

What's At Stake In Justices' Merits Hearing Of FTC Firing

By **Anthony DiResta and Timothy Taylor** (October 22, 2025)

On Sept. 22, the U.S. Supreme Court issued an order in *Trump v. Slaughter* staying a lower court's order to reinstate Rebecca Slaughter as commissioner at the Federal Trade Commission, following President Donald Trump's decision to remove her without cause.

The Supreme Court also directed that the case be heard on the merits in December. The high court issued similar orders earlier in May and July, staying reinstatements of members of the National Labor Relations Board, Merit Systems Protection Board, and Consumer Product Safety Commission.

Discussion of the Supreme Court's Order

Trump removed Slaughter, as well as Commissioner Alvaro Bedoya, on March 18.

Slaughter sued, challenging the action in the U.S. District Court for the District of Columbia, citing the 1935 Supreme Court precedent *Humphrey's Executor v. U.S.*, which held that presidents cannot remove FTC commissioners except for the reasons specified by Congress: inefficiency, neglect of duty or malfeasance.

Trump did not cite any of these reasons, only policy differences.

On July 17, U.S. District Judge Loren L. AliKhan ordered Slaughter's reinstatement. On Sept. 2, the U.S. Court of Appeals for the D.C. Circuit denied the government's motion to stay the decision.

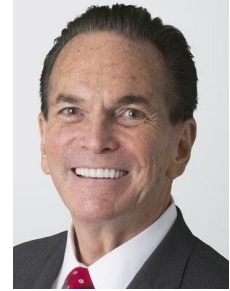
The government made an emergency application to the Supreme Court to temporarily stay the district court's order. The government argued that the FTC in the days of *Humphrey's Executor* was far different from the FTC today.

By a 6-3 vote, the Supreme Court granted the stay, allowing Trump's removal of Slaughter to stand while the justices consider the case's broader legal question.

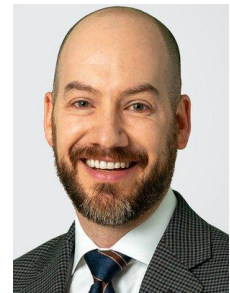
Procedurally, the court treated the government's application as a petition for a writ of certiorari and granted it. The court will review whether the FTC's removal protections violate the constitutional separation of powers and whether *Humphrey's Executor* should be overruled. The case will be scheduled for oral argument in December.

Justice Elena Kagan dissented, joined by Justices Sonia Sotomayor and Ketanji Brown Jackson. In her dissent, Justice Kagan cited Title 15 of the U.S. Code, Section 41, which bars the president from discharging FTC commissioners except for "inefficiency, neglect of duty, or malfeasance in office."

She wrote that the FTC is a "classic independent agency" with a "multi-member, bipartisan commission ... whose members serve staggered terms and cannot be removed except for



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good reason."

The FTC's History

The FTC Act of 1914 was enacted in response to growing public concern about monopolies, trusts and unfair methods of competition during the Progressive Era of the 1890s through 1920s.

Congress sought to create an expert, independent body that could address complex economic practices in ways the courts could not easily manage. The FTC Act has given the FTC two primary directives: to protect competition by prohibiting unfair methods of competition and to safeguard consumers by prohibiting unfair or deceptive acts or practices.

The agency was envisioned as a preventive regulator, empowered to investigate, study and stop harmful practices before they solidified into entrenched monopolies. Congress designed the FTC with certain features to function as an independent commission rather than a single-headed executive agency:

- Five commissioners appointed by the president and confirmed by the U.S. Senate;
- A bipartisan composition, with no more than three commissioners belonging to the same political party to ensure a balance of perspectives; and
- Staggered, fixed terms of seven years, staggered so that one seat expires yearly, insulating the agency from short-term political shifts.

This structure was intended to foster apolitical, expert decision-making, modeled on a quasi-judicial, quasi-legislative body that combined economic expertise with legal authority. The legislative history shows Congress sought to create an independent referee in the economy.

President Woodrow Wilson, who signed the FTC Act into law, argued that monopolistic power should not be policed solely through the courts but also through a specialized, dispassionate commission capable of continuous oversight.

Humphrey's Executor

In 1935, the Supreme Court decided *Humphrey's Executor v. U.S.*, a landmark case that has guided this facet of constitutional law for nearly a century.

The case arose when President Franklin Roosevelt removed FTC Commissioner William Humphrey for political and policy disagreements. Humphrey resisted, pointing to the FTC Act's requirement that commissioners could be removed only for cause. After Humphrey's death, his estate sued for back pay.

The Supreme Court unanimously ruled in favor of Humphrey's estate. It held that Congress had the authority to limit presidential removal power for independent regulatory commissions.

The high court distinguished the FTC from purely executive agencies, describing it as performing quasi-legislative and quasi-judicial functions. As such, the court concluded, Congress could validly restrict the president's removal authority to protect the agency's

independence.

Impact of the Court's Decision

The immediate effect of the Supreme Court's September order is that Slaughter remains removed, pending a decision after a full hearing in December. There is no guarantee that the high court's decision will keep Slaughter removed. In its earlier Wilcox stay decision, one of the Supreme Court's reasons for permitting temporary removal was simply "to avoid the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation."

If the Supreme Court overturns or narrows Humphrey's Executor, the implications will be profound.

More Presidential Control Over Independent Agencies

Agencies such as the FTC, NLRB, CPSC, MSPB and the Federal Communications Commission could see their commissioners or leadership more vulnerable to removal for political or policy disagreements rather than misconduct.

The president might have broader power to shape these agencies' policies by choosing to remove and replace nonaligned officials.

Reduced Institutional Independence

The role of independent regulatory bodies is often to counterbalance political influence, bring technical expertise and enforce laws consistently. Weakening removal protections could reduce that insulation, increasing the risk of politicization.

Critics warn that independent agencies might become more beholden to whomever is the sitting president.

Greater Political Responsiveness and Accountability

The other side of a stronger removal power is a more politically responsive and accountable set of independent agencies.

Advocates argue that these agencies should reflect the policies and priorities of the American people, as shown through their presidential choice, rather than aims of their own or that are antithetical to their elected chief executive.

Changed Dynamics in Litigation/Regulation

If removal protections are weakened, there may be more litigation over whether a removal was "for cause," what counts as "cause," and what statutory protections remain.

Precedent Shift

Overturning or further narrowing Humphrey's Executor would continue the shift in legal and political understanding of the balance between Congress, independent agencies and the president. It might also affect separation-of-powers jurisprudence more broadly.

Key Questions to Consider

What counts as executive power or quasi-legislative/quasi-judicial power?

If court removes, redefines or shrinks the category of agencies that Humphrey's Executor protects, many agencies' leadership structure and traditions will be reevaluated.

Are other presidential removal or selection criteria constitutionally valid?

For instance, courts may be asked to consider the constitutionality of partisan-balance requirements.

If the high court agrees that the president can remove FTC commissioners, how broad will its grounds be?

It will be important to see if the Supreme Court relies on features unique to the FTC, facts of its operations today compared to the time of Humphrey's Executor, or a more generally applicable constitutional interpretation. Those contours will inform whether the court's forthcoming decision applies only to the FTC or to additional agencies, such as financial and labor regulators.

Can Congress craft removal protections?

And if allowed it remains to be seen if it will do so in ways that preserve some independence while respecting presidential removal power.

Slaughter and the Supreme Court's Jurisprudence

The John Roberts Supreme Court has shown no qualms overruling even long-standing precedent when it clashes with the court majority's interpretive methodology. It has used several methods for changing course — or bringing the court's jurisprudence into proper constitutional alignment.

Sometimes the court has invoked originalist methodology to determine the correct interpretation of the U.S. Constitution, including what it does and does not address or protect.

Sometimes the court has described modern court decisions as deviations from a consistent historical, legal and political tradition. And sometimes the court has overruled or distinguished precedent by describing its constitutional analysis as being circumstance-dependent, and that circumstances have since changed.

This aspect of the court's jurisprudence cannot be reduced to simple explanations, such as the idea that the court reflexively chooses politically conservative outcomes or favors particular people or causes. The court has been accused of and cheered for both diminishing and aggrandizing all three branches of government, depending on the decision at issue.

The Supreme Court may use any or all of these levels of constitutional interpretation in the Slaughter case. The how of the court's decision will determine the height and circumference of the decision's ripples.

A decision narrowly carved to the FTC's statutory scheme, history and current duties may have little precedential value. A decision that takes a broader approach, as the questions presented suggest, could affect many or all independent agencies. And a decision that takes

a maximalist approach could raise new questions about Executive Branch authority that extend well beyond the recondite realms regulated by independent agencies.

Conclusion

The interim decision to let Slaughter's removal stand while the case proceeds signals the court's consideration of a potential major shift in the separation-of-powers structure of U.S. regulatory governance.

If Humphrey's Executor is overturned or sharply curtailed, it will give presidents much more authority over independent agencies — with both legal and political consequence.

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