

# The Post-*Slaughter* Landscape: What Businesses Should Expect Next

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In an anticipated but consequential decision, the Supreme Court ruled 6-3 on June 29, 2026 in *Trump v. Slaughter* that the statutory provision requiring “cause” to remove Federal Trade Commission (FTC) members violates the Constitution. The decision will fundamentally alter the operation and practice of the FTC in its enforcement and rulemaking functions and potentially carries far-reaching implications for independent agencies broadly. The *Slaughter* decision may pave the way for significant future challenges to agency rulemaking practices and may significantly limit the concept of the “independent” agency going forward.

Businesses should expect more significant swings in FTC policy and enforcement between administrations, and for agency decision-making to hew more closely to White House policy preferences. Businesses should also be prepared to incorporate these considerations into their strategy when interacting with the FTC.

## Background

The case was precipitated by President Donald Trump’s firing of Democratic FTC Commissioners Rebecca Kelly Slaughter and Alvaro Bedoya last year. The Federal Trade Commission Act (FTC Act) created the agency in 1914 as a commission comprised of five members with staggered seven-year terms, no more than three of whom can be of the same political party as the President. The FTC Act also states that commissioners may be removed by the President only for “inefficiency, neglect of duty or malfeasance in office.”<sup>1</sup>

At the time of the firing, the President did not assert that he had cause to fire Slaughter or Bedoya under any of these standards, but rather that their service on the FTC was “inconsistent with [his] Administration’s priorities.” Slaughter challenged her removal as unlawful, and lower courts ruled in her favor based on the precedent in *Humphrey’s Executor v. United States*, the landmark 1935 case which upheld the FTC Act’s removal restrictions and that has long served as the constitutional foundation for independent multi-member agencies.

## The Opinion

The majority, in an opinion authored by Chief Justice Roberts, framed the dispute as a straightforward question of presidential control over the executive branch. Relying on Article II’s vesting of the “executive Power” in a single President, the Court concluded that executive officers exercising substantial governmental authority must remain accountable to the President through the removal power. According to the majority, because the FTC in its “present form ... enforces and administers some 80 statutes, which cover almost every facet of our Nation’s economy,” it “unquestionably exercises executive power.”

While *Humphrey’s Executor* had described certain of these functions as “quasi-legislative” and “quasi-judicial,” the majority concluded that these distinctions are no longer tenable, and that agencies with any executive authority must fall within the rule of presidential removal. The Court therefore held that FTC

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<sup>1</sup> 15 U.S.C. § 41.

commissioners are removable at will and that Congress cannot impose for-cause restrictions on the President's ability to remove them.

Justice Gorsuch authored a separate concurrence emphasizing broader constitutional concerns about agencies that simultaneously exercise legislative, executive, and adjudicative functions. Gorsuch commended the majority for "tak[ing] a notable step back toward the Constitution," but also wrote that "the only sure path is to finish the journey we start today and restore legislative and judicial powers to where they belong: in Congress and the courts."

The *Slaughter* decision can be read as the next in a line of cases from the Roberts Court weakening the power of the FTC, and of federal agencies more generally. In *AMG Capital Management, LLC v. FTC* (2021), the Court stripped the FTC of its ability to seek equitable monetary relief under Section 13(b) of the FTC Act. In *Loper Bright Enterprises v. Raimondo* (2024), the Court ended the longstanding "Chevron doctrine" which gave deference to agency interpretations of ambiguous federal statutes. And as both the majority opinion and Justice Gorsuch's concurrence suggest, further cases challenging agency authority may be forthcoming.

## Analysis

### *Implications for the FTC*

In the immediate future, the *Slaughter* decision will have little impact on the enforcement priorities of the FTC, which has already been operating with only two Republican commissioners for more than a year.

Taking a longer view, the decision represents a profound change to the FTC's institutional structure. For more than a century, the agency has operated as a bipartisan commission whose staggered terms and removal protections were designed to moderate political influence and promote deliberative decision-making. Following *Slaughter*, presidents may remove commissioners for any reason, substantially weakening the bipartisan character that Congress sought to embed in the agency's design. It is possible, if not likely, that subsequent presidents of both parties will fire opposing party commissioners upon taking office and replace them solely with members of their own party, resulting in decreased continuity in the agency and more drastic policy shifts as control of the White House changes.

Further, even the commissioners from the president's own party lose much of their independence. Previously, majority commissioners were free to take positions that the president disagreed with and be insulated by the removal protections. Indeed, agency rules and practices specifically prohibit *ex parte* communications with interested persons on a case, including White House staff. Now, commissioners may be more inclined to remain in lockstep with the White House on issues or enforcement actions that it has an interest in (whether political or personal), for fear of being fired if they dissent—and nothing in the FTC's rules prohibits the White House from making its preferences on a matter clear through public statements.

Beyond the removal issue, the decision raises the question of whether the FTC will even continue functioning as a multi-member body. If commissioners may be fired at will, there is nothing preventing the President from removing all but one commissioner to serve as chair.<sup>2</sup> And to the extent that multiple commissioners remain, there is little reason to expect disagreement on matters for which the president's preference is clear. The logic of the opinion thus arguably reduces the constitutional significance of collective decision-making and pushes the FTC closer to the model of a traditional executive agency headed by a single administrator. Businesses should therefore expect continued debate over whether the FTC should remain a commission at all.

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<sup>2</sup> This is because the FTC Act provides that the commissioner(s) will continue carrying out the work of the FTC even if seats are left vacant. See 15 U.S.C. § 41 ("A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission").

As a result, clients with matters before the FTC should consider the following practical advice:

- Clients should expect that positions taken by staff—even at the investigatory level—will be closely aligned with the commissioners;
- Clients should be prepared to face significant pushback when their positions do not align with the policy and/or enforcement precedent of the party in power at the White House;
- Clients should expect that FTC precedent, particularly precedent set during the tenure of the out-of-power party, may carry significantly less weight;
- Clients should expect that there will be little opportunity to influence enforcement outcomes based on contrary or conflicting views taken by the commissioners;
- Clients should expect that outcomes may be significantly impacted by lobbying outside the FTC, including before Congress and the White House;
- Clients should expect that lobbying to the “minority” party will have little bearing on the outcome of matters.

#### *Implications for Administrative Rulemaking*

Although Chief Justice Roberts confined the opinion to presidential removal and did not directly attack Congress’s authority to delegate policymaking discretion to agencies, the decision contains broader implications for administrative law, including to agency rulemaking. For example, one of the most significant functions of the FTC is its rulemaking activity under Section 5 of the FTC Act’s prohibition on “unfair or deceptive acts or practices.” Both the majority opinion and Justice Gorsuch’s concurrence suggest that this type of rulemaking may come under fire in the near future.

Justice Gorsuch’s concurrence is particularly noteworthy. His separate opinion focused on the constitutional difficulties created by agencies that exercise legislative, executive, and adjudicative authority simultaneously. While Roberts stopped short of questioning Congress’s ability to delegate broad policymaking authority because the issue was not before the Court, Gorsuch’s reasoning suggests that future litigants may use *Trump v. Slaughter* as a platform for renewed challenges to expansive agency rulemaking authority. Going forward, clients should anticipate that current rules promulgated under Section 5 of the FTC Act’s prohibition on “unfair or deceptive acts or practices” (as opposed to those promulgated under specific statutory delegations) may be subject to review and possibly significantly revised or eliminated.

#### *Implications for Independent Agencies More Broadly*

Another significant consequence of *Trump v. Slaughter* will be its impact beyond the FTC. By overruling *Humphrey’s Executor*, the Court has potentially opened numerous independent agencies with similar structures to greater presidential control. Agencies historically structured as bipartisan commissions—including entities that exercise enforcement, adjudicatory, or regulatory authority—may see more dramatic turnover and policy shifts from one administration to the next. Businesses should be prepared for this increased volatility, and for dramatic swings in policy and enforcement priority between administrations.

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