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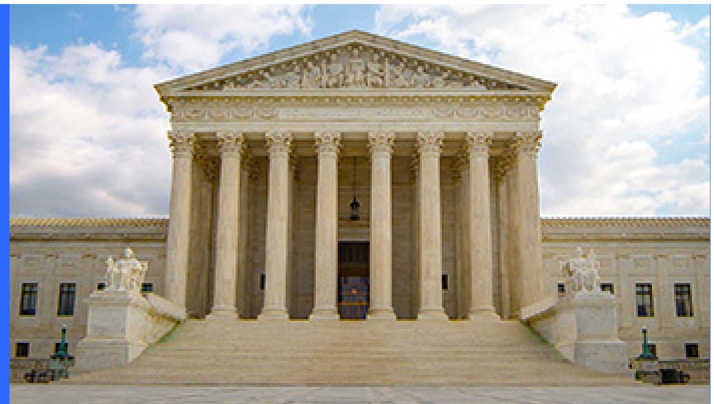

Appellate and Constitutional Law Update June 29, 2026

Supreme Court Rules "Independent" Executive Agencies Unconstitutional

***Trump v. Slaughter*, No. 25-332** – Decided June 29, 2026

Today, the Supreme Court held 6-3 that Congress may not restrict the President's power to remove members of so-called independent executive agencies, overruling *Humphrey's Executor v. United States*.

"The FTC unquestionably exercises executive power, and must therefore be controlled by the Chief Executive, in whom such power is vested."

CHIEF JUSTICE ROBERTS, WRITING FOR THE COURT

Background:

Congress created the Federal Trade Commission in 1914. The agency is led by five Commissioners, appointed by the President and confirmed by the Senate. The Commissioners serve staggered seven-year terms, and no more than three can belong to the same political party. Originally, the FTC primarily issued cease-and-desist orders that courts could then enforce. But its authority has grown significantly. Today, the FTC can impose civil penalties, file civil lawsuits, make substantive rules, and even negotiate with foreign law-enforcement agencies.

Under the Federal Trade Commission Act, the President may remove an FTC commissioner only for "inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. But in March 2025, President Trump removed FTC Commissioner Rebecca Slaughter for different reasons. Slaughter's termination letter explained that her service was "inconsistent with [the] Administration's priorities" and that she was being removed "pursuant to [President Trump's] authority under Article II of the Constitution."

Slaughter sued, arguing her removal violated the FTC Act because it was not based on "inefficiency, neglect of duty, or malfeasance in office." The U.S. District Court for the District of Columbia agreed and ordered the government to reinstate Slaughter, reasoning that the Supreme Court's decision in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), had already upheld the FTC Act's removal restrictions. The D.C. Circuit refused to stay the injunction pending appeal, but the Supreme Court granted a stay and agreed to review the district court's decision.

Issue:

Do the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, should *Humphrey's Executor* be overruled?

Court's Holding:

Yes. The FTC Act's removal restrictions violate the separation of powers and *Humphrey's Executor* is overruled.

What It Means:

- Today's decision continues the Supreme Court's recent separation-of-powers jurisprudence by confirming that Congress may not insulate federal officers of multi-member independent agencies that exercise executive power from at-will presidential removal, even when Congress has historically provided "for-cause" protections.

- The Court's decision emphasizes that agencies exercising executive power—a power vested exclusively in the President by Article II of the Constitution—must remain accountable to the President. Congress may not enact statutes impeding that accountability.

- The Court also recognized that "not all offices created by Congress necessarily come with executive or even sovereign power attached." Op. 27. The Court expressly declined to consider the constitutionality of tenure protections for other "officials not before us," including the judges of non-Article III courts, such as the Tax Court and the Court of Federal Claims. Op. 28. The Court also "left open the possibility" that "some functions traditionally handled outside the Executive Branch," such as Legislative Branch agencies, may not be subject to presidential at-will removal. Op. 27.

- The Federal Reserve likely is one such office. In a companion opinion in *Trump v. Cook*, the Court declined to stay an order reinstating a member of the Federal Reserve System Board of Governors who challenged her removal for cause, noting that "any definition of 'cause' in [that] context must reflect the Federal Reserve's unique historical status and role." Read about that decision here.

- One consequence of today's decision may be increased volatility in administrative policy across presidential administrations, as presidents now have broader power to reshape the leadership of formerly independent agencies. For example, the Court's decision will strengthen presidential control over the FTC's rulemaking and enforcement agenda, potentially enabling more direct White House influence over the agency's consumer-protection priorities.
- Justice Gorsuch authored a concurrence in which he observed that today's decision does not eliminate the vast rulemaking and adjudicatory powers of federal agencies, but instead re-locates those powers in the President. He urged the Court to develop and apply its "many doctrines designed to protect the Constitution's separation of powers," including the nondelegation doctrine, the major questions doctrine, due-process and vagueness doctrines, and the Seventh Amendment right to a jury trial. These doctrines are likely to be a basis for continued litigation on separation-of-powers issues.

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The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice group leaders:

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