



Trump v. Slaughter and the Future of For-Cause Removal Protections

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In a 6-3 decision on June 29, 2026, the [Supreme Court held](#) that statutory provisions that allow the President to remove Federal Trade Commission (FTC) commissioners only “for cause” violate the Constitution. The Court’s decision, written by Chief Justice Roberts and joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett, explicitly overrules the 1935 Supreme Court case *Humphrey’s Executor v. United States*, which had upheld Congress’s use of statutory provisions limiting the President’s removal of members of the FTC. Courts initially [applied](#) *Humphrey’s* broadly to uphold for-cause removal protections for multimember boards intended to operate with some independence from presidential control and with functions that were characterized as “quasi-legislative” or quasi-judicial.” More recent cases, however, [narrowed](#) *Humphrey’s* application and [questioned](#), in nonbinding dicta, whether the case “withstood the test of time.” In *Slaughter*, the majority [declared](#) that “If anything more is left of *Humphrey’s*,” it is “overruled.”

The Court’s decision in *Slaughter* [renders](#) the provisions limiting the removal of FTC commissioners, including Rebecca Slaughter, no longer applicable. The long-term impact of the Court’s decision is difficult to predict, however. The Court [only addressed](#) the President’s removal authority over FTC commissioners, but dozens of agencies headed by multimember boards or commissions (commonly referred to as *independent regulatory commissions*)—like the National Labor Relations Board (NLRB), the Federal Energy Regulatory Commission, and the Federal Reserve—have similar, if not identical, statutory removal provisions. After *Slaughter*, however, those provisions appear to be on precarious legal footing. (In *Trump v. Cook*, a separate case released the same day as *Slaughter*, the Court upheld the for-cause removal protections for Federal Reserve Board governors.) The Court [also left open](#) whether the President has the power to directly remove officials appointed by agency leaders—known as “inferior officers.”

Procedural Background in *Slaughter*

Since the beginning of his second term, President Trump [has dismissed](#) dozens of officials from independent regulatory commissions who are covered by statutory for-cause removal provisions. The removal provisions at issue limited the President’s ability to remove board members and commissioners of multimember commission-style agencies. These [provisions require](#) some form of cause for the

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President to remove a commissioner or board member, usually but not always [formulated](#) as “inefficiency, neglect of duty, or malfeasance in office.” Notwithstanding these provisions, President Trump’s removals were largely carried out pursuant to the Administration’s [legal conclusion](#) that existing statutory restrictions on removal are an unconstitutional restraint on the President’s constitutional authority over the executive branch. Leaders of independent commissions, the Administration [argued](#), serve at the pleasure of the President and may, like other agency officials, be removed at will.

Members of at least eight independent agencies filed lawsuits in federal court challenging their removal, including Gwynne Wilcox and Rebecca Slaughter, whom the President removed from the NLRB and FTC, respectively. A [federal district court](#) first issued a decision reinstating Wilcox, holding that the President’s action violated the applicable statutory removal limitation and that, under *Humphrey’s*, the limitation did not unconstitutionally infringe on the President’s removal power. The government sought a stay of the district court opinion in the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit), which, sitting en banc, [held](#) that “[t]he Supreme Court’s repeated and recent statements that *Humphrey’s Executor* . . . remain[s] precedential” required denial of the motion. The government petitioned the Supreme Court for a stay pending appeal, which that Court ultimately granted. In doing so, the Court appeared to [signal](#) that the holding in *Humphrey’s* may no longer support the use of tenure protections for modern independent regulatory commissions, at least not those like the NLRB that can be said to exercise executive power. “The stay,” the [Court stated](#), “reflects our judgment that the Government is likely to show that . . . the NLRB exercise[s] considerable executive power.”

Shortly thereafter, a federal district court [ordered](#) the reinstatement of Ms. Slaughter to the FTC. As in *Trump v. Wilcox*, the government sought a stay of that ruling from the D.C. Circuit, which again denied the stay on the grounds that the issue was foreclosed by *Humphrey’s*. According to the [D.C. Circuit](#), the government had “no likelihood of success . . . given controlling and directly on point Supreme Court precedent.” As the court [explained](#), a “unanimous Supreme Court” had upheld Congress’s use of for-cause provisions to limit the President’s ability to remove FTC commissioners “ninety years ago,” and “[o]ver the ensuing decades—and fully informed of the substantial executive power exercised by the Commission—the Supreme Court has repeatedly and expressly left *Humphrey’s Executor* in place, and so precluded Presidents from removing Commissioners at will.” Though the Supreme Court may have suggested that *Humphrey’s* did not apply to the NLRB in *Wilcox*, the D.C. Circuit [determined](#) that the case continued to apply to the FTC (William Humphrey was an FTC commissioner). The government again sought a stay from the Supreme Court.

The Supreme Court [granted](#) that stay and, treating the application as a petition for a writ of certiorari before judgment, granted the petition, directing the parties to brief and argue “[w]hether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey’s Executor v. United States*, should be overruled.”

The Slaughter Decision

The Court’s decision overrules *Humphrey’s*, thereby invalidating removal provisions for FTC commissioners and, likely, officials appointed to commission-style agencies that wield executive power, including the authority to bring a case in federal court, issue binding regulations, and adjudicate claims. The Court grounded this decision in its view of the text, structure, and history of Article II of the Constitution. In the [Court’s view](#), the [Vesting Clause](#) of Article II, which vests “the executive power” in “a President of the United States,” creates a “unity” of executive power in a single person—the President. From this premise, the Court [derived](#) its holding that all power delegated to the executive branch is the President’s and, as “a necessary corollary,” any executive power wielded by an officer must be answerable to the President through the power to remove them at will.

This reading of the Constitution, the Court [contended](#), is supported by early American history. The delegates to the Constitutional Convention in Philadelphia, the Court [recounted](#), debated the structure of the executive branch at length, ultimately deciding on a single President that would exercise “energy [and] vigour” and a certain amount of control over any officers provided by Congress. While neither the Constitution nor the delegates in Philadelphia mentioned the removal power, the Court [held](#) that the basic structure of Article II mandates at-will removal for subordinate officials. The inability to remove subordinate officials at will would, in the Court’s [view](#), destroy the unity the Framers created in vesting a single President with the executive power. More fundamentally, the Court [explained](#) that removal “was just part of what it meant to wield ‘the executive power.’” According to the *Slaughter* majority, the First Congress confirmed this reading in its debate and creation of the first three executive departments in 1789. The Court [reasoned](#) that, by identifying the fate of documents held by a subordinate if he were removed by the President, the First Congress recognized that the Constitution vests the removal power with the President and the President alone. The Court also surveyed judicial decisions, commentary, and presidential and congressional practice throughout the 19th and early 20th centuries, which it [described](#) as confirming the President’s power to remove subordinates at will.

With this historical analysis, the Court cast *Slaughter* as the final step in a long line of 20th- and 21st-century cases that slowly and persistently chipped away at the foundations of the *Humphrey’s* decision. (Several CRS [products address in detail](#) the history of the Supreme Court’s shifting approach to *Humphrey’s*.) In *Humphrey’s*, decided in 1935, the Supreme Court held that Congress could limit the President’s authority to remove members of commission-style agencies that [were](#) “predominantly quasi-judicial and quasi-legislative” in nature. *Humphrey’s* came just nine years after the Court’s apparently contrary decision in *Myers v. United States*. There, the Court [invalidated](#) a statutory provision that prohibited the President from removing an appointed executive official—a postmaster—without first obtaining the advice and consent of the Senate. *Myers* [recognized](#) that “the executive power” vested in the President by Article II includes “the power of appointment and removal of executive officers,” along with “general administrative control” of the executive branch. *Myers* did not address the constitutionality of statutory removal protections, even though its sweeping pronouncements about executive authority [indicate](#) that such provisions might be constitutionally suspect. *Humphrey’s*, however, did address removal protections for commissioners of the FTC. It [distinguished](#) *Myers* by holding that the FTC did not exercise “executive” power but rather exercised “quasi-legislative” and “quasi-judicial” power. As a result, the *Humphrey’s* Court [ruled](#) that commissioners need not be removable at will by the President.

Beginning in the 1980s, however, the Court began to cast doubt on the *Humphrey’s* decision. In the 1988 case *Morrison v. Olson*, the Court in dicta [explained](#) that it thought the FTC “would at the present time be considered ‘executive,’ at least to some degree,” undermining *Humphrey’s* categorization of the FTC as quasi-legislative or quasi-judicial. In a [series of cases](#) from 2010 to 2024, the Court [displayed](#) a growing [skepticism](#) of Congress’s authority to limit removal of executive officials heading departments, describing the President’s power as “unrestricted” and “exclusive.” As part of this transition, the modern Court had stated, up until its decision in *Slaughter*, that it [recognized](#) “only two” specific scenarios in which Congress could insulate a federal officer from at-will removal to encourage agency independence: “one for multimember expert agencies that do not wield substantial executive power” that derives from the Court’s holding in *Humphrey’s*, “and one for inferior officers with limited duties and no policymaking or administrative authority” that derives primarily from *Morrison*. The Court’s [two](#) most [recent](#) cases prior to *Slaughter* deciding the scope of presidential removal power formally left *Humphrey’s* in place but undercut the rationale for that decision by stating that *Humphrey’s* “conclusion that the FTC did not exercise executive power has not withstood the test of time.” In ruling that the for-cause removal protections for FTC commissioners impermissibly encroached upon the President’s removal authority, the Court in *Slaughter* reasoned that it was simply taking its decisions over the last several decades to their logical conclusion. In the [Court’s words](#): “To persist in *Humphrey’s* would require us to depart from almost every case on the subject we have decided since.”

The FTC, the Court [held](#), exercises significant executive authority. It promulgates binding regulations, enforces statutes and its own regulations through in-house adjudications, and can bring suit on behalf of the United States in federal court. The Court [noted](#) that it held each of these powers to be “executive” in nature in prior cases and [determined](#) that “The FTC unquestionably exercises executive power, and must therefore be controlled by the Chief Executive.” Because the FTC’s functions “fall well within the heartland of executive power,” the Court [declined](#) to use the case as an opportunity “to define the bounds of what such power entails.”

The Court also [explicitly disclaimed](#) that it was deciding the permissibility of statutory removal protection for other officials. In particular, the Court [identified](#) the Federal Reserve as outside the ambit of its decision, although on the same day *Slaughter* was issued, the Court issued its decision in *Trump v. Cook*, upholding the constitutionality of removal protections for Federal Reserve Board of Governors members because of the Federal Reserve’s “distinct historical tradition.” The Court also [left “for another day”](#) the fate of removal protections for non-Article III courts, like the Tax Court and the Court of Federal Claims.

Finally, the Court did not explicitly address the President’s authority to remove “inferior officers.” [Inferior officers](#) are those officers within the executive branch who wield a limited amount of executive authority but are subject to supervision by a superior officer who themselves report directly to the President—a head of an executive agency or department, for example. The [Appointments Clause](#) of the Constitution permits Congress to vest the appointment of inferior officers in the President, a head of department, or a court of law, all without the need for Senate advice and consent. Several Supreme Court decisions spanning over a century have announced two principles that *Slaughter* may have called into question. First, beginning in the early 19th century, the Court [recognized](#) the common law principle that, unless otherwise specified by statute, the power to appoint an official carries with it the power to remove that official. Second, where the power to appoint was vested with a head of department, as is permitted for inferior officers, the Court held (on [two occasions](#) separated by almost a century) that Congress may impose restrictions on the removal of certain kinds of inferior officers. The Court’s pronouncements in *Slaughter* of the President’s removal authority over the executive branch, however, appear to raise the question of whether the President could directly remove an inferior officer whose appointment was vested with a head of department or court of law and whether Congress could impose any removal procedures or limitations in such cases. (The reach of *Slaughter* may also have implications for administrative law judges who adjudicate claims brought before agencies as well as for civil service tenure protections, which were based largely on the Court’s 19th century opinions.)

The Dissent

Justice Sotomayor dissented, joined by Justices Kagan and Jackson. The dissent [first contended](#) that the Court’s decision unsettles over a century of law and practice dating back to the creation of the first modern independent agency—the Interstate Commerce Commission—in 1887. The dissent also took aim at the majority’s historical analysis, [noting](#) the absence of any constitutional provision addressing removal specifically and any debate during the Constitutional Convention on the topic. In the [dissent’s view](#), the majority’s account of the Framers’ writings before and after ratification of the Constitution and the views of 19th-century judges and commentators elides inconvenient statements that indicate a much larger and more nuanced range of views regarding presidential removal. The unsettled nature of the debate over decades (if not centuries) should, the [dissent argued](#), give the majority pause in holding that the Constitution is clear in empowering the President to remove subordinates at will.

The dissent [faulted](#) the majority for leaving unanswered many questions about the scope of its opinion. What is it, the dissent [asked rhetorically](#), that would make non-Article III courts not subject to the logic of the majority’s opinion, since the [majority held](#) that adjudications by entities within the executive branch are an exercise of executive power subject to the control of the President? What is the fate of inferior

officers and civil servants who exercise some amount of executive power given the Court's holding? The dissent [predicted](#) that these open questions will generate “chaos” for lower courts and agencies trying to implement the Court's decision. Finally, the dissent [criticized](#) the majority for carving out the Federal Reserve from its decision. Why, the dissent [asked](#), should only agencies that influence monetary policy be exempt from the constitutional limits on Congress's authority? Moreover, the dissent [argued](#) that the majority does not explain how similar the Federal Reserve must remain to its historical antecedents to continue to qualify for this exemption. These are all issues that, in the [dissent's view](#), were already settled law under *Humphrey's* that the Court will now have to address over time.

Considerations for Congress

The Court's decision imposes a clear limit on Congress's legislative powers: it [likely no longer can provide](#) for-cause removal protections for members of commission-style agencies who wield executive power. The Court declined to provide a comprehensive definition of executive power, but it [declared](#) that “When an agency ‘executes’ a congressional mandate against private parties, it exercises executive power.” In the Court's [view](#), issuing regulations concerning private party conduct, conducting in-house adjudication, and bringing suit in federal court in the name of the United States are all exercises of executive power that require presidential control through at-will removal.

The practical upshot of this opinion appears to be that the members of dozens of commission-style agencies likely now serve at the pleasure of the President, providing the President with a powerful tool to impose policy priorities. [Justice Gorsuch](#), in his concurring opinion, and the [dissent](#) suggested that Congress might never have delegated such broad authorities to executive branch agencies without independence from the President provided by removal protections. Justice Gorsuch [noted](#), however, that if Congress wishes to diminish the power of these agencies, it may have to do so through a veto-proof supermajority, since, in his estimation, a President would likely veto a dissipation of his regulatory power.

Notwithstanding these limitations, the Court's decision appears to leave Congress with several possible legislative options, should it wish to respond. Significantly, Congress is the [primary architect](#) of executive branch agencies. If Congress were to decide that *Slaughter* unsettles the fundamental bargain of independent agencies (i.e., the delegation of great power conditioned on independence from the President), it could claw back some or all of the power it delegated to these agencies. Congress could also disestablish these agencies, reorganize them as it sees fit, or break them apart and distribute their powers among other agencies. In addition, for [principal officers](#), the Constitution [vests](#) the Senate with the power of advice and consent over the President's nominees, and Congress may elect to use the same appointments framework for inferior officers. Requiring Senate assent to a nominee could influence the President's selection of persons for those offices. Moreover, the Senate may be able to limit an agency's ability to act by withholding its advice and consent of a nominee.

Other potential options include designing additional procedures to limit presidential influence. To date, the Supreme Court has never questioned the legitimacy of generally applicable procedural rules prescribed by Congress for how agencies carry out their delegated functions. Statutes like the [Administrative Procedure Act](#) or the [Paperwork Reduction Act](#) create such procedures for rulemaking, agency adjudications, and information collection efforts. The nature of commission-style agencies may create additional opportunities for Congress to impose requirements before an agency can act. Because commission-style agencies necessarily have more than one person at the top of the agency, Congress could, for example, require a certain number of members to be present before an agency takes action. Known as a *quorum requirement*, this type of provision can bar an agency from acting with too few members present and would appear to give the Senate some degree of control over such agencies' ability to act by withholding advice and consent of presidential nominees, thereby defeating a quorum. Some commission-style agencies already have statutory quorum requirements—the National Transportation

Safety Board is an [example](#)—but many do not. Congress could also impose supermajority voting requirements on agency action. Given that most commission-style agencies are also balanced along partisan lines, with the President’s party receiving a bare majority of seats, a supermajority voting requirement would require consent from a member in the minority before the agency could take action. These kinds of procedural interventions may limit the ability of a President or a single party to exercise complete control over an agency but might come with significant costs in the agency’s ability act quickly, or at all.

Ultimately, although *Slaughter* overruled *Humphrey’s* and invalidated the statutory removal protections for FTC commissioners, it left open a number of questions that the courts will likely address, as well as options for Congress to provide direction to the President and the courts in future cases.

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