the FTC to be a quasi-legislative and quasi-judicial agency, that “carr[ies] into effect legislative policies embodied in the [FTC Act] in accordance with the legislative standard therein prescribed, and perform[s] other specified duties as a legislative or as a judicial aid.”¹³ According to the Court, it could not be categorized as fulfilling executive functions exclusively, and therefore the FTC Commissioners could carry out their statutory duties free of political influence, meaning they were entitled to for-cause protection.¹⁴

In the decades to come, the Court would begin to slowly chip away at *Humphrey's Executor*. In 1988, the Supreme Court ruled in *Morrison v. Olson* that the power of an independent counsel appointed by Congress to investigate conduct by the executive branch is in itself executive to some degree, but it was unclear whether it tipped the scale enough to overturn *Humphrey's Executor*.¹⁵ *Free Enterprise Fund*, decided in 2010, challenged the removal protections of officials of the Public Company Accounting Oversight Board (PCAOB).¹⁶ The Supreme Court found that establishing different tiers of removal protections for officials versus political appointees violated the constitutional separation of powers, and that *Humphrey's Executor* does not address inferior (lower-ranking) officers.¹⁷ In 2020, *Seila Law v. CFPB* found that the for-cause insulation of CFPB officials was unconstitutional, as they held significant executive power and had a single person serving as the head of the agency, mimicking an executive structure.¹⁸ The court found two exceptions to at-will removal. The first exception, which is of import here, fell under *Humphrey's Executor* but was intended only for “expert agencies led by a group of principled officers” that “do

¹³ *Humphrey's Executor v. U.S.*, 295 U.S. 602, 628 (1935).

¹⁴ *Slaughter*, 2026 WL 1855613, at 17.

¹⁵ *Morrison v. Olson*, 487 U.S. 654, 691 (1988).

¹⁶ *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 484 (2010).

¹⁷ *Id.* at 513–14; Zhang, *supra* note 7, at 77.

¹⁸ *Seila Law LLC v. Consumer Fin. Prot. Bureau* 591 U.S. 197 (2020).

not wield substantial executive power.”¹⁹ However, the Court cast doubt on FTC falling under this category.

The Court had become skeptical of *Humphrey’s Executor* and the assertion that the FTC was anything besides executive in nature.²⁰ The true reckoning finally arrived in *Trump v. Slaughter*.

How Trump v. Slaughter Came to Be

Rebecca Slaughter was nominated to serve as a commissioner of the FTC by President Trump in his first term and unanimously confirmed by the Senate. She began her term in May of 2018, and was renominated by the Biden Administration in 2023, receiving a second unanimous confirmation. In 2025, she was fired via email, without any cause, being told only that her service was inconsistent with the second Trump Administration’s priorities.

The government’s core argument justified the firing under Article II of the Constitution, stating that at-will firing of FTC commissioners was necessary for the executive to properly execute the laws of the United States. The underlying logic to this justification being a belief that FTC functions are executive in nature, having expanded beyond the scope identified in *Humphrey’s Executor*. The government pointed to the FTC’s power to investigate businesses for federal law violations, conduct hearings on those violations, and adjudicate related claims brought forth by third parties, in conjunction with having the power to enforce regulations that ensure a fair business environment.²¹ Slaughter argued that the FTC’s duties remained the same, and were quasi-judicial and quasi-legislative in nature, relying on the well-established precedent of *Humphrey’s Executor*.

¹⁹ *Id.* at 80.

²⁰ Adam White, *After Slaughter and Cook: future Federal Reserve fights, and maybe some midnight firings*, SCOTUSBLOG (July 2, 2026, 10:00 AM), <https://www.scotusblog.com/2026/07/after-slaughter-and-cook-future-fed-fights-and-maybe-some-midnight-firings/> [https://perma.cc/2QRJ-UD8X].

²¹ Jenna Thakkar, *Trump v. Slaughter*, 78 Fed. Comm. L.J. 385, 386 (2026).

The district court, siding with *Slaughter*, found that the growth of the FTC duties is an expansion of existing powers, not new powers that fall under executive authority, essentially stating that the foundation of the agency has remained the same since *Humphrey's Executor*.²² According to the district court, the question was not whether *Humphrey's Executor* was good law, but whether *Humphrey's* characterized the original duties of the FTC correctly, a harbinger for what was to come. The court granted injunctive relief and restored *Slaughter*. The DC Circuit Court affirmed the district court's decision because of the factual similarities to *Humphrey's Executor* and the fact they saw it as good law.²³

The Trump Administration sought a stay of the DC Circuit's opinion, seeking to pause *Slaughter's* reinstatement while it pursued a petition for certiorari. The Supreme Court granted certiorari and heard oral arguments, during which, several Justices expressed concerns about overruling *Humphrey's* without serious justification, while others were skeptical on limiting the President's removal powers whatsoever.²⁴

The End of *Humphrey's Executor*

Chief Justice Roberts began the historic *Slaughter* opinion by delving into the history of executive power and its relation to independent agencies. The Court stated that the president's removal authority lies in Article II, Section 1, Clause 1, known as the executive vesting clause, which states that "the executive Power shall be vested in a President of the United States of America" and Article II, Section 3, known as the Take Care Clause, which continues by saying that "he shall take Care that the Laws be faithfully executed."²⁵

²² *Id.* at 387.

²³ *Id.* at 389.

²⁴ *Id.*

²⁵ *Trump v. Slaughter*, 2026 WL 1855613, 7 (U.S. June 29, 2026).

Because the president enjoys the executive power vested in him by the Constitution, anyone exercising executive authority draws from that power, (creating the chain of dependence) and to do his job properly, the president must be able to maintain control and direct them. He cannot possibly oversee all of those executive functions himself, so he delegates power to agencies.²⁶ But because of that chain of dependence, they must meet the executive's mandates, or their existence is essentially unconstitutional, as they are then wielding executive power without presidential approval.

The Court found that with the removal protections first established in *Humphrey's*, the chain of dependence was broken, and agencies were left accountable to no one, breaking the democratic connection between elections and governance in the process.²⁷ And with these agencies being led by board and commissions with multiple members, the populace was left not knowing who was responsible for overreach, inefficiency, regulatory failure, etc., nor did they have a method to remove them.²⁸

The Court held that *Humphrey's* created a legally erroneous framework which denied that agencies that "exercise[] legislatively delegated authority to regulate private conduct" do indeed wield executive power.²⁹ And when an agency exercises executive power, the President retains at-will removal rights over the heads of those agencies, which is necessary to fulfill their constitutional obligation.³⁰ Therefore, any statute that restrict the President's firings of these executive agency officials is unconstitutional.

²⁶ *Id.* at 8.

²⁷ *Id.* at 13–14.

²⁸ *Id.* at 5.

²⁹ *Id.* at 16.

³⁰ *Id.* at 5.

Applying this reasoning to the present case, the Court was able to quickly establish that the FTC is indeed an executive power. The Court found that the agency performs key executive functions that subject it to the above framework. First, the FTC participates in rulemaking, as 15 U.S.C. § 57(a) authorizes it to set forth trade regulation that governs “unfair or deceptive acts or practices” with the full force of federal law behind it. Second, they conduct corporate investigations and lead internal adjudication that can result in binding orders or penalties. And third, they represent the U.S. directly in federal court against private entities.³¹

This categorization of duties naturally would have led to a possible extension of the “executive” label onto other previously unmarked agencies and regulatory bodies, but the Court chose to not come to any decision on agencies that fell outside of the President’s “general administrative control,” specifically, those that have historically served a legislative or judicial role.³² Most notably, it set aside the Federal Reserve due to its “unique role[,] . . . to the extent that it follows in the distinct historical tradition of the First and Second Banks” in setting monetary policy.³³ The Court also chose not to opine on non-Article III courts, such as the U.S. Tax Court or the U.S. Court of Federal Claims.³⁴

In his dissent, Justice Gorsuch focused primarily on the impacts of the *Slaughter* decision. He discussed that Congress delegated power to independent agencies under the assumption of for-cause insulation, and that the Court would have to now scrupulously evaluate these delegations under the Nondelegation Doctrine, which bars Congress from handing its powers to another branch, in order to prevent an overconcentration of power in the executive.³⁵ And in a scathing

³¹ *Id.* at 17.

³² *Id.* at 18.

³³ *Id.* at 18.

³⁴ *Id.* at 18.

³⁵ *Id.* at 28 (Gorsuch, J., concurring).

dissent, Justice Sotomayor (joined by Justice's Kagan and Jackson) detailed the historical inaccuracies of the majority's opinion, and how that led to the faulty *stare decisis* analysis that would serve as the core of the argument to overturn *Humphrey's*.³⁶

What it Means for the Future of the FTC

Gorsuch's concurrence provides a strong understanding for how the Court will function in a post-*Slaughter* world.³⁷ While historically, there has been plenty of authority-sharing across branches, *Slaughter* will put an end to that. The Court must now, in future challenges to any of the various agencies, consider whether any of the branches are exercising powers that are better off elsewhere.³⁸ As Gorsuch sees it, the Court created a mess with *Humphrey's*, but they created an even bigger one with *Slaughter* and are responsible for cleaning it up. Insulating agencies is no longer an option, according to Gorsuch, so the Court must take appropriate action itself to hold the President accountable to Constitutional restraints.³⁹

There are several implications that could flow from the *Slaughter* decision. First, it is very possible that the FTC may be absorbed into the DOJ's Antitrust Division.⁴⁰ After all, aside from DOJ's criminal prosecution authority, they do share the same antitrust enforcement responsibilities. Their respective caseloads are only divided based on past experience and where each one might be the best fit; there is no legal separation between the two. The only perceivable leadership difference was that the FTC used to enjoy at-will removal protections, but without that

³⁶ See generally *id.* at 29–51 (Sotomayor, J., dissenting).

³⁷ Andy Smarick, *Gorsuch's Con-jority Opinion in Slaughter*, L. & LIBERTY (Aug. 24, 2026), <https://lawliberty.org/gorsuchs-con-jority-opinion-in-slaughter/> [https://perma.cc/BQ3N-AK5P].

³⁸ For example, they may have to consider if cabinet departments should be able to exercise rule-making authority, or if Congress should make their rules for them. *Id.*

³⁹ This could include simply taking judicial functions away from executive agencies, or something as extreme as declaring non-Article-III court unconstitutional. *Id.*

⁴⁰ Koenig, *The End of an 'Independent' FTC*, LAW360 EMP. AUTH. (June 29, 2026, 8:07 PM), <https://www.law360.com/employment-authority/articles/2494953/the-end-of-an-independent-ftc> [https://perma.cc/AFR5-TE9S].

distinction, perhaps there is no reason to keep them separate now. Having two agencies was done by design, as it allowed for the FTC to be an enforcer independent from the executive branch, which they no longer are.⁴¹ This strengthens the case for consolidation, one already being proposed.⁴²

Second, filling seats is likely to be a challenge post-*Slaughter*. Appointees are likely to experience issues with receiving approval from Congress, or perhaps the President may find it advantageous to just leave the seat empty.⁴³ We see this today, with only 2/5 seats filled, both belonging to Republicans. Because of how the FTC staggers appointments, Presidents typically must appoint commissioners from the other party, but why not just leave them empty? In an era where Commissioners can be fired at will or seats can be left open, why would the Senate put time or effort into recruiting or vetting candidates that may be fired in months or never appointed at all?

Third, these vacancy issues may cause barely-there quorums for meetings/actions, since the FTC must have a majority of Commission members present in order to hold meetings and enact policy or make administrative decisions.⁴⁴ The FTC, and other agencies, may also be unable to take action if someone dies/resigns, as the aforementioned congressional gridlock or stonewalling in filling the seat may create issues obtaining majority votes on enforcement actions and/or policy decisions.⁴⁵ But for certain actors, perhaps this is the goal, to handicap independent agencies.

⁴¹ Koenig, *The End of an 'Independent' FTC*, LAW360 EMP. AUTH. (June 29, 2026, 8:07 PM), <https://www.law360.com/employment-authority/articles/2494953/the-end-of-an-independent-ftc> [https://perma.cc/AFR5-TE9S].

⁴² The One Agency Act has been brought to the Senate floor several times by Senator Mike Lee, most recently in Spring of 2025. Lee Berger and Jason Abel, *Two Agencies Are Better Than One?*, STEPTOE (May 7, 2025), <https://www.steptoec.com/en/news-publications/steptoehead-antitrust-and-competition-insights/two-agencies-are-better-than-one.html> [https://perma.cc/6JQY-YGGH].

⁴³ Adam White, *After Slaughter and Cook: future Federal Reserve fights, and maybe some midnight firings*, SCOTUSBLOG (July 2, 2026, 10:00 AM), <https://www.scotusblog.com/2026/07/after-slaughter-and-cook-future-fed-fights-and-maybe-some-midnight-firings/> [https://perma.cc/2QRJ-UD8X].

⁴⁴ *Id.*; 16 CFR § 4.14 (b) (2026).

⁴⁵ White, *supra* note 43. If there are four Commissioners left after one dies, for example, the Commission could be stuck on 2-2 votes on several matters. The FTC is required to obtain a majority of the quorum's votes at a given meeting to act. 16 CFR § 4.14 (c) (2026).

Fourth, with these at-will firings and the resulting chaos at the top of independent agencies, we are likely to see increased politicization in the agencies and the broader economy. It is very possible that a President could intentionally hobble an entire agency, firing as many people as possible before leaving office, to constrain the resources of the next administration, putting them at a disadvantage and raising the possibility that the incumbent or their party can later return to power.⁴⁶

Finally, this politicization could also drop to the civil service, essentially crushing the administrative state entirely. It is possible that at-will firing power could extend over all executive functions, which would mean that civil service protections and independent agencies are now unconstitutional. We are seeing this challenge being raised in cases using *Slaughter* to challenge *U.S. v. Perkins*, which endorsed firing protections for lower-ranking officers appointed by the head of a department.⁴⁷

Even if the executive only maintains at-will removal over principal officers, wielding such control would allow the President to apply extreme pressure across the executive branch to push certain actions. During the Trump Administration, the FDA has been pressured by the President to approve drugs and announce that Tylenol causes autism, and the DOJ has acted on a prosecutorial agenda that focuses on punishing the President's enemies. One could also see⁴⁸ (as we saw in *Slaughter*) situations where an agency that doesn't go along with the President's wishes is pressured to do so, with principal officers fired if they don't comply, as we almost saw with the Federal Reserve and former Chairman Powell.

Conclusion

⁴⁶ *Id.*

⁴⁷ Lev Menand, *The Unitary Executive and the Federal Reserve*, 94 FORDHAM L. REV. 1, 5–6 (2026).

⁴⁸ See generally Strada, *supra* note 5, at 1–3 (describing a hypothetical scenario in which the executive could wield their increased political power over the economy).

These new mechanisms are a broad restricting of the independence of the administrative state, designed to increase and centralize executive power with less friction than before. After all, assuming control over the heads of agencies is easier than passing legislation to reform those very agencies in one's image.⁴⁹

The growth of the administrative state (sometimes even called the “fourth branch”) was historically tolerated by the legislature since Congress didn't want to have to regulate all the things within the scope of those agencies. It was tolerated by the executive because the President controlled appointments and governance, and meanwhile, courts saw little reason to scrutinize this system beyond the precedent set in *Humphrey's* and built upon by successive cases like *Morrison*. But the pendulum is now swinging, the Court only sees constitutional text defined by themselves, not a living breathing document guided by history.⁵⁰

These decisions and the potential future examination of them have the potential to destabilize the American economy by eroding the structure that has made America the anchor of the global economy. In turn, regular American consumers will suffer.

⁴⁹ Joe Sims, *The FTC Firings Are About Something Bigger than Policy or Personnel*, TRUTH ON THE MKT. (Mar. 26, 2025), <https://truthonthemarket.com/2025/03/26/the-ftc-firings-are-about-something-bigger-than-policy-or-personnel/> [<https://perma.cc/8DG9-PZHU>].

⁵⁰ *Id.*