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Insights
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SCOTUS Just Expanded President's Power to Fire Members of Independent Agencies: What the Landmark Ruling Means for Businesses and Employers

The US Supreme Court just ruled in favor of President Trump by vastly expanding the presidential power to remove members of independent agencies. While today's *Trump v. Slaughter* decision centered on challenges to statutory removal protections for members of the Federal Trade Commission (FTC), the case could have sweeping implications for other independent agencies like the Employment Opportunity Commission (EEOC) and the National Labor Relations Board (NLRB) – not to mention the fundamental structure of the federal government itself. Here's everything businesses and employers need to know.

Quick Background

- **How It Started.** Last year, President Donald Trump fired two Democratic Commissioners of the Federal Trade Commission (FTC) without articulating a specific cause. After former Commissioner, Rebecca Kelly Slaughter, challenged her termination as unlawful and was reinstated by a federal district court, the Trump administration appealed and challenged Slaughter's statutory removal protections as unconstitutional. The Supreme Court

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agreed in September to hear the case and blocked Slaughter's reinstatement while the lawsuit played out.

- **Legal Issues.** At issue in *Trump v. Slaughter* is a century-old federal law and a 1935 Supreme Court decision. The **FTC Act** establishes the agency's powers and provides that commissioners may be removed by the president for "inefficiency, neglect of duty, or malfeasance." In ***Humphrey's Executor v. United States***, SCOTUS upheld the constitutionality of for-cause removal protections in the FTC Act. The unanimous Court at that time said that because FTC commissioners were "charged with duties neither political nor executive, but predominantly *quasi*-judicial and *quasi*-legislative," the power of Congress to establish those protections prevailed over the president's removal power.

The Supreme Court's Decision in *Trump v. Slaughter*

In a 6-3 decision issued today, the Supreme Court held that the FTC Act's statutory removal protections **violate the separation of powers**, and that the President **may remove his subordinates at will**.

Writing for the majority, Chief Justice Roberts said that the President is not "all powerful" but is "not impotent either" – and has the **sole executive power** of the United States. The Court said that today's FTC enforces and administers around 80 federal laws that are key to the US economy and performs tasks that "fall well within the heartland of executive power."

SCOTUS ultimately concluded: "Although it is up to the Senate to decide whether to confirm those with whom the President would prefer to work, neither Congress nor the courts may saddle him with those with whom he cannot work. Subordinates who exercise the President's power are subject to removal by him. Then, and only then, can they remain accountable to the President, and the President to the people."

In so ruling, the Court **overruled *Humphrey's Executor***, after questioning if anything more was left of it after decades of decisions that chipped away at it. The Court said that *Humphrey's* was tethered to a "highly circumscribed and almost fictional view of the FTC's role" that is completely out of step with the agency's activities today.

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The Court, however, **left many questions open**. For example, the Court declined to define the bounds of what the executive power entails, noting that "not all offices created by Congress necessarily come with executive or even sovereign power attached." The majority also made clear that the *Trump v. Slaughter* decision:

- should **not** be read to implicate the constitutionality of other entities with unique roles, such as the Federal Reserve; and
- does **not** address the fate of officials not before the Court, explicitly leaving open potential exceptions for adjudicatory agencies, including non-Article III courts.

Justices Sotomayor, Kagan, and Jackson Strongly Dissented

Justice Sotomayor wrote a dissenting opinion, joined by Justices Kagan and Jackson. The dissent said that the Constitution's text and history, as well as centuries of political practice and the Court's own precedent, make it clear that Congress may enact for-cause removal protections for the heads of independent agencies. **"The result," according to the dissent, "is a President who emerges with far greater power than ever before."**

The dissent also said that today's decision will **transform the dozens of agencies headed by commissioners or board members with for-cause removal protections** "in ways that those who created them never could have expected and actively sought to avoid, fundamentally recalibrating the balance of power in this country in the process."

How'd We Do With Our Predictions? Our FP attorneys (Jonathan Crook, Dave Dorey, Ben Ebbink, and Reyburn Lominack) correctly predicted in December that the SCOTUS majority would strike down the statutory removal protection for FTC Commissioners as unconstitutional in a 6-3 decision (with Jonathan, Dave, and Reyburn even nailing that it would be written by Chief Justice Roberts). Our attorneys also predicted that the Court would overrule *Humphrey's Executor* while also making clear that it was not reaching unpresented questions about "unique" government agencies such as the Federal Reserve.

Key Takeaways for Employers

Now that the Supreme Court has struck down the statutory removal protections for FTC members, we anticipate two big developments in the near future that will impact the workplace.

Stay Tuned for FTC Politicization

The FTC will soon become more politicized, and its enforcement priorities could swing more drastically with each administration. However, it would have little impact in the short term. The five-member agency currently has just two commissioners – Andrew Ferguson (Chair) and Mark Meador, both Republicans. In addition, President Trump nominated David MacNeil (Republican) to one of the three remaining open seats, and federal law prohibits more than three commissioners from the same political party.

While the FTC may not seem like a major player in workplace law, it has increasingly expanded its reach into employment-related issues, such as non-competes and restrictive covenants, antitrust in the labor market, gig economy and worker classification, and employee data privacy (particularly when artificial intelligence tools are involved). And, of course, consumer protection remains a priority for the FTC, which can also impact many businesses (for example, the FTC announced in September a $7.5 million settlement with an educational technology company over its unlawful cancellation practices).

Impact on Other Federal Agencies

The Court's overruling of *Humphrey's Executor* will eventually create ripple effects for other independent agencies such as the NLRB and EEOC, dramatically shifting how these key workplace agencies operate. For example:

- In December, a federal appeals court upheld President Trump's unprecedented firing of former NLRB member Gwynn Wilcox, ruling that the Board's functions in recent years amounted to meaningful enforcement and policymaking authority beyond the reach of *Humphrey's Executor* and into a realm that must be subject to the president's unfettered removal authority. While the ruling could be appealed, the Supreme Court's decision in *Trump v. Slaughter* seems to strongly signal that the Wilcox saga will end in the president's favor.

- Several courts are currently hearing constitutional challenges to the NLRB's structure – such as litigation brought by SpaceX in 2024 after the agency issued an administrative complaint against the company (read more here – however, earlier this year a Regional Director of the NLRB relinquished jurisdiction over SpaceX, and a federal appeals court recently dismissed a SpaceX appeal in its suit against the agency). In addition, circuit courts divided last year regarding whether employers can use federal court injunctions to halt NLRB proceedings. After today's ruling, the agency will be in a much weaker position to prevail in these cases.
- After Trump fired two Democratic members of the EEOC in January 2025, one of them sued the administration. Jocelyn Samuels argued that her removal was unlawful and that protections set by Congress are constitutional under *Humphrey's Executor*. In October, a district court in DC hit pause on the case pending the decision in *Trump v. Slaughter* – and we now seem to have a pretty good indication on how that litigation will turn out.

Conclusion

We will continue to monitor developments from SCOTUS and all areas of workplace law, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.