

## Administration dismisses FTC's two Democratic commissioners, setting up battle over FTC independence

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On March 18, 2025, the FTC's two Democratic commissioners were dismissed. The dismissals have sparked additional debate over the constitutionality of independent agencies and increase the likelihood of Supreme Court review. With a third Republican commissioner likely to be confirmed shortly, the immediate impact of the dismissals on FTC enforcement may be limited. But the ultimate resolution of this matter could have implications far beyond the FTC for U.S. administrative law.

On March 18, 2025, the administration notified the Federal Trade Commission's two Democratic Commissioners, Alvaro Bedoya and Rebecca Kelly Slaughter, that their "continued service on the F.T.C. is inconsistent with [his] administration's priorities."<sup>1</sup> Bedoya and Slaughter have both responded by stating publicly that they intend to sue to enjoin the actions as a violation of the FTC Act,<sup>2</sup> which provides that FTC commissioners may be removed "for inefficiency, neglect of duty, or malfeasance in office."<sup>3</sup> FTC Chair Andrew Ferguson and Commissioner Melissa Holyoak have publicly supported the actions.<sup>4</sup>

In the U.S. Supreme Court's 1935 opinion in *Humphrey's Executor v. United States*, the Supreme Court upheld the constitutionality of the limits the FTC Act imposes on the ability to remove a sitting FTC commissioner based on a finding that the FTC did not exercise executive authority at that time.<sup>5</sup> Any challenge from Bedoya or Slaughter will first be adjudicated in the lower federal courts, although it is likely that the U.S. Supreme Court will ultimately have to assess the dismissal under *Humphrey's Executor* and to determine whether the removal restrictions are consistent with Article II of the Constitution, which vests the president with "the executive power." In the interim, a lower court might be asked to issue an order reinstating Bedoya and Slaughter as commissioners pending the U.S. Supreme Court's decision. In *Wilcox v. Trump*, the district court recently was asked to do so and did in the context of the National Labor Relations Board.<sup>6</sup>

Given the likely imminent confirmation of Mark Meador as the third Republican commissioner, even if Bedoya and Slaughter are reinstated, Republicans would still maintain a three-vote majority. As a result, the removal of the two Democratic commissioners might have little meaningful effect on matters currently pending before the FTC or new enforcement or rulemaking decisions. Nevertheless, the resolution of this matter in the courts could have significant implications for U.S. administrative law going forward – both with respect to the FTC and other federal agencies.

### Legal background

The dismissals are the next step in an ongoing debate regarding the Executive Branch's authority over so-called "independent" agencies, such as the FTC, Consumer Financial Protection Bureau (CFPB), Securities and Exchange Commission, and Federal Communications Commission, among others. The dismissals come on the heels of a February 12, 2025 letter from the Acting Solicitor General expressing the Department of Justice's view that statutory protections that permit removal of FTC commissioners only for cause (i.e., "for inefficiency, neglect of duty, or malfeasance in office" rather than dismissals at will) are unconstitutional and signaling an intention to seek U.S. Supreme

Court review to overturn *Humphrey's Executor*.<sup>7</sup> And on February 18, 2025, an Executive Order stated that “[independent] regulatory agencies currently exercise substantial executive authority without sufficient accountability to the President” and declaring that “it shall be the policy of the executive branch to ensure Presidential supervision and control of the entire executive branch,” including independent agencies.<sup>8</sup>

In *Humphrey's Executor*, the U.S. Supreme Court addressed whether the FTC Act's provisions providing for-cause removal protections for FTC commissioners violated the separation of powers to the extent that they undermined the president's control over the executive branch.<sup>9</sup> The Court held that, because the FTC was constituted as a body to perform “quasi-legislative” and “quasi-judicial” functions, “independen[ce] [from] executive control” was warranted.<sup>10</sup> Accordingly, the Court found that for-cause removal protections, which insulated FTC commissioners from the president's influence, were constitutional.<sup>11</sup>

Recent U.S. Supreme Court decisions have addressed the constitutionality of removal protections for independent agencies but have not squarely addressed multi-member agencies such as the FTC. In *Free Enterprise Fund v. Public Company Accounting Oversight Board*, the Court in 2010 addressed the constitutionality of for-cause removal protections in the Sarbanes–Oxley Act of 2002 for members of the Public Company Accounting Oversight Board (PCAOB), an independent agency whose members were removable only for cause by another independent agency, the SEC.<sup>12</sup> The Court held that the statute's requirement that the SEC could only remove a PCAOB member “for cause” violated the separation of powers because PCAOB's position under the SEC created a “dual” layer (SEC and PCAOB) of “for cause” removal protection from the president.<sup>13</sup> The Court severed the removal provision of the statute to make PCAOB members removable at will by the SEC.<sup>14</sup>

Moving a step closer to the FTC Act's commissioner removal protections, in *Seila Law LLC v. CFPB*, the U.S. Supreme Court in 2020 held that the CFPB's structure, which provided for a single director with the same for-cause removal protections as FTC commissioners, violated the separation of powers.<sup>15</sup> Following *Seila Law*, the CFPB's director is now removable by the president at will. The holding of *Seila Law* was limited to the structure of the CFPB and did not address the constitutionality of independent agencies led by a multi-member commission, such as the FTC.<sup>16</sup> Courts of Appeals have therefore continued to apply *Humphrey's Executor* as controlling regarding the structure of the FTC.<sup>17</sup> But the majority in *Seila* criticized the reasoning of *Humphrey's Executor* and Justice Thomas's concurrence in part argued explicitly that *Humphrey's Executor* should be overruled.<sup>18</sup>

## Judicial review

As noted above, both Democratic commissioners have indicated that they intend to challenge their dismissals in federal court. Given that the U.S. Supreme Court has not overturned its holding in *Humphrey's Executor*, this matter is unlikely to be resolved in the lower federal courts and therefore seems destined for review by the U.S. Supreme Court. It appears possible that any lawsuit could become a vehicle for the U.S. Supreme Court to reconsider *Humphrey's Executor* and the degree of presidential control over independent agencies.

## Impact on FTC proceedings

The long-term impact of the dismissals remains uncertain; in the near term, it may not have significant practical effects on matters before the FTC. The FTC currently has two commissioners, Chair Andrew Ferguson and Commissioner Melissa Holyoak. Mark Meador, the nominee to serve as the third Republican commissioner, has not yet been confirmed by the Senate but may be confirmed in the coming weeks, which would have given the FTC a 3-2 Republican majority prior to the removal of Bedoya and Slaughter.<sup>19</sup> To the extent that FTC decisions fall along party lines, the removal of the two Democratic commissioners might therefore not alter ultimate agency decisions.

In the interim, FTC regulations require a quorum of only the “majority of the members of the Commission in office and not recused from participating in a matter”<sup>20</sup> for FTC votes. Accordingly, the dismissals of Bedoya and Slaughter should not prevent the FTC from conducting day-to-day business such as filing or dismissing cases or issuing or rescinding regulations (to the extent that neither Chair Ferguson nor Commissioner Holyoak are recused from a given matter).

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<sup>1</sup> David McCae & Cecilia Kang, *Trump Fires Democrats on Federal Trade Commission*, New York Times (March 18, 2025), <https://www.nytimes.com/2025/03/18/technology/trump-ftc-fires-democrats.html>.

<sup>2</sup> *Id.*

<sup>3</sup> 15 U.S.C. § 41.

<sup>4</sup> *FTC Chairman Andrew N. Ferguson Statement on Former Commissioners Slaughter and Bedoya* (March 19, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/03/ftc-chairman-andrew-n-ferguson-statement-former-commissioners-slaughter-bedoya>; *Statement of Commissioner Melissa Holyoak* (March 19, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/holyoak-statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-statement.pdf).

<sup>5</sup> *Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

<sup>6</sup> *Wilcox v. Trump*, No. 25-334 (BAH), 2025 WL 720914 (D.D.C. March 6, 2025).

<sup>7</sup> Letter from Sarah M. Harris (Acting Solicitor General of the United States) to Hon. Mike Johnson (Speaker of the United States House of Representatives), *Re: Restrictions on the Removal of Certain Principal Officers of the United States* (Feb. 12, 2025), <https://www.justice.gov/oip/media/1389526/dl?inline>.

<sup>8</sup> Exec. Order No. 14215, 90 Fed. Reg. 10447 (Feb 24, 2025).

<sup>9</sup> *Id.* at 602.

<sup>10</sup> *Id.* at 629.

<sup>11</sup> *Id.*

<sup>12</sup> 561 U.S. 477 (2010).

<sup>13</sup> *Id.* at 492.

<sup>14</sup> *Id.* at 508.

<sup>15</sup> 591 U.S. 197 (2020).

<sup>16</sup> Other recent Supreme Court decisions have curtailed other aspects of independent agencies, such as the constitutionality of the appointment of administrative law judges. See *Lucia v. Securities and Exchange Commission*, 585 U.S. 237 (2018) (holding that SEC administrative law judges were “Officers of the United States” within the meaning of the Appointments Clause and requiring a new hearing for the petitioner before a properly appointed ALJ).

<sup>17</sup> See, e.g., *Illumina, Inc. v. Federal Trade Commission*, 88 F.4th 1036, 1047 (5th Cir. 2023).

<sup>18</sup> See, e.g., *Seila*, 591 U.S. at 215; *id.* at 239 (Thomas, J., concurring in part and dissenting in part).

<sup>19</sup> See PN12-29 — Mark Meador — Federal Trade Commission, <https://www.congress.gov/nomination/119th-congress/12/29> (placing confirmation of Meador on Senate Executive Calendar on March 12, 2025).

<sup>20</sup> See 16 CFR 4.14(b).