No. 25-332

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

REBECCA KELLY SLAUGHTER, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: SEPT. 4, 2025
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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Case No.

REBECCA KELLY SLAUGHTER, IN HER OFFICIAL AND PERSONAL CAPACITIES, C/O COUNSEL 2020 PENNSYLVANIA AVE. NW, SUITE # 163 WASHINGTON D.C. 20006,

AND

ALVARO M. BEDOYA, IN HIS OFFICIAL AND PERSONAL CAPACITIES, C/O COUNSEL 2020 PENNSYLVANIA AVE. NW, SUITE # 163 WASHINGTON D.C. 20006, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, 1600 PENNSYLVANIA AVENUE NW WASHINGTON, D.C. 20500,

ANDREW N. FERGUSON, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE FEDERAL TRADE COMMISSION, 600 PENNSYLVANIA AVENUE NW WASHINGTON, D.C. 20580,

MELISSA HOLYOAK, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE FEDERAL TRADE COMMISSION, 600 PENNSYLVANIA AVENUE NW WASHINGTON, D.C. 20580,

AND

DAVID B. ROBBINS, IN HIS OFFICIAL CAPACITY AS THE EXECUTIVE DIRECTOR OF THE FEDERAL TRADE COMMISSION, 600 PENNSYLVANIA AVENUE NW WASHINGTON, D.C. 20580, DEFENDANTS

Filed: Mar. 27, 2025

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiffs Rebecca Kelly Slaughter and Alvaro M. Bedoya are Commissioners of the Federal Trade Commission. Last week, President Donald Trump purported to fire them, in direct violation of a century of federal law and Supreme Court precedent. Plaintiffs will not and do not accept this unlawful action: Plaintiffs bring this action to vindicate their right to serve the remainder of their respective terms, to defend the integrity of the Commission, and to continue their work for the American people.

Nearly 111 years ago, Congress created the Federal Trade Commission (FTC), a bipartisan federal agency whose mission is to combat unfair, deceptive, and anticompetitive business practices. To ensure the quality and fairness of the agency's decision-making, the FTC Act provides that no more than three of the FTC's five Commissioners can be of the same political party, that Commissioners serve staggered seven-year terms, and that a Commissioner can only be "removed by the President for inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. These tenure protections echo those Congress granted to the members of the Interstate Commerce Commission (ICC) in 1887, which, in turn, drew on a long history—dating back to the Founding era and before—of government officials, board members, commissioners, and other agents who enjoyed protection from at-will removal by the executive.

Ninety years ago, in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), the Supreme Court unanimously affirmed the constitutionality of the statutory tenure protections granted to FTC Commissioners and held that the President could not remove such Commissioners at will. Removal protections like those for FTC Commissioners appear in statutes for myriad agencies, notably including the Federal Reserve. Congress has continually relied on *Humphrey's Executor*, and the Supreme Court has repeatedly refused to upset this landmark precedent. As *Humphrey's Executor* recognized, providing some protection from removal at the President's whim is essential to ensuring that agency officials can exercise their own judgment: "[I]t is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will." *Id.* at 629.

In short, it is bedrock, binding precedent that a President cannot remove an FTC Commissioner without cause. And yet that is precisely what has happened here: President Trump has purported to terminate Plaintiffs as FTC Commissioners, not because they were inefficient, neglectful of their duties, or engaged in malfeasance, but simply because their "continued service on the FTC is" supposedly "inconsistent with [his] Administration's priorities."

The President's action is indefensible under governing law. This Court should declare the President's attempted removals unlawful and ineffective; permanently enjoin the FTC Chairman, Commissioner Holyoak, and the FTC Executive Director from taking any action that would prevent Plaintiffs from fulfilling their duties as Commissioners and serving out the remainder of their terms; and grant any other relief this Court deems proper.

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1361, 1651, 2201, and 2202.

2. Venue is proper in this district under 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Rebecca Kelly Slaughter is a Commissioner of the FTC. She was nominated to serve as a Democratic Commissioner by President Donald Trump, was duly confirmed by the U.S. Senate in 2018, and was re-nominated by President Joe Biden and reconfirmed by the Senate in 2024. Her appointment carries a seven-year term that expires on September 25th, 2029.

4. Plaintiff Alvaro M. Bedoya is a Commissioner of the FTC. He was nominated by President Joe Biden to serve as a Democratic Commissioner, and he was duly confirmed by the U.S. Senate to a seven-year term that expires on September 25th, 2026.

5. Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity.

6. Defendant Andrew N. Ferguson is the Chairman of the Federal Trade Commission. He is sued in his official capacity.

7. Defendant Melissa Holyoak is a Commissioner of the Federal Trade Commission. She is sued in her official capacity.

8. Defendant David B. Robbins is the Executive Director of the Federal Trade Commission. He is sued in his official capacity.

STATUTORY BACKGROUND

9. Congress created the Federal Trade Commission in 1914. The FTC Act was the culmination of a series of reform efforts aimed at curtailing the trust crisis of the late-nineteenth and early-twentieth centuries—a period now remembered as the Gilded Age and known for dominating monopolies like Standard Oil, U.S. Steel, and the Beef Trust.

10. Congress's efforts at curtailing corporate consolidation began with the Sherman Antitrust Act of 1890, which outlaws "every contract, combination, or conspiracy in restraint of trade," and any attempts to "monopolize" or "conspirac[ies] or combination[s] to monopolize." 15 U.S.C. § 1, 2. That effort largely failed, however, as mergers continued, and trusts grew more powerful.

11. In 1903, Congress created the Bureau of Corporations, an investigatory agency that reported on abuses of monopoly power. This, too, proved insufficient, particularly after the Supreme Court's decision in *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911), curtailed the reach of the Sherman Act.

12. In 1914, Congress passed, and President Woodrow Wilson signed, the Clayton Act and the FTC Act, which created the Federal Trade Commission and into which the former Bureau of Corporations was merged. The Sherman Act, Clayton Act, and FTC Act still make up the core of federal antitrust law today.

13. In the FTC Act, the Commission was "empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers . . . from using unfair methods of competition in com-

merce." Pub. L. No. 63-203, ch. 311, § 5, 38 Stat. 717, 719 (1914). To do so, when it had "reason to believe" a corporation was "using any unfair method of competition in commerce," it was empowered to issue "a complaint stating its charges" and giving notice of a hearing, *id.*; it could hold a hearing with a written record, *id.*; and after such a hearing, issue a report with a cease and desist order, *id.* at 38 Stat. 719-20. Such an order could then be enforced in the federal Courts of Appeals. *Id.* at 38 Stat. 720. The Commission's findings of fact, if supported by testimony, would be deemed conclusive. *Id.* at 38 Stat. 721. The FTC Act also authorized the Commission to perform investigations into business practices and issue subpoenas. *Id.* § 9, 38 Stat. 722; *see also id.* § 6(b), 38 Stat. 721. Congress also licensed the Commission to assist courts in drafting decrees for antitrust cases, *id.* § 7, 38 Stat. 722, and to help the Attorney General assure compliance with antitrust orders by performing investigations and reporting findings, *id.* § 6(c), 38 Stat 721.

14. The composition of the Commission's membership was a key feature in Congress's design. Then, as now, the FTC Act provided that the FTC "shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate . . . for terms of seven years," and that Commissioners are removable by the President only for "inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. As the Senate Report for the FTC Act explained, this arrangement would give the Commission "greater prestige and independence, and its decisions, coming from a board of several persons, will be more readily accepted as impartial and well considered." S. Rep. No. 63-597 at 11 (1914). The Senate Report con-

tinued that "it is essential that [the Commission] should not be open to the suspicion of partisan direction," and thus no more than three members of the Commission may be of the same party, *id.*, a restriction that remains today, 15 U.S.C. § 41.

15. Agencies such as the FTC—led by commissioners with protection from at-will removal by the President —have existed since the earliest days of the Constitution. To take the most cited example, the Sinking Fund Commission, proposed by Alexander Hamilton, passed by the First Congress, signed into law by President Washington, exercised significant authority and was composed of Commissioners, several of whom the President had no ability to dismiss. Sinking Fund Act of Aug. 12, 1790, ch. 47, §§ 1-4, 1 Stat. 186, 187. But this is hardly the only example: early Congresses established numerous commissions and boards and created various offices that enjoyed similar independence.

16. Likewise, the notion that legislatures have the power to create certain offices with "term of years" tenure, from which an officeholder cannot be terminated by the executive at will, was well-settled before, during, and long after the Founding. Indeed, that principle is the subject of extensive discussion in *Marbury v. Madison*, 5 U.S. 137 (1803), in which Chief Justice Marshall explains that, if Mr. Marbury properly received his commission appointing him to a five-year term as a justice of the peace, he "has, to [his] commission, a vested legal right, of which the executive cannot deprive him. He has been appointed to an office, from which he is not removable, at the will of the executive. . . . " *Id.* at 172.

17. In the nineteenth century, state legislatures and Congress built on this tradition in establishing, most notably, commissions to regulate the railroads, culminating in the establishment of the Interstate Commerce Commission in 1887, whose five members—similar to the FTC's Commissioners—were appointed to terms of six years, and could be removed by the President only for inefficiency, neglect of duty, or malfeasance. *See* An Act to Regulate Commerce, ch. 104, § 11, 24 Stat. 379, 383 (1887).

18. The FTC opened its doors in 1915 and in its first decade "moved forward to apply the range of policymaking tools Congress provided," including by "rel[ying] heavily on litigation under the FTC and Clayton Acts" along with "public hearings, investigations, and reports."[1]

19. In 1925, William Humphrey joined the Commission, and, in 1931, he was reappointed for a second seven-year term. Humphrey was a controversial Commissioner, who "reveled in personal and political attacks" that he directed at his colleagues on the Commission, including by denouncing "'pink' politicians who used the FTC to 'persecute honest business.'"[2] Under Humphrey's partisan approach, the Commission dismissed twenty pending consumer protection cases and fifty-five competition cases in his first eighteen months, with detailed dissents from other Commissioners.[3] Still, Humphrey's tenure saw the FTC take on several prom-

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[1] Marc Winerman and William E. Kovacic, *The William Humphrey and Abram Myers Years, The FTC from 1925 to 1929*, 77 Antitrust L.J. No. 3, 701, 707 (2011).

[2] *Id.* at 711.

[3] *Id.* at 715.

inent enforcement actions, including, in 1925, charging the Aluminum Company with antitrust violations (in a high profile break with the Department of Justice);[4] in 1927, instigating investigations into DuPont, General Motors, and U.S. Steel;[5] and in 1928, enforcing an antitrust order against a motion picture industry consolidation.[6]

20. Shortly after President Franklin D. Roosevelt came into office, he asked Humphrey for his resignation, explaining that "the aims and purposes of the Administration with respect to the work of the Commission [could] be carried out most effectively with personnel of my own selection." *Humphrey's Executor*, 295 U.S. 602, 618 (1935). President Roosevelt then wrote Humphrey again to ask for his resignation, reiterating that "I do not feel that your mind and my mind go along together on either the policies or the administering of the [FTC]," but Humphrey declined. *Id.* at 619. President Roosevelt then wrote Humphrey a final letter, stating: "Effective as of this date you are hereby removed from the office of Commissioner of the Federal Trade Commission." *Id.*

21. Humphrey "never acquiesced in this action," but died several months later. *Id.* His executor ultimately challenged his termination, however, presenting to the Supreme Court the "question[] . . . of the power of the President to make the removal." *Id.*

22. In the resulting decision, *Humphrey's Executor v. United States*, a unanimous Supreme Court held that

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[4] *Id.* at 716-17.

[5] *Id.* at 723.

[6] *Id.* at 726-27.

President Roosevelt's attempted removal was unlawful, and affirmed that, "as to officers of the kind here under consideration," *i.e.*, Commissioners of the FTC, "we hold that no removal can be made during the prescribed term for which the officer is appointed, except for one or more of the causes named in the applicable statute." *Id.* at 632.

23. Despite repeated challenges, *Humphrey's Executor* has stood for ninety years and remains binding law. *See, e.g.*, *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 228 (2020) ("[W]e do not revisit *Humphrey's Executor* or any other precedent today. . . . "); *Morrison v. Olson*, 487 U.S. 654, 724-25 (1988) ("Since our 1935 decision in *Humphrey's Executor* . . . removal restrictions have been generally regarded as lawful for so-called 'independent regulatory agencies,' such as the Federal Trade Commission. . . . ") (Scalia, J., dissenting); *Wiener v. United States*, 357 U.S. 349, 356 (1958) (endorsing "[t]he philosophy of *Humphrey's Executor*, in its explicit language as well as its implications"); *Consumers' Rsch. v. Consumer Prod. Safety Comm'n*, 91 F.4th 342, 356 (5th Cir.), *cert. denied*, 145 S. Ct. 414 (2024) ("[H]ere, *Humphrey's* does settle the question [of the constitutionality of removal restrictions]. Only the Supreme Court has power to reconsider that New Deal-era precedent—perhaps reaffirming it, overruling it, or narrowing it—and at least so far, it hasn't."); *FTC v. Precision Patient Outcomes, Inc.*, No. 22-CV-07307-VC, 2023 WL 3242835, at *1 (N.D. Cal. May 3, 2023) (arguments that FTC removal restrictions are unconstitutional "clearly foreclosed by Supreme Court precedent").

24. Both before and after *Humphrey's Executor*, Congress has created numerous agencies, boards, and

commissions whose members are protected from at-will removal—the Federal Reserve, the Postal Service, the National Transportation Safety Board (NTSB), the National Labor Relations Board (NLRB), and the Federal Energy Regulatory Commission (FERC), among others.

FACTUAL BACKGROUND

25. President Trump nominated Plaintiff Rebecca Kelly Slaughter, a Democrat, to be FTC Commissioner in 2018. Commissioner Slaughter was confirmed by the Senate and sworn in on May 2, 2018. President Biden renominated Ms. Slaughter on February 13th, 2023. The Senate confirmed her again—in a bipartisan slate that included two Republican Commissioners, Defendants Ferguson and Holyoak—on March 7th, 2024, for a term set to expire on September 25th, 2029.

26. President Biden nominated Plaintiff Alvaro M. Bedoya, a Democrat, to serve as FTC Commissioner in September 2021. The Senate confirmed his nomination on May 11, 2022, and he was sworn in on May 16, 2022, to a term that expires on September 25th, 2026.

27. President Biden nominated Defendant Andrew Ferguson, a Republican, to serve as FTC Commissioner on July 11, 2023. While the Senate was considering his nomination, Defendant Ferguson answered questions from the Senate Committee on Commerce, Science, and Transportation about, among other things, *Humphrey's Executor* and the independence of the FTC. He explained:

> If confirmed as an FTC Commissioner, I will abide by binding Supreme Court precedent. The Supreme Court has held that the FTC's removal provisions

are consistent with Article II of the Constitution. Although subsequent decisions have drawn *Humphrey's Executor* into question, the Supreme Court has instructed time and again that "it is [the Supreme] Court's prerogative alone to overrule one of its precedents." The Supreme Court's "decisions remain binding precedent until [it] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing validity."[7]

28. President Trump appointed Mr. Ferguson Chair of the FTC effective January 20, 2025, the date of President Trump's inauguration.

29. In 1950, the FTC Act was amended to give the President the power to appoint the FTC's Chair from among its members. Reorganization Plan No. 8 of 1950, 15 Fed. Reg. 3175 (May 25, 1950). The Chair is the "executive and administrative head of the agency." 16 C.F.R. § 0.8. As such, the Chair controls the agency's expenditures and selects the heads of its major policy-making divisions. *Id.*

30. The Chair is also empowered to direct the Executive Director of the FTC. 16 C.F.R. § 0.10. Since 2013, Defendant Robbins has served in that role. As Executive Director, Mr. Robbins is the chief operating officer of the FTC, tasked with managing the Commission's facilities, finances, administrative services, information technology, and human resources. *Id.*

31. During the tenure of Commissioners Slaughter and Bedoya, the FTC has regulated some of the nation's

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[7] *Democratic Questions for the Record*, S. Comm. on Com., Sci., and Transp. (2023) (statement of Andrew Ferguson).

largest corporations, including those with other business with the federal government. For example:

a. In May 2021, the FTC issued a report to Congress detailing how repair restrictions imposed by manufacturers hurt small businesses and consumers.[8]

b. On May 31, 2023, the FTC charged Amazon with violating the Children's Online Privacy Protection Act Rule by keeping Alexa voice recordings in perpetuity and ignoring parents' deletion requests.[9] The Commission ordered Amazon to delete the children's data and implement new privacy safeguards.[10]

c. On December 18, 2023, Illumina, Inc. and Grail, Inc. abandoned their planned merger following a decision from the U.S. Court of Appeals for the Fifth Circuit supporting the FTC's determination that the proposed merger was anticompetitive and threatened the market for cancer detection tests.[11]

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[8] Fed Trade Comm'n, Nixing the Fix: An FTC Report to Congress on Repair Restrictions (2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

[9] *FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests*, Fed. Trade Comm'n (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-chargeamazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever.

[10] *Id.*

[11] *Statement Regarding Illumina's Decision to Divest Grail*, Fed. Trade Comm'n (Dec. 18, 2023), https://www.ftc.gov/news-events/

d. On July 9, 2024, the FTC issued a staff report detailing how the six largest pharmacy benefit managers (PBMs) artificially boosted their profits by systematically steering customers to PBM-affiliated pharmacies and higher priced drugs.[12] On September 20, 2024, the FTC filed an administrative complaint against Caremark, Express Scripts, and Optum, the three largest PBMs, who together administer about 80% of all prescriptions in the United States.[13] That case is still pending. On January 14, 2025, the FTC issued another staff report detailing how the three major PBMs charge markups for medications treating cancer, HIV, and other critical diseases.[14]

e. On September 19, 2024, the FTC issued a report detailing how some of the largest social media and streaming companies have surveilled consumers, monetizing the personal information of

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news/press-releases/2023/12/statement-regarding-illuminas-decision-divest-grail.

[12] *FTC Releases Interim Staff Report on Prescription Drug Middlemen*, Fed. Trade Comm'n (July 9, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-releases-interim-staff-report-prescription-drug-middlemen.

[13] *FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices*, Fed. Trade Comm'n (Sept. 20, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices.

[14] *FTC Releases Second Interim Staff Report on Prescription Drug Middlemen*, Fed. Trade Comm'n (Jan. 14, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-releases-second-interim-staff-report-prescription-drug-middlemen.

their users, especially children and teenagers.[15] The report included information on, among others, Amazon.com, Inc.; ByteDance Ltd., which owns TikTok; Discord Inc.; Meta Platforms, Inc.; YouTube LLC; and X Corp.[16]

f. On September 24, 2024, the FTC reached a settlement with Invitation Homes, the nation's largest landlord of single-family homes, in which the company agreed to turn over $48 million to refund consumers harmed by its deceptive practices—including hidden fees, withheld security deposits, and misleading people about eviction policies during the pandemic.[17]

g. On October 25, 2024, the FTC reached a proposed settlement with Lyft arising from the rideshare companies' use of misleading claims about earnings to lure new drivers.[18]

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[15] *FTC Staff Report Finds Large Social Media and Video Streaming Companies Have Engaged in Vast Surveillance of Users with Lax Privacy Controls and Inadequate Safeguards for Kids and Teens*, Fed. Trade Comm'n (Sept. 19, 2024), https://www.ftc.gov/news-events/news/pressreleases/2024/09/ftc-staff-report-finds-large-social-media-video-streaming-companies-have-engaged-vast-surveillance.

[16] *Id.*

[17] *FTC Takes Action Against Invitation Homes for Deceiving Renters, Charging Junk Fees, Withholding Security Deposits, and Employing Unfair Eviction Practices*, Fed. Trade Comm'n (Sept. 24, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-takes-action-against-invitation-homes-deceiving-renters-charging-junk-fees-withholding-security.

[18] *FTC Takes Action to Stop Lyft from Deceiving Drivers with Misleading Earnings Claims*, Fed. Trade Comm'n (Oct. 25, 2024),

h. On December 10, 2024, the FTC obtained a preliminary injunction from the U.S. District Court for the District of Oregon preventing a merger between Kroger Company and Albertsons Companies, Inc. This would have been the largest supermarket merger in U.S. history, resulting in higher prices on everyday grocery staples for millions of Americans.[19]

i. In April, the FTC is scheduled to go to trial against Meta Platforms, Inc., in a suit that alleges Meta accumulated and maintained illegal monopoly power over social networking through its acquisitions of Instagram and WhatsApp.[20]

32. On March 17, 2025, Defendant Ferguson appeared on the Bloomberg.com podcast *Odd Lots*, and commented on the "benefits in certain circumstances to having multimember agencies with people from both parties." He continued:

> I mean, look, if you have an agency that is exceeding the law, abusing the companies that it purports to regulate, it's helpful for markets, for Courts, for litigants, for government transparency, to have people on the other party pointing this out and saying it in dissents. You know, I wrote 400 plus pages of dis-

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https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-takes-action-stop-lyft-deceiving-drivers-misleading-earnings-claims.

[19] *Statement on FTC Victory Securing Halt to Kroger, Albertsons Grocery Merger*, Fed. Trade Comm'n (Dec. 10, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/12/statement-ftc-victory-securing-halt-kroger-albertsons-grocery-merger.

[20] *See FTC v. Meta Platforms, Inc.*, 1:20-cv-03590-JEB (D.D.C. filed Dec. 09, 2020).

sents during my time as a minority commissioner, I think that that adds value.[21]

33. The following day, on March 18, Plaintiffs Slaughter and Bedoya each received an email message from Trent Morse, Deputy Director of Presidential Personnel. That email included a message from President Trump: "I am writing to inform you that you have been removed from the Federal Trade Commission, effective immediately." (*See* Ex. A.)

34. President Trump's message did not identify any "inefficiency, neglect of duty, or malfeasance in office" to support Plaintiffs' removal, as the FTC Act requires. Instead, tracking nearly word-for-word President Roosevelt's message to Humphrey, President Trump's message simply asserted: "Your continued service on the FTC is inconsistent with my Administration's priorities. Accordingly, I am removing you from office pursuant to my authority under Article II of the Constitution." (*Id.*)

35. The President's message briefly acknowledged *Humphrey's Executor* but asserted that it "does not fit the principal officers who head the FTC today" because, "[a]s presently constituted, the FTC exercises substantial executive power." (*Id.*) After listing certain of the FTC's powers, the message stated: "An independent agency of this kind has 'no basis in history and no place in our constitutional structure,'" citing "Seila Law, 591 U.S. at 220; see id. at 222 & n.8."

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[21] Odd Lots, *FTC Chief Andrew Ferguson on the Trump Vision for Antitrust*, Bloomberg (Mar. 17, 2024), https://www.bloomberg.com/news/audio/2025-03-17/ftc-chair-andrew-ferguson-on-maga-antitrust.

36. The message does not acknowledge, however, that the quoted passage from *Seila Law* referred to "an independent agency *led by a single Director* and vested with significant executive power," 591 U.S. at 220 (emphasis added), and followed an extensive discussion of the ways in which the agency at issue in that case, the CFPB, differs from the FTC, *see id.* at 218-19. Nor did the message acknowledge that *Seila Law* expressly declined to "revisit" *Humphrey's Executor*, *id.* at 228, and, to the contrary, even suggested that Congress could "convert[] the CFPB into a multimember agency" to remedy the constitutional issue identified in that case, *i.e.*, by making the CFPB more like the FTC, *id.* at 237.

37. Shortly after the message that purported to fire them, Plaintiffs Slaughter and Bedoya were cut off from their FTC email addresses and asked to return their technology equipment. They have been denied access to their offices, their staff have all been placed on administrative leave, and they are now listed as "Former Commissioners" on the FTC website. As a result of these actions, Plaintiffs Slaughter and Bedoya have been unable to fulfill their duties as Senate-confirmed FTC Commissioners.

38. Since Plaintiffs' purported firing, only two FTC Commissioners have been able to perform their duties —Republican Commissioners Ferguson and Holyoak. President Trump has also nominated a third Republican to serve as Commissioner, Mark Meador. The Senate is still considering that nomination.

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT, 15 U.S.C. § 41

39. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 to 38 as if fully set forth herein.

40. Plaintiffs have a statutory right to remain in office. Once confirmed by the Senate, the FTC Act entitles Commissioners to serve the remainder of the seven-year term to which they are appointed, unless they are removed "for inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41.

41. The President did not terminate Plaintiffs based on a finding of "inefficiency, neglect of duty, or malfeasance in office."

42. Instead, the President purported to remove Plaintiffs solely because their "service on the FTC is inconsistent with [his] Administration's priorities." This ground for removal is not permitted by the statute, as confirmed by *Humphrey's Executor v. United States*, 295 U.S. 602, 632 (1935) ("[W]e hold that no removal can be made during the prescribed term for which the [FTC Commissioner] is appointed, except for one or more of the causes named in the applicable statute.").

43. As a result, the President's termination of Commissioners Slaughter and Bedoya is *ultra vires* and a clear violation of law.

COUNT TWO

ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706

44. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 to 43 as if fully set forth herein.

45. President Trump may not remove Commissioners Slaughter and Bedoya without a finding of "inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. As there was no such finding here, their purported termination is unlawful, and all actions taken by Defendants Ferguson, Holyoak, and Robbins to carry out that firing are "not in accordance with law," "contrary to constitutional right, power, privilege, or immunity," and "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2). These actions include barring Commissioners Slaughter and Bedoya from the office, cutting off their access to technology systems, revoking technology equipment, placing their staff on administrative leave, and otherwise failing to recognize their status as active Commissioners.

46. Commissioners Slaughter and Bedoya seek to have such actions set aside, pursuant to section 706 of the Administrative Procedure Act, and to compel agency action unlawfully withheld or unreasonably delayed.

COUNT THREE
DECLARATORY JUDGMENT ACT,
28 U.S.C. §§ 2201 and 2202

47. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 to 46 as if fully set forth herein.

48. Commissioners Slaughter and Bedoya are entitled to declaratory relief on the basis of all claims identified.

49. There is a substantial and ongoing controversy between Plaintiffs and Defendants, and a declaration of rights under the Declaratory Judgment Act is both necessary and appropriate to establish and affirm that Ms. Slaughter and Mr. Bedoya are Commissioners of the FTC and that the President does not have authority to remove them absent a finding inefficiency, neglect of duty, or malfeasance in office.

COUNT FOUR
VIOLATION OF THE SEPARATION OF POWERS

50. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 to 49 as if fully set forth herein.

51. President Trump's purported removal of Commissioners Slaughter and Bedoya is invalid because it violates Article I, Section 8 and Article II, Sections 2 and 3 of the U.S. Constitution. The Constitution empowers Congress to set reasonable limitations on the removal of the heads of independent agencies and it does not confer on the President an authority to disregard Congress's scheme. The President's purported removal of Commissioners Slaughter and Bedoya violates the powers vested in Congress by the Constitution and further violates the President's duty to "take Care that the Laws be faithfully executed."

COUNT FIVE
WRIT OF MANDAMUS

52. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 to 51 as if fully set forth herein.

53. In the alternative, Commissioners Bedoya and Slaughter are entitled to a writ of mandamus. The FTC Act's removal restrictions impose a ministerial duty on the President and subordinate officials not to interfere

with Commissioners' tenure in office absent cause for inefficiency, neglect of duty, or malfeasance in office. *See Swan v. Clinton*, 100 F.3d 973, 977-78 (D.C. Cir. 1996).

54. Commissioners Slaughter and Bedoya are entitled to a writ of mandamus prohibiting their removal from office and, absent this Court granting one of the counts identified above, there is no other adequate means of redress.

COUNT SIX
EQUITABLE RELIEF FOR STATUTORY AND CONSTITUTIONAL VIOLATIONS

55. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 to 54 as if fully set forth herein.

56. Under this Court's traditional equitable jurisdiction, the Plaintiffs are entitled to equitable relief to prevent and restrain ongoing violations of both statutory and constitutional federal law by Defendants. Equitable actions have "long been recognized as the proper means" to prevent public officials from acting unconstitutionally. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n. 2 (2010) (quoting *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001)). Because such actions seek simply to halt or prevent a violation of federal law rather than the award of money damages, they do not ask the Court to imply a new cause of action. To the contrary, the ability to sue to enjoin unlawful and unconstitutional actions by federal officers is the creation of courts of equity and reflects a long history of judicial review of illegal executive action, tracing back to England. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-27 (2015).

PRAYER FOR RELIEF

Commissioners Slaughter and Bedoya request that the Court:

a. Declare the President's purported termination of Plaintiffs Slaughter and Bedoya unlawful and that Plaintiffs Slaughter and Bedoya are Commissioners of the Federal Trade Commission;

b. Declare that Commissioners of the Federal Trade Commission may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office;

c. Enter an injunction against Defendants Ferguson, Holyoak, and Robbins, ordering that they treat Plaintiffs as FTC Commissioners, including by permitting them access to their office, staff, electronic devices, receive all wages and other benefits and resources of their office, and that these Defendants take no further actions to obstruct Plaintiffs carrying out their duties as Commissioners;

d. Award all other appropriate relief.

Dated: March 27, 2025

Respectfully submitted,

THE PROTECT DEMOCRACY PROJECT, INC.

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**Pro hac vice applications forthcoming*

Exhibit A

From: Morse, Trent M. EOP/WHO <Trent.M.Morse@who.eop.gov>
Sent: Tuesday, March 18, 2025 4:24:42 PM
To: Slaughter, Rebecca <rslaughter@ftc.gov>
Subject: Message from PPO

Dear Rebecca,

On behalf of President Donald J. Trump, please see the letter below.

Trent Morse
Deputy Director
Presidential Personnel

* * *

I am writing to inform you that you have been removed from the Federal Trade Commission, effective immediately.

In Myers v. United States, 272 U.S. 52 (1926), the Supreme Court recognized that Article II of the Constitution gives the President an "unrestricted" power of "removing executive officers who had been appointed by him by and with the advice and consent of the Senate." Id. at 176. In Humphrey's Executor v. United States, 295 U.S. 602 (1935), the Supreme Court created an exception to that rule. The Court held that Congress may "forbid the[] removal except for cause" of members of the FTC—as that Commission was understood in 1935—on the ground that the FTC exercised merely "quasi-legislative or quasi-judicial powers" and thus could be required to "act in discharge of their duties independently of executive control." Id. at 628-629.

The Supreme Court has made clear that the holding of Humphrey's Executor embodies a narrow "exception" to the "unrestricted removal power" that the President generally has over principal executive officers and that the exception represents "'the outermost constitutional limit[] of permissible congressional restrictions'" on the President's authority to remove such officers. Seila Law LLC v. Consumer Fin. Protection Bureau, 591 U.S. 197, 215, 218 (2020) (citation omitted). Further, the Supreme Court has held, the holding of Humphrey's Executor applies only to administrative bodies that do not exercise "substantial executive power." Id. at 218-219. The Supreme Court has also explained that Humphrey's Executor appears to have misapprehended the powers of the "New Deal-era FTC" and misclassified those powers as primarily legislative and judicial. Id. at 218.

The exception recognized in Humphrey's Executor does not fit the principal officers who head the FTC today. As presently constituted, the FTC exercises substantial executive power. The FTC issues subpoenas, 15 U.S.C. § 49, promulgate binding rules, id. §§ 46, 57a, imposes injunctions on private parties, id. § 53, and issues final decisions in administrative adjudications, id. § 45(g). Indeed, the FTC "enforces a variety of antitrust and consumer protection laws affecting virtually every area of commerce[.]" FTC, What the FTC Does, https://www.ftc.gov/news-events/mediaresources/what-ftc-does (Mar. 17, 2025). This includes laws "prohibiting unfair methods of competition" and "deceptive acts or practices in or affecting commerce," 15 U.S.C. § 45(a), portions of the Clayton Act, id. § 13(a), and many additional statutes, see, e.g., id. §§ 45b, 45f, 7803. An independent agency of this kind has "no basis in history and no place in our constitutional structure." Seila Law, 591 U.S. at 220; see id. at 222 & n.8.

Your continued service on the FTC is inconsistent with my Administration's priorities. Accordingly, I am removing you from office pursuant to my authority under Article II of the Constitution.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Case No. 25 Civ. 909

REBECCA KELLY SLAUGHTER, IN HER OFFICIAL AND PERSONAL CAPACITIES, AND ALVARO M. BEDOYA, IN HIS OFFICIAL AND PERSONAL CAPACITIES, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ANDREW N. FERGUSON, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE FEDERAL TRADE COMMISSION, MELISSA HOLYOAK, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE FEDERAL TRADE COMMISSION, AND DAVID B. ROBBINS, IN HIS OFFICIAL CAPACITY AS THE EXECUTIVE DIRECTOR OF THE FEDERAL TRADE COMMISSION, DEFENDANTS

Filed: Apr. 11, 2025

PLAINTIFFS' STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to Local Rule 7(h), Plaintiffs hereby submit this Statement of Material Facts Not in Dispute in conjunction with their Motion for Expedited Summary Judgment.

1. In 2018, the Senate had the opportunity to consider a full slate of five FTC Commissioners, nominated by President Trump. The nominees included Republicans Joseph Simons, Noah Phillips, and Christine Wil-

son, and Democrats Rohit Chopra and Plaintiff Rebecca Kelly Slaughter. Declaration of Plaintiff Commissioner Rebecca Kelly Slaughter ("Slaughter Decl.") ¶ 1.

2. The U.S. Senate unanimously confirmed Commissioner Slaughter on April 26, 2018, and she was sworn in on May 2, 2018. Slaughter Decl. ¶ 2.

3. President Trump exercised his authority to designate Commissioner Joseph Simons as Chair on the day he was sworn in, replacing Acting Chair Maureen K. Ohlhausen, whom President Trump had designated as Acting Chair upon his taking office in January 2017. Slaughter Decl. ¶ 3.

4. When President Biden took office in January 2021, he named Commissioner Slaughter Acting Chair of the FTC, a role she held until the day Lina Khan was confirmed by the Senate and named Chair by President Biden in June 2021. Slaughter Decl. ¶ 4.

5. President Biden renominated Commissioner Slaughter on February 13, 2023. Slaughter Decl. ¶ 5.

6. The Senate unanimously confirmed her again on March 7, 2024, approving another bipartisan slate that included two Republican Commissioners, Defendants Ferguson and Holyoak. Slaughter Decl. ¶ 6.

7. Commissioner Slaughter's second term expires on September 25, 2029. Slaughter Decl. ¶ 7.

8. On September 12, 2021, President Biden announced his nomination of Plaintiff Alvaro M. Bedoya, a Democrat, to serve as an FTC Commissioner. Declaration of Plaintiff Commissioner Alvaro M. Bedoya ("Bedoya Decl.") ¶ 1.

9. The Senate confirmed Commissioner Bedoya on May 11, 2022, with Vice President Harris casting the tiebreaking vote after the Senate was divided along party lines. Bedoya Decl. ¶ 2.

10. Commissioner Bedoya was sworn in on May 16, 2022, to a term that expires on September 25, 2026. Bedoya Decl. ¶ 3.

11. Commissioners Slaughter and Bedoya are Democrats. Slaughter Decl. ¶ 1; Bedoya Decl. ¶ 4.

12, President Biden nominated Defendant Andrew Ferguson, a Republican, to serve as FTC Commissioner on July 11, 2023. Slaughter Decl. ¶ 9.

13. On September 20, 2023, Defendant Andrew Ferguson testified in connection with his nomination before the Senate Committee on Commerce, Science, and Transportation, and, when asked about *Humphrey's Executor* and the independence of the FTC, he explained:

> If confirmed as an FTC Commissioner, I will abide by binding Supreme Court precedent. The Supreme Court has held that the FTC's removal provisions are consistent with Article II of the Constitution. *See Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Although subsequent decisions have drawn *Humphrey's Executor* into question, *see, e.g., Collins v. Yellen*, 141 S. Ct. 1761 (2021); *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183 (2020), the Supreme Court has instructed time and again that "'it is [the Supreme] Court's prerogative alone to overrule one of its precedents,'" *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (quoting *United States v. Hatter*, 532 U.S. 557, 567 (2001)). The Supreme Court's "decisions remain *binding*

> *precedent* until [it] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing validity." *Hohn v. United States*, 524 U.S. 236, 252–53 (1998).

Andrew Ferguson, Senate Committee on Commerce, Science and Transportation, Democratic Questions for the Record, 2 (Sept. 20, 2023) (alternations and emphasis original), *available at* https://www.commerce.senate.gov/services/files/05B6F295-7EAC-494E-986A-FF966EA875EA.

14. Immediately following his inauguration on Jan. 20, 2025, President Trump designated Commissioner Ferguson Chair of the FTC. Slaughter Decl. ¶ 10.

15. On March 17, 2025, Defendant Ferguson appeared on the Bloomberg.com podcast *Odd Lots*, and he commented on the "benefits in certain circumstances to having multi-member agencies with people from both parties," explaining: "I mean, look, if you have an agency that is exceeding the law, abusing the companies that it purports to regulate, it's helpful for markets, for Courts, for litigants, for government transparency, to have people on the other party pointing this out and saying it in dissents. You know, I wrote 400 plus pages of dissents during my time as a minority commissioner, I think that that adds value." *Odd Lots: FTC Chief Andrew Ferguson on the Trump Vision for Antitrust*, Bloomberg.com (Mar. 17, 2024), *available at* https:// www.bloomberg.com/news/audio/2025-03-17/ftc-chair-andrew-ferguson-on-maga-antitrust.

16. On March 18, 2025, Commissioners Slaughter and Bedoya each received identical email messages from Deputy Director of Presidential Personnel Trent Morse purporting to remove them as FTC Commission-

ers because their "continued service on the FTC is inconsistent with [the] Administration's priorities." Slaughter Decl. ¶ 11 & Ex. A; Bedoya Decl. ¶ 6.

17. During the tenures of Commissioners Slaughter and Bedoya, the FTC has taken significant actions in service of the Commission's statutory mission with respect to some of the nation's largest corporations. Slaughter Decl. ¶ 8; Bedoya Decl. ¶ 5.

a. For example, the FTC issued a report to Congress in May 2021 detailing how repair restrictions imposed by manufacturers hurt small businesses and consumers. Slaughter Decl. ¶ 8a; *see* Federal Trade Commission, *Nixing the Fix: an FTC Report to Congress on Repair Restrictions* (May 2021), *available at* https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

b. On May 31, 2023, the FTC charged Amazon with violating the Children's Online Privacy Protection Act Rule by keeping Alexa voice recordings in perpetuity and ignoring parents' deletion requests. Slaughter Decl. ¶ 8b; The Commission ordered Amazon to delete the children's data and implement new privacy safeguards. Slaughter Decl. ¶ 8a; *see FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests*, Fed. Trade Comm'n (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings- forever.

c. On July 9, 2024, the FTC issued a staff report detailing how the six largest pharmacy benefit managers (PBMs) artificially boosted their profits by systematically steering customers to higher priced insulin products. Slaughter Decl. ¶ 8c; *see* Federal Trade Commission, *FTC Releases Interim Staff Report on Prescription Drug Middlemen* (July 9, 2024), *available at* https://www.ftc. gov/news-events/news/press-releases/2024/07/ftc-releases-interim-staff-report-prescription-drug-middlemen.

d. On September 19, 2024, the FTC issued a report detailing how some of the largest social media and streaming companies—including Amazon.com, Inc.; ByteDance Ltd., which owns TikTok; Discord Inc.; Meta Platforms, Inc.; YouTube LLC; and X Corp—have surveilled consumers, monetizing the personal information of their users, especially children and teenagers. Slaughter Decl. ¶ 8d; *see* Federal Trade Commission, *FTC Staff Report Finds Large Social Media and Video Streaming Companies Have Engaged in Vast Surveillance of Users with Lax Privacy Controls and Inadequate Safeguards for Kids and Teens* (Sept. 19, 2024), *available at* https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-staff-report-finds-large-social-media-video-streaming-companies-have-engaged-vast-surveillance.

e. On January 14, 2025, the FTC issued another staff report detailing how the three major PBMs charge markups for medications treating cancer, HIV, and other critical diseases. Slaughter Decl. ¶ 8e; *see* Federal Trade Commission, *FTC Releases Second Interim Staff Report on Prescription Drug Middlemen* (Jan. 14, 2025), *available at* https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-releases-second-interim-staff-report-prescription-drug-middlemen.

f. On April 14, 2025, the FTC is scheduled to go to trial against Meta Platforms, Inc., in a suit that alleges Meta accumulated and maintained illegal monopoly power over social networking through its acquisitions of Instagram and WhatsApp. Slaughter Decl. ¶ 8f; *see FTC v. Meta Platforms, Inc.*, 1:20-cv-03590-JEB (D.D.C. filed Dec. 09, 2020).

18. Shortly after the March 18 email that purported to remove them, Commissioners Slaughter and Bedoya were cut off from their email access, access to government servers and electronic files, and asked to return their technology equipment. Slaughter Decl. ¶ 12; Bedoya Decl. ¶ 7.

19. Plaintiffs have been denied access to their offices and their staff members have all been placed on administrative leave or reassigned to other offices in the agency; they are now listed as "Former Commissioners" on the FTC website, indicating their "time in office" ended on March 18, 2025. Slaughter Decl. ¶ 13; Bedoya Decl. ¶ 8; *see* Federal Trade Commission, *Former Commissioners*, *available at* https://www.ftc.gov/

about-ftc/commissioners-staff/former-commissioners (last accessed April 1, 2025).

20. As a result of these actions, Commissioners Slaughter and Bedoya have been unable to fulfill their duties as duly appointed FTC Commissioners with years remaining in their terms of service. Slaughter Decl. ¶ 14; Bedoya Decl. ¶ 9.

21. The actions described in paragraphs 18 and 19 can have been taken only at the direction of Defendant Chairman Ferguson and Defendant David Robbins, in his capacity as Executive Director of the FTC. Defendant Commissioner Holyoak has also acquiesced in these same actions. Slaughter Decl. ¶ 15; Bedoya Decl. ¶ 10.

22. If this Court were to grant relief that would require Defendants named in the prior paragraph to permit them to do so, Commissioners Slaughter and Bedoya would be able to fulfill their duties as duly appointed FTC Commissioners. Slaughter Decl. ¶ 16; Bedoya Decl. ¶ 11.

23. Since the purported removal of Commissioners Slaughter and Bedoya, only two FTC Commissioners—Republican Chair Ferguson and Commissioner Holyoak—have been able to perform their duties. Slaughter Decl. ¶ 17.

24. President Trump recently nominated a third Republican, Mark Meador, to serve as Commissioner, Mark Meador. *See* Nomination of Mark Meador for Federal Trade Commission, 119th Congress (2025-2026), PN12-29, 119th Cong. (2025), *available at* https://www.congress.gov/nomination/119th-congress/12/29. He was confirmed by the Senate on April 10, 2025.

25. Neither President Trump's email message, nor any other communication from him, has sought to justify Plaintiffs' removal on the ground that either of them committed any inefficiency, neglect of duty, or malfeasance, and Plaintiffs have not committed any inefficiency, neglect of duty, or malfeasance. Slaughter Decl. ¶ 18; Bedoya Decl. ¶ 12.

Dated: April 11, 2025

Respectfully submitted,

CLARICK GUERON REISBAUM LLP

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Case No. 1:25cv-00909-LLA

REBECCA KELLY SLAUGHTER, IN HER OFFICIAL AND PERSONAL CAPACITIES, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS

Filed: Apr. 23, 2025

DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS AND RESPONSE TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 7(h), Defendants hereby submit this Statement of Material Facts Not in Dispute in response to Plaintiff's Statement of Material Facts, ECF No. 20-1, and in conjunction with their motion for summary judgment:

1. Defendants do not dispute the material facts set forth in numbered paragraphs 2, 5-12, 14, 16, and 18-19 of Plaintiffs' Statement of Material Facts, ECF No. 20-1. Defendants further do not dispute that, as set forth in numbered paragraph 25 of Plaintiffs' Statement of Material Facts, ECF No. 20-1, "[n]either President Trump's email message, nor any other communication from him, has sought to justify Plaintiffs' removal on

the ground that either of them committed any inefficiency, neglect of duty, or malfeasance."

2. Defendants do not dispute the facts set forth in numbered paragraphs 1, 3, 13, 15, 17, and 20-24 of Plaintiffs' Statement of Material Facts, ECF No. 20-1. Defendants nonetheless respectfully contend that the facts set forth in those paragraphs are not material to the resolution of this action.

Dated: April 23, 2025

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-909 (LLA)

REBECCA KELLY SLAUGHTER, ET AL.,
IN THEIR OFFICIAL AND PERSONAL CAPACITIES,
PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

Filed: July 17, 2025

MEMORANDUM OPINION

More than a century ago, Congress created the Federal Trade Commission (the "FTC" or "Commission") as an independent, multimember body of experts committed to the regulation of economic competition. To insulate the agency from volatile political headwinds that might jeopardize its mission, Congress placed restrictions on the selection and tenure of FTC Commissioners, including a requirement that they only be removed for "inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. Roughly two decades after the FTC's creation, the Supreme Court upheld this for-cause removal protection in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Now, ninety years later, Commissioners Rebecca Slaughter and Alvaro Bedoya bring this suit against President Trump and several FTC officials challenging their purported removal from the FTC—without cause—in March 2025.

ECF No. 1. Because the law on the removal of FTC Commissioners is clear, and for the reasons explained below, the court will grant Ms. Slaughter's motion for summary judgment and deny Defendants' cross-motion for summary judgment.

I. STATUTORY BACKGROUND

In 1914, Congress passed the Federal Trade Commission Act (the "FTC Act"), Pub. L. No. 63-203, 38 Stat. 717 (1914) (codified as amended at 15 U.S.C. § 41 *et seq.*), which established the FTC to prevent "unfair methods of competition in commerce," *id.* § 5.1.[1] Congress simultaneously passed the Clayton Act, which empowered the FTC to enforce prohibitions on price discrimination and anticompetitive mergers. Clayton Act, Pub. L. No. 63-212, § 11, 38 Stat. 730, 734 (1914) (codified as amended at 15 U.S.C. § 12 *et seq.*).

At its inception, if the FTC suspected unfair competition, it could "issue and serve upon [any] person, partnership, or corporation a complaint stating its charges" and request that the party appear at a hearing to respond. FTC Act § 5, 38 Stat. at 719. The FTC could also enter an order requiring the party "to cease and desist from [any] violation of law" charged in the complaint. *Id.* If the party failed to obey the cease-and-desist order, the FTC could "apply to the circuit court of appeals of the United States . . . for the enforcement of its order." *Id.* In any such proceeding, the

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[1] Congress intended for the FTC Act to supplement the Sherman Antitrust Act of 1890, which prohibited "[e]very contract, combination . . . , or conspiracy[] in restraint of trade or commerce among the several States, or with foreign nations." 15 U.S.C. § 1; *see Fed. Trade Comm'n v. Beech-Nut Packing Co.*, 257 U.S. 441, 453 (1922).

"findings of the [C]ommission as to the facts, if supported by testimony, [would] be conclusive." *Id.*

Additionally, the FTC had the power to investigate businesses for potential violations of law, to require businesses to respond to inquiries about their practices, to monitor businesses for compliance with court orders relating to antitrust violations, and—at the direction of certain government offices—to make reports and recommendations about alleged violations of antitrust laws. *Id.* § 6. It could even compel the testimony of witnesses. *Id.* § 9.

Congress also gave the FTC quasi-judicial and quasi-legislative abilities. It empowered the Commission to "make rules and regulations for the purpose of carrying out the provisions of [the FTC] Act." *Id.* § 6(g). Furthermore, if the Attorney General were to prevail in an antitrust suit in equity against a defendant, the presiding court could "refer said suit to the [C]ommission, as a master in chancery, to ascertain and report an appropriate form of decree." *Id.* § 7.

Congress designed the FTC to be led by a bipartisan group of five Commissioners, no more than three of whom could belong to a single political party. *Id.* § 1.[2] Each Commissioner had to be appointed by the President and confirmed by the Senate. *Id.* The first FTC Commissioners were appointed to staggered terms to enable future presidents to appoint new members. *See id.* Successive Commissioners, however, would serve seven-year terms. *Id.* Most relevant here, Congress

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[2] The Senate Committee report explained that "it [was] essential that [the FTC] should not be open to the suspicion of partisan direction." S. Rep. No. 63-597, at 11 (1914).

enabled the President to remove the Commissioners for "inefficiency, neglect of duty, or malfeasance in office." *Id.*

In 1938, Congress added the targeting of "unfair or deceptive acts or practices in commerce" to the FTC's mission. Wheeler-Lea Act, Pub. L. No. 75-447, § 3, 52 Stat. 111, 111-12 (1938). In 1973, the FTC gained the ability to "directly enforce subp[o]enas issued by the Commission and . . . seek preliminary injunctive relief to avoid unfair competitive practices." Trans-Alaska Oil Pipeline Act, Pub. L. No. 93-153, § 408(b), 87 Stat. 576, 591-92 (1973). Then, in 1975, Congress gave the FTC the ability to "commence a civil action to recover a civil penalty" of up to $10,000 per violation of the FTC Act or one of the Commission's cease-and-desist orders. Magnuson-Moss Act, Pub. L. No. 93-637, § 205(a), 88 Stat. 2183, 2200-01 (1975).

II. FACTUAL BACKGROUND

While the parties disagree about a great many things, the following facts are not in dispute. In 2018, President Trump nominated Ms. Slaughter—a Democrat—and four other nominees to be Commissioners on the FTC. ECF No. 20-1 ¶ 1; ECF No. 32-2. The Senate unanimously confirmed Ms. Slaughter in April 2018 and she began her seven-year term in May 2018. ECF No. 20-1 ¶ 2; ECF No. 32-2. When President Biden took office in January 2021, he named Commissioner Slaughter as the Commission's Acting Chair. ECF No. 20-1 ¶ 4; ECF No. 32-2. She held that position until the Senate confirmed Lina Khan to the FTC, who subsequently became Chair. ECF No. 20-1 ¶ 4; ECF No. 32-2. In September 2021, President Biden nominated Mr. Bedoya—also a Democrat—to the FTC. ECF No. 20-1 ¶ 8; ECF No.

32-2. In May 2022, the Senate confirmed him to a term expiring in September 2026. ECF No. 20-1 ¶¶ 9-10; ECF No. 32-2.

In February 2023, President Biden renominated Commissioner Slaughter to another seven-year term. ECF No. 20-1 ¶ 5; ECF No. 32-2. In March 2024, the Senate again unanimously confirmed her to a term expiring in September 2029. ECF No. 20-1 ¶¶ 6-7; ECF No. 32-2. In the same slate of nominees, the Senate also confirmed Republican Commissioners Andrew Ferguson and Melissa Holyoak. ECF No. 20-1 ¶ 6; ECF No. 32-2.

In January 2025, President Trump designated Commissioner Ferguson as the Chair of the FTC. ECF No. 20-1 ¶ 14; ECF No. 32-2. In March 2025, Commissioners Slaughter and Bedoya received identical emails from Deputy Director of Presidential Personnel Trent Morse purportedly removing them from their positions. ECF No. 20-1 ¶ 16; ECF No. 32-2. The emails contained a message from President Trump stating: "I am writing to inform you that you have been removed from the Federal Trade Commission, effective immediately." ECF No. 1-2. The message concluded: "Your continued service on the FTC is inconsistent with my Administration's priorities. Accordingly, I am removing you from office pursuant to my authority under Article II of the Constitution." *Id.* The message did not indicate that either Commissioner was being fired for inefficiency, neglect of duty, or malfeasance in office. *See id.*; ECF No. 20-1 ¶ 25; ECF No. 32-2.

Shortly after receiving the email, Commissioners Slaughter and Bedoya were unable to access their work emails, government servers, and digital files. ECF No.

20-1 ¶ 18; ECF No. 32-2. They were also denied access to their offices and members of their staff were placed on administrative leave or reassigned to other positions within the FTC. ECF No. 20-1 ¶ 19; ECF No. 32-2. On the FTC website, both are now listed as "former" Commissioners. ECF No. 20-1 ¶ 19; ECF No. 32-2. Even though neither of their terms had expired and neither was alleged to have "committed any inefficiency, neglect of duty, or malfeasance," ECF No. 20-1 ¶ 25; ECF No. 32-2, Ms. Slaughter and Mr. Bedoya are now wholly "unable to fulfill their duties as duly appointed FTC Commissioners," ECF No. 20-1 ¶ 20; ECF No. 32-2.

The current, purported composition of the FTC consists of Republican Commissioners Ferguson, Holyoak, and Mark Meador—who was confirmed by the Senate in April 2025. ECF No. 20-1 ¶¶ 23-24; ECF No. 32-2.

III. PROCEDURAL HISTORY

In March 2025, Ms. Slaughter and Mr. Bedoya sued President Trump, FTC Chair Ferguson, FTC Commissioner Holyoak, and FTC Executive Director David Robbins seeking various forms of relief. ECF No. 1. They assert that their purported removals were unlawful and therefore without legal effect. *Id.* at 3.

In April 2025, Plaintiffs moved for expedited summary judgment, seeking declaratory relief and a permanent injunction prohibiting Defendants from interfering with their roles as FTC Commissioners. ECF No. 20-2, at 34. In the alternative, Plaintiffs seek a writ of mandamus affording the same relief. *Id.*[3] Later that

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[3] The following entities and individuals filed amicus briefs in support of Plaintiffs' Motion for Summary Judgment: Members of Congress, ECF No. 25; the State of Colorado and a coalition of 19

month, Defendants opposed Plaintiffs' motion and filed a cross-motion for summary judgment. ECF Nos. 32, 33.[4] Briefing on both motions was completed in mid-May, ECF Nos. 38, 39, 43, and the court held a motions hearing on May 20, 2025, *see* May 20, 2025 Minute Entry.

On June 9, 2025, Mr. Bedoya notified the court that he had formally resigned from his position as a Commissioner of the FTC. ECF No. 46. He explained that his purported termination had "denied [him] the wages, benefits, and resources to which [he was] legally entitled as an FTC Commissioner." ECF No. 46-1 ¶ 7. Because "[a]pplicable rules and regulations limit an FTC Commissioner's ability to accept other employment while serving on the Commission," Mr. Bedoya "[could] no longer afford to go without any source of income." *Id.* ¶ 8. Despite his resignation, he "continue[s] to seek any and all relief appropriate in light of [his] new circumstances, including a declaratory ruling from this [c]ourt recognizing that the President's 'purported termination' without cause . . . was 'unlawful.'" *Id.* ¶ 10 (quoting ECF No. 1, at 19). The court subsequently ordered the parties to submit supplemental briefing on Mr. Bedoya's standing to proceed with the case, June 11, 2025 Minute Order, which the parties submitted on June 18, ECF Nos. 48, 49.

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other states and the District of Columbia, ECF No. 27; Professor of Law Jed H. Shugerman, ECF No. 29; and Professors John C. Coates, Jeffrey N. Gordon, Kathryn Judge, and Lev Menand, ECF No. 30.

[4] The following entities filed amicus briefs in support of Defendants' Cross-Motion for Summary Judgment: the State of Florida and a coalition of twenty other states and the Arizona Legislature, ECF No. 34; and the Christian Employers Alliance, ECF No. 37.

IV. LEGAL STANDARDS

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Where the parties do not dispute any material facts, as is the case here, the matter is "particularly amenable to resolution on summary judgment" because all that remains is the application of law. *W & T Travel Servs., LLC v. Priority One Servs., Inc.*, 69 F. Supp. 3d 158, 164 (D.D.C. 2014).

V. DISCUSSION

The court's analysis proceeds in four parts. First, the court addresses Mr. Bedoya's standing. Second, the court walks through the Supreme Court's ninety-year-old jurisprudence on removal protections for Executive-Branch officers generally and FTC Commissioners specifically. Third, the court analyzes how that precedent —most importantly, *Humphrey's Executor*, 295 U.S. 602 (1935)—affects the outcome of this case. Finally, the court addresses the scope of available remedies to which Plaintiffs are entitled.

A. The Justiciability of Mr. Bedoya's Claims

"In order to invoke federal-court jurisdiction, a plaintiff must demonstrate that he possesses a legally cognizable interest, or 'personal stake,' in the outcome of the action." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013) (quoting *Camreta v. Greene*, 563 U.S. 692, 701 (2011)). Absent certain circumstances not present here, he must maintain that personal stake for the duration of the case. If he fails to do so, "the action can no longer proceed [against him] and must be dismissed as moot." *Id.* at 72. Defendants argue that Mr.

Bedoya's claims have become moot because he has resigned from his position as an FTC Commissioner. ECF No. 49, at 3-8. The court agrees.

In the complaint, Mr. Bedoya sought (1) a declaration that he remained a rightful Commissioner of the FTC (and that President Trump's purported removal of him was without legal effect), and (2) a permanent injunction requiring Defendants to continue treating him as such. ECF No. 1, at 19-20. Mr. Bedoya's resignation from the FTC plainly moots the second request. Now that he has voluntarily relinquished the role he was fighting to keep, the court cannot grant injunctive relief restoring him to that role. There would be no remedial effect of this court's instructing Defendants to treat Mr. Bedoya as an FTC Commissioner when he himself no longer claims that position. In other words, he "has nothing to gain from the equitable relief []he seeks." *Bois v. Marsh*, 801 F.2d 462, 466 (D.C. Cir. 1986). Because the facts of the case have "outrun the controversy such that the court can grant no meaningful relief," the request for an injunctive remedy as it concerns Mr. Bedoya "must be dismissed as moot." *McBryde v. Comm. to Rev. Cir. Council Conduct & Disability Ords. of the Jud. Conf. of the U.S.*, 264 F.3d 52, 55 (D.C. Cir. 2001).

Whether Mr. Bedoya retains standing to demand declaratory relief is a closer question, but not close enough. Under established D.C. Circuit precedent, "[w]hen a plaintiff's specific claim is moot . . . [and he] merely attacks an isolated agency action, . . . the mooting of the specific claim moots any claim for a declaratory judgment that the specific action was unlawful." *City of Houston v. Dep't of Hous. & Urban Dev.*, 24 F.3d 1421, 1429 (D.C. Cir. 1994). Here, Mr. Bedoya's quarrel is with his purported termination—an "isolated" act by Defendants. Now that that particular disagreement is moot, the court lacks authority to opine on the legality of that act in the absence of an ongoing injury.

Mr. Bedoya argues that he is still entitled to declaratory relief because he continues to suffer reputational harm arising from the confusion over his alleged termination. ECF No. 48, at 5-6. He consequently asks the court to "'clarify[] the legal relations between [himself and Defendants], and establish[] that [Defendants'] conduct on this record' violated the law and d[id] not have legal effect." *Id.* at 8-9 (fourth alteration in original) (quoting *Anatol Zukerman & Charles Krause Reporting, LLC v. United States*, 64 F.4th 1354, 1366-67 (D.C. Cir. 2023)). Unfortunately for Mr. Bedoya, an abundance of case law makes plain that there is no standing "where reputational injury is the lingering effect of an otherwise moot aspect of a lawsuit." *Foretich v. United States*, 351 F.3d 1198, 1212 (D.C. Cir. 2003); *id.* at 1213 ("Because the cause of the reputational harm is an otherwise moot government action, a judicial declaration that the action was unlawful is not likely to provide any further relief beyond that resulting from the expiration of the action itself.").

In summary, Mr. Bedoya's allegations of continuing injury were rooted in his claim to a role he no longer desires. A declaratory ruling would not correct an *ongoing* harm to him; it would be an advisory opinion about a dead controversy. And because Mr. Bedoya does not seek damages, the nature of his requested relief is strictly in the here-and-now.[5] Although the court

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[5] Indeed, Plaintiffs' request for injunctive relief is premised on the assertion that damages are insufficient to afford complete relief here, given the unique nature and role of being an FTC Com-

is sympathetic to Mr. Bedoya's motivations for resigning, he has failed to "maintain [his] personal interest in the dispute at all stages of litigation." *TransUnion*, 594 U.S. at 431. Accordingly, the court will dismiss his claims as moot.

B. The Supreme Court's Removal-Protection Jurisprudence for Multimember Agencies

1. *Myers v. United States*

Article II of the United States Constitution vests all "executive Power" in the President. U.S. Const. art. II, § 1. It also assigns the President the responsibility to "take Care that the Laws be faithfully executed." *Id.* § 3. "[B]ecause it would be 'impossib[le]' for 'one man' to 'perform all the great business of the State,' the Constitution assumes that lesser executive officers will 'assist the [President] in discharging [his] duties[.]'" *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 213 (2020) (quoting 30 Writings of George Washington 334 (J. Fitzpatrick ed. 1939)). These executive officers "must remain accountable to the President," lest the President be hindered from faithfully executing the laws. *Id.* at 213-14.

In *Myers v. United States*, 272 U.S. 52 (1926), the Supreme Court held that the combined powers and responsibilities under Article II granted the President "general administrative control of those executing the laws, including the power of appointment and removal of executive officers." *Id.* at 164. In that case, the Court considered the constitutionality of a statute that re-

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missioner. *See* ECF No. 20-2, at 28-29 ("[A]ny argument that mere monetary damages are sufficient here would make a mockery of the FTC Act[.]").

quired the President to obtain the Senate's advice and consent before removing a United States postmaster. *Id.* at 107. Striking down the law, the Court explained that the President's power to "select those who . . . act for him under his direction in the execution of the laws" must also imply, "in the absence of any express limitation respecting removals, . . . power [to] remov[e] those for whom he cannot continue to be responsible." *Id.* at 117. This basic understanding of the President's removal power dates back to 1789 and has only been restrained by narrow exceptions since *Myers*.

2. ***Humphrey's Executor v. United States***

Nine years after invalidating the statute in *Myers*, the Supreme Court considered whether the FTC Act's for-cause removal protections also violated the President's Article II authority. In the lead-up to *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), President Roosevelt had asked FTC Commissioner William Humphrey to resign from his post because the two disagreed on key policy issues. *Id.* at 618. When Commissioner Humphrey refused, President Roosevelt sent him a letter "remov[ing] [him] from the office of Commissioner," effective immediately. *Id.* at 619. Because then, as now, the FTC Act only permitted removal of Commissioners "for inefficiency, neglect of duty, or malfeasance in office," Humphrey "continued thereafter to insist that he was still a member of the [C]ommission." *Id.* Following his death, Humphrey's estate sued for backpay. *Id.* at 618.

In a unanimous opinion, the Court sided with Commissioner Humphrey and held that the FTC Act's removal protections for FTC Commissioners did not violate Article II. *Id.* at 629-32. The Court began by describing the FTC's various powers, noting that the FTC was empowered to prevent "unfair methods of competition in commerce," "issue . . . complaint[s] stating its charges," issue cease-and-desist orders, and apply to a United States circuit court of appeals to enforce such orders. *Id.* at 620-21. It also observed that the FTC had "wide powers of investigation in respect of certain corporations subject to the act" and the ability to decide the appropriate course of action as a "master in chancery" when prompted by the Attorney General. *Id.* at 621. The Court further recognized that "[t]he [C]ommission is to be nonpartisan; and it must, from the very nature of its duties, act with entire impartiality." *Id.* at 624. As the Court clarified, "[the FTC] is charged with the enforcement of no policy except the policy of the law," and "[i]ts duties are neither political nor executive, but predominantly quasi judicial and quasi legislative." *Id.*

In *Humphrey's Executor*, the United States had argued that the FTC Act's protections conflicted with *Myers*'s broad pronouncement of Presidential removal power. *Id.* at 626. But the Court declined to follow *Myers* because the role of a postmaster was too dissimilar from that of an FTC Commissioner: a postmaster performed only "executive functions" and lacked any "legislative or judicial power." *Id.* at 627. *Myers*, the Court explained, only applied to "purely executive officers" and went "no farther." *Id.* at 627-28. In contrast, the FTC "is an administrative body created by Congress to carry into effect legislative policies" and "to perform other specified duties as a legislative or as a judicial aid." *Id.* at 628. In the Court's view, "[s]uch a body cannot in any proper sense be characterized as an arm or an eye of the executive" because "[i]ts duties are performed without executive leave and . . . must [therefore] be free from executive control." *Id.*

Acknowledging that the United States' position would expose countless other federal positions—like judgeships on the U.S. Court of Claims—to unfettered removals, the Court "th[ought] it plain under the Constitution that the illimitable power of removal is not possessed by the President [over] officers of the character of [agencies like the FTC]." *Id.* at 629. As the Court explained, Congress "[un]doubted[ly]" had the power to create quasi-legislative or quasi-judicial agencies and instruct them to act "independently of executive control." *Id.* Without removal protections, that independence would be jeopardized. *Id.*; *see id.* ("[I]t is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will.").

Accordingly, the Court held that the FTC Act's for-cause removal protections were constitutional. *Id.* at 632. In so holding, it explained that "the power of the President to remove an officer" in the face of congressionally imposed limits "will depend on the character of the office." *Id.* at 631. The Court recognized that its decision left open "a field of doubt" as to the President's removal powers in the gap between "purely executive officers"—as in *Myers*—and "officers of the [FTC]." *Id.* at 631-32. It opted to leave those thorny, inevitable questions "for future consideration and determination as they may arise." *Id.* at 632.[6]

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[6] Between *Humphrey's Executor* and *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010), the Court decided *Wiener v. United States*, 357 U.S. 349 (1958), and *Morrison v. Olson*, 487 U.S. 654 (1988). In *Wiener*, the Su-

3. *Free Enterprise Fund v. Public Company Accounting Oversight Board*

Three-quarters of a century later, the Supreme Court decided *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010). *Free Enterprise Fund* concerned whether "separate layers of [for-cause removal] protection may be combined," such that a President is "restricted in his ability to remove a principal officer, who is in turn restricted [from] remov[ing] an inferior officer." *Id.* at 483-84. While that question is distinct from the issue presented here, the Court used the opinion to clarify its removal-protection jurisprudence.

In holding that "such multilevel protection from removal is contrary to Article II[]," the Court did not disturb its conclusion in *Humphrey's Executor* that the President's removal authority "is not without limit." *Id.* at 483-84. Instead, it reaffirmed the notion that Congress could "confer[] good-cause tenure on the principal officers of certain independent agencies" like the FTC because that agency was "'quasi-legislative and quasi-judicial,' rather than 'purely executive.'" *Id.* at 493 (quoting *Humphrey's Ex'r*, 295 U.S. at 627-29).

4. *Seila Law v. Consumer Financial Protection Bureau*

Ten years after *Free Enterprise Fund*, the Supreme Court addressed yet another new removal-protection context. In *Seila Law LLC v. Consumer Financial*

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preme Court relied on *Humphrey's Executor*'s rationale to unanimously uphold removal protections for the War Claims Commission. *Wiener*, 357 U.S. at 353-56. Thirty years later, in *Morrison*, the Court held that Congress could also limit a principal officer's ability to remove an inferior officer to only circumstances where the principal officer has "good cause" for doing so. 487 U.S. at 693.

Protection Bureau, 591 U.S. 197 (2020), the Court considered the constitutionality of removal protections for agencies "wield[ing] significant executive power and . . . run by a single individual." *Id.* at 204. The Court held that such protections violated Article II and thus declined to extend the *Humphrey's Executor* rule to any single-director agencies. *Id.* at 204-05. Under *Seila Law*, any principal officer who acts as the sole director of an independent agency must be removable by the President at-will. *Id.* at 205.

At the same time, the Court reaffirmed its holding in *Humphrey's Executor*. The Court explained that "*Free Enterprise Fund* left in place two exceptions to the President's unrestricted removal power": (1) "one for multimember expert agencies that do not wield substantial executive power," and (2) "one for inferior officers with limited duties and no policymaking or administrative authority." *Seila Law*, 591 U.S. at 215, 218.

C. Whether *Humphrey's Executor* Controls the Outcome of This Case

The answer to the key substantive question in this case—whether a unanimous Supreme Court decision about the FTC Act's removal protections applies to a suit about the FTC Act's removal protections—seems patently obvious. In arguing for a different result, Defendants ask this court to ignore the letter of *Humphrey's Executor* and embrace the critiques from its detractors. Defendants hope that, after doing so, this court will bless what amounts to the implied overruling of a ninety-year-old, unanimous, binding precedent. Because "it is [the Supreme] Court's prerogative alone to overrule one of its precedents," *United States v. Hatter*, 532 U.S. 557, 567 (2001) (quoting *State Oil Co. v.*

Khan, 522 U.S. 3, 20 (1997)), the court cannot, and will not, fulfill that request.

1. *Humphrey's Executor* remains binding on this court

The Supreme Court has made clear that "'[i]f [one of its] precedent[s] . . . has direct application in a case,' . . . a lower court 'should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.'" *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)). This holds true "even if the lower court *thinks the precedent is in tension* with 'some other line of decisions'" by the Supreme Court. *Id.* (emphasis added) (quoting *Rodriguez de Quijas*, 490 U.S. at 484).

Humphrey's Executor involved the exact same provision of the FTC Act that Ms. Slaughter seeks to enforce here: the for-cause removal protection within 15 U.S.C. § 41 prohibiting any termination except for "inefficiency, neglect of duty, or malfeasance in office." Defendants concede that Ms. Slaughter was not removed for any of those enumerated reasons. ECF No. 32-2 ¶ 1. Instead, President Trump purported to remove her because her "continued service on the FTC [was] inconsistent with [his] Administration's priorities." ECF No. 1-2.

These facts almost identically mirror those of *Humphrey's Executor*. President Roosevelt did not hide his motivation for removing Commissioner Humphrey: the President explained "that the aims and purposes of [his] Administration with respect to the work of the Commission c[ould] be carried out most effectively with personnel of [his] own selection." *Humphrey's Ex'r*, 295 U.S. at 618. He reiterated this point in a subsequent letter, writing, "I do not feel that your mind and my mind go along together on either the policies or the administering of the Federal Trade Commission." *Id.* at 619. Like here, President Roosevelt did not purport to base the removal on inefficiency, neglect of duty, or malfeasance.

Similarly, in *Humphrey's Executor*, the United States argued that restricting the President's removal power was an "unconstitutional interference" with his Article II authority. *Id.* at 626. The United States relied on *Myers* to make its case, *see Humphrey's Ex'r*, 295 U.S. at 626, much like President Trump does here, *see* ECF No. 1-2 (beginning his explanation for Ms. Slaughter's removal by citing to *Myers*). But the Court remained unconvinced and unanimously upheld the FTC Act's removal protections as "plain[ly]" constitutional. *Humphrey's Ex'r*, 295 U.S. at 629. The Court elaborated by saying that Congress had unquestionable authority to "creat[e] quasi legislative or quasi judicial agencies[] [and] to require them to act in discharge of their duties independently of executive control." *Id.*

Humphrey's Executor remains good law today. Over the span of ninety years, the Supreme Court has declined to revisit or overrule it. *See Wiener v. United States*, 357 U.S. 349, 356 (1958) (relying on the "philosophy" and "explicit language" of *Humphrey's Executor* to unanimously uphold removal protections for the War Claims Commission); *Morrison v. Olson*, 487 U.S. 654, 687 (1988) (reaffirming *Humphrey's Executor*'s "plain" holding); *Free Enter. Fund*, 561 U.S. at 483 (reiterating *Humphrey's Executor*'s holding that Presidential removal authority "is not without limit"); *Seila Law*, 591 U.S. at 204, 228 ("[W]e do not revisit *Humphrey's Executor* or any other precedent today[.]"); *Collins v. Yellen*, 594 U.S. 220, 250-51 (2021) (noting that the Court "did 'not revisit [its] prior decisions allowing certain limitations on the President's removal power'" in *Seila Law* (quoting *Seila Law*, 591 U.S. at 204)). In fact, the Court has expressly left *Humphrey's Executor* "in place." *Seila Law*, 591 U.S. at 215. During that period, Congress has not once disturbed the FTC Act's removal protection, while thirteen Presidents have acquiesced to its vitality. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610-11 (1952) (Frankfurter, J., concurring) ("[A] systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution . . . may be treated as a gloss on 'executive Power' vested in the President by [Article II].").

Beyond the Supreme Court, countless lower federal courts have relied on *Humphrey's Executor* to reject challenges to the FTC Act's removal protections. *See, e.g.*, *Meta Platforms, Inc. v. Fed. Trade Comm'n*, No. 24-5054, 2024 WL 1549732, at *2 (D.C. Cir. Mar. 29, 2024) (rejecting Meta's argument that the FTC Act "likely violates Article II by limiting the President's power to remove the [FTC's] Commissioners" because "[t]he Supreme Court already answered this question adversely to Meta" and "has not disturbed that precedent"); *Illumina, Inc. v. Fed. Trade Comm'n*, 88 F.4th 1036, 1046-47 (5th Cir. 2023) (rejecting Illumina's argument "that the FTC unconstitutionally exercised executive powers while insulated from presidential removal in violation of Article II" as foreclosed by *Humphrey's Executor*).

Courts have likewise upheld similar protections in the context of other, analogous agencies. *See, e.g.*, *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103

F.4th 748, 760 (10th Cir. 2024) ("Since the Supreme Court's decision in *Humphrey's Executor*, the constitutionality of independent [multimember] agencies, whose officials possess some degree of removal protection that insulates them from unlimited and instantaneous political control, has been uncontroversial."), *cert. denied*, 145 S. Ct. 1047 (2025); *Consumers' Rsch. v. Consumer Prod. Safety Comm'n*, 91 F.4th 342, 346 (5th Cir.) (rejecting the plaintiffs' challenge to the constitutionality of the Consumer Product Safety Commission—"a mirror image of the [FTC]"—as foreclosed by *Humphrey's Executor*), *cert. denied*, 145 S. Ct. 414 (2024); *YAPP USA Automotive Sys. v. Nat'l Lab. Rels. Bd.*, 748 F. Supp. 3d 497, 508 (E.D. Mich.) (upholding the National Labor Relations Board's removal protections as constitutional under *Humphrey's Executor*), *stay pending appeal denied*, No. 24-1754, 2024 WL 4489598 (6th Cir. Oct. 13, 2024), *appl. for writ of inj. denied*, No. 24A348, 2024 WL 4508993 (2024); *Alivio Med. Ctr. v. Abruzzo*, No. 24-CV-2717, 2024 WL 4188068, at *9 (N.D. Ill. Sept. 13, 2024) (same); *Kerwin v. Trinity Health Grand Haven Hosp.*, No. 24-CV-445, 2024 WL 4594709, at *7 (W.D. Mich. Oct. 25, 2024) (same); *Loren Cook Co. v. Nat'l Lab. Rels. Bd.*, No. 24-CV-3277, 2024 WL 5004534, at *6 (W.D. Mo. Nov. 27, 2024) (same); *Overstreet v. Lucid USA Inc.*, No. 24-CV-1356, 2024 WL 5200484, at *10 (D. Ariz. Dec. 23, 2024) (same). *But see Space Expl. Techs. Corp. v. Nat'l Lab. Rels. Bd.*, 741 F. Supp. 3d 630, 637 (W.D. Tex.) (holding that the National Labor Relations Board's removal protections are unconstitutional because its "members clearly wield substantial executive power"), *appeal filed*, No. 24-50627 (5th Cir. 2024).

Indeed, courts have already considered—and rejected—President Trump's challenges to similar removal restrictions for other independent, multimember agencies. In *Wilcox v. Trump*, 775 F. Supp. 3d 215 (D.D.C. 2025), for example, the court blocked President Trump's attempt to remove a member of the National Labor Relations Board ("NLRB") by relying on *Humphrey's Executor*. *Id.* at 223-35. In so holding, it rebuffed President Trump's argument that the Supreme Court had "repudiat[ed]" *Humphrey's Executor*. *Id.* at 228-29. Similarly, in *Harris v. Bessent*, 775 F. Supp. 3d 164 (D.D.C. 2025), the court held that President Trump's attempt to remove a member of the Merit System Protects Board ("MSPB") was unlawful under *Humphrey's Executor*. *Id.* at 173-178. It held that the Supreme Court had recently "reaffirmed the constitutionality of multimember boards with for-cause removal protections, as those agencies have a robust basis in this country's history." *Id.* at 175.

To be sure, *Wilcox* and *Harris* have colorful subsequent history. On March 28, 2025, a motions panel of the D.C. Circuit granted the United States' emergency motions for a stay pending appeal in both cases. *Harris v. Bessent*, No. 25-5037, 2025 WL 980278, at *1 (D.C. Cir. Mar. 28, 2025). Judges Walker and Henderson concurred in the decision, reasoning that the United States was substantially likely to succeed in showing that the NLRB and MSPB exercised substantial executive power and therefore did not fall within the ambit of *Humphrey's Executor*. *See Harris*, 2025 WL 980278, at *13-18 (Walker, J., concurring); *id.* at *21-23 (Henderson, J., concurring). Judge Millett dissented, writing that the "none of the government's arguments . . . distinguish[ed] the MSPB or NLRB in any materially relevant way from the Supreme Court's holdings in *Humphrey's Executor* and *Wiener*." *Id.* at *33 (Millett, J., dissenting). Then, on April 7, the *en banc* D.C. Circuit vacated the panel's decision and *denied* the United States' motion for a stay pending appeal. *Harris v. Bessent*, No. 25-5037, 2025 WL 1021435, at *1-2 (D.C. Cir. Apr. 7, 2025). The D.C. Circuit explained that the "Supreme Court's repeated and recent statements that *Humphrey's Executor* and *Wiener* remain precedential require[d] denying the government's emergency motions." *Id.* at *2. The United States subsequently asked the Supreme Court to stay the district court decisions in *Wilcox* and *Harris* (and effectively vacate the D.C. Circuit's *en banc* order), which the Court ultimately did on May 22. *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025). While the Supreme Court's stay "reflect[ed] [its] judgment that the Government is likely to show that both the NLRB and MSPB exercise considerable executive power," it "d[id] not ultimately decide in this posture whether the NLRB or MSPB falls within . . . a recognized [removal-power] exception." *Id.* Curiously, the Court did not cite *Humphrey's Executor* in reaching this conclusion. *See id.* at 1419 (Kagan, J., dissenting) ("[H]ere the President fired the NLRB and MSPB Commissioners in the teeth of *Humphrey's*, betting that this Court would acquiesce. And the majority today obliges—without so much as mentioning *Humphrey's*.").

Defendants urge this court to read the tea leaves of *Wilcox* and *Harris* as further support for their position that this court can and should jettison *Humphrey's Executor*. *See* ECF No. 44, at 2 ("[T]he Supreme Court's stay counsels against issuance of the relief Plaintiffs seek here."). But the Supreme Court's stay order is not a decision on the merits. The Court expressly left the pivotal legal questions "for resolution after full briefing and argument." *Wilcox*, 145 S. Ct. at 1415. And even taking the Court's pronouncements at face value, its order only addressed removal protections as they pertain to the NLRB and MSPB. *Id.* The sole justification for granting the application was that the President "may remove without cause executive officers who exercise that power on his behalf, *subject to narrow exceptions recognized by our precedents*." *Id.* (emphasis added). *Humphrey's Executor*, of course, is one of those precedents, and it dealt with, as here, *the FTC*. Accordingly, any suggestion that *Humphrey's Executor* may not extend to *other* agencies cannot be read as an invitation to sidestep its application to the FTC.[7]

That said, the court acknowledges that the Supreme Court has questioned aspects of the *Humphrey's Exec-*

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[7] Recently, the U.S. District Court for the District of Maryland held that President Trump's attempt to terminate several members of the Consumer Product Safety Commission (the "CSPC") without cause was unlawful. *Boyle v. Trump*, No. 25-CV-1628, 2025 WL 1677099, at *15 (D. Md. June 13, 2025). The government sought a stay of the District of Maryland's order and argued that the Supreme Court's stay in *Wilcox* required a ruling in its favor. The Fourth Circuit disagreed and denied the application for a stay. *Boyle v. Trump*, No. 25-1687, 2025 WL 1808180, at *1 (4th Cir. July 1, 2025). In his concurrence, Judge Wynn explained that "*Seila Law* [did not] implicitly abrogate . . . *Humphrey's Executor*" and that "*Wilcox* does not alter the [relevant,] controlling precedent." *Id.* at *2 (Wynn, J., concurring). "Because Defendants' likelihood of success [was] thoroughly foreclosed by existing case law," and because the remaining stay factors weighed in favor of the plaintiff commissioners, staying the district court's ruling would have been improper. *Id.* at *2-4. The next day, the government filed an application with the Supreme Court to stay the district court's order and vacate the Fourth Circuit's denial of a stay. Appl. to Stay, *Trump v. Boyle*, No. 25A11 (July 2, 2025). That application remains pending as of this opinion's issuance.

utor decision. For example, in *Morrison*, the Court noted in dicta that "it is hard to dispute that the powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered 'executive,' at least to some degree." *Morrison*, 487 U.S. at 689 n.28. And more recently, in *Seila Law*, the Court observed—again in dicta—that the "conclusion that the FTC did not exercise executive power has not withstood the test of time." 591 U.S. at 216 n.2. But whether or not the Supreme Court has lost faith in its ninety-year-old holding is not a decision for *this* court to make. *See Agostini v. Felton*, 521 U.S. 203, 238 (1997) (holding that the trial court was correct to apply "binding precedent" "unless and until [the Supreme] Court reinterpreted [it]"). Even if the Supreme Court eventually chooses to overrule *Humphrey's Executor*, it would be an act of judicial hubris for this court to do so prematurely (especially "through gloss added by a later Court in dicta," *Seila Law*, 591 U.S. at 219 n.4.).

2. The modern FTC remains protected by *Humphrey's Executor*

In an attempt to sidestep *Humphrey's Executor*'s direct application to this case, Defendants argue that "the Supreme Court . . . did not sanction removal protections in perpetuity for the FTC" and that "Commissioners of the present-day FTC do not fit within [the *Humphrey's Executor*] exception[]." ECF No. 32-1, at 10. The core factual premise undergirding Defendants' position is that the powers of the 1935-era FTC in *Humphrey's Executor* pale in comparison to those of its modern-day counterpart. In their view, even the *Humphrey's Executor* Court would have struck down the FTC Act's removal protections if it were deciding the case today. Defendants are not the first litigants to sell this argument, and this court will not be the first to buy it.

a. The FTC's original powers

Defendants begin by highlighting portions of *Humphrey's Executor* that rhetorically downplay the FTC's powers. *See* ECF No. 32-1, at 10-11. For example, the Court viewed the agency as "an administrative body created by Congress to carry into effect legislative policies . . . and to perform other specified duties as a legislative or judicial aid." *Humphrey's Ex'r*, 295 U.S. at 628. "Such a[n] [agency could] not in any proper sense be characterized as an arm or an eye of the executive." *Id.* Instead, it acted primarily in a quasi-judicial and quasi-legislative role. *Id.* Any "executive function" that it wielded, "as distinguished from executive power in the constitutional sense," only furthered the "effectuation of its quasi legislative or quasi judicial powers." *Id.* According to Defendants, these passages indicate that the *Humphrey's Executor* Court would not intend for its ruling to embrace the FTC as it exists today.

Defendants assert that the current FTC—contrary to its 1935 form—"exercises significant executive power" in three key ways. ECF No. 32-1, at 11; *see id.* at 4-6. First, it "investigates potential violations" of federal law and, "where the evidence supports such action, . . . prosecutes violations of [the relevant] statutes." *Id.* at 11; *see* 15 U.S.C. §§ 46(a) (authorizing investigations of entities engaging in business that affects commerce), 49 (authorizing the FTC to subpoena testimony and evidence relating to any pending investigation), 57b-1(c) (authorizing civil investigative demands). Second, the current FTC may administratively adjudicate claims itself. ECF No. 32-1, at 12; 15 U.S.C. § 45(b) (allowing the FTC to issue administrative complaints, require parties to appear before it for a hearing, and serve cease-and-desist orders). And third, the current FTC can promulgate rules and regulations to prevent unfair business practices. 15 U.S.C. § 46(g) (permitting the FTC to "make rules and regulations for the purpose of carrying out the provisions of [the FTC] Act").

The biggest problem with this line of attack is that the FTC possessed each of these powers from the moment it was created and well before the Supreme Court decided *Humphrey's Executor*. The FTC's organic statute, passed in 1914, gave it broad investigatory powers like the ability to issue subpoenas, compel testimony, and acquire evidence. *See* FTC Act § 6(a), 38 Stat. at 721 (giving the FTC power "[t]o gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce"); *id.* § 6(b) (enabling the FTC to request annual or special reports, made under oath, from corporations engaged in commerce); *id.* § 9 (authorizing the FTC to demand the production of evidence, issue subpoenas and, if necessary, enforce subpoenas in federal court). The statute also enabled the FTC to adjudicate claims through its own administrative process. *Id.* § 5 (allowing the FTC to issue administrative complaints, require the attendance of the charged parties at a hearing, reduce any given testimony to writing, and—if the Commission is "of the opinion that the method of competition in question is prohibited by [the FTC] Act"—issue and serve a cease-and-desist order on the charged party). And it also provided the FTC with rulemaking power. *Id.* § 6(g); *see Nat'l Petroleum Refiners Ass'n v. Fed. Trade Comm'n*, 482 F.2d 672, 685-86 (D.C. Cir. 1973) (holding that the plain language of the FTC Act "confirm[ed] the framers' intent to allow [the] exercise of [substantive rulemaking] power").

Indeed, the *Humphrey's Executor* Court discussed each of these three categories of actions: it addressed the Commission's "wide powers of investigation" flowing from Section 6 of the FTC Act, *Humphrey's Ex'r*, 295 U.S. at 621; its administrative adjudicatory powers, like ordering parties to appear, show cause, or cease and desist from certain actions, *id.* at 620-21; and its "quasi legislative" role in effectuating the FTC Act, *id.* at 624; *see Immigr. & Naturalization Serv. v. Chadha*, 462 U.S. 919, 953 n.16 (1983) (citing *Humphrey's Executor* as an example of the Court "referr[ing] to agency [rulemaking, or 'lawmaking'] as being 'quasi-legislative' in character"). To the extent Defendants attempt to hang their hats on critiquing these original powers, their argument necessarily fails under *Humphrey's Executor*. The Court in that case was plainly aware of the FTC's investigatory, adjudicatory, and rulemaking abilities and yet it upheld the FTC Act's removal protections as constitutional.

True, the Supreme Court in *Seila Law* suggested that the *Humphrey's Executor* Court may not have considered the full panoply of the FTC's powers when reaching its decision in 1935. *See Seila Law*, 591 U.S. at 219 n.4 ("Perhaps the FTC possessed broader rulemaking, enforcement, and adjudicatory powers than the *Humphrey's* Court appreciated. Perhaps not. Either way, what matters is the set of powers the Court considered as the basis for its decision, not any latent powers that the agency may have had not alluded to by the Court."). But, as explained above, the *Humphrey's Executor* Court *did* address each of the agency's original abilities and concluded that they posed no constitutional problems. Disputing *Humphrey's Executor* on its own terms may take Defendants back to 1935, but it gets them nowhere today.

b. The FTC's "new" powers

Putting aside the powers that the FTC possessed at its inception, Defendants next claim that "the FTC has acquired immense *new* authority since 1935" in three primary ways. ECF No. 32-1, at 15 (emphasis added). First, the FTC gained "consumer-protection authority . . . for the first time in 1938." *Id.*; *see* Wheeler-Lea Act § 3, 52 Stat. at 111 (giving the FTC authority to combat "unfair or deceptive acts or practices in commerce" beginning in 1938). Second, "the Commission acquired . . . the ability to seek preliminary and permanent injunctions in federal court in the first instance" after *Humphrey's Executor*. ECF No. 32-1, at 15; *see* Trans-Alaska Oil Pipeline Act, § 408(f), 87 Stat. at 592 (permitting the FTC to "bring a suit in a district court of the United States to enjoin" any practice that would violate the FTC Act beginning in 1973). And third, the Congress gave the FTC "the ability to seek monetary penalties under Section 5 of the FTC Act against private parties" in 1975. ECF No. 32-1, at 15; *see* Magnuson-Moss Act § 205(a), 88 Stat. at 2200-01 (allowing the FTC to "commence a civil action to recover a civil penalty [of up to $10,000] in a district court of the United States against" a knowing violator of the FTC Act beginning in 1975). These statements are all true as a factual matter, but none poses a legally relevant basis on which to distinguish *Humphrey's Executor*.

Each of the FTC's three "new" abilities are outgrowths of its original powers, rather than dramatic transformations of the "character of the office." *See Humphrey's Ex'r*, 295 U.S. at 632. Take the Commission's so-called "consumer-protection" authorization: Defendants repeatedly portray the 1938 amendment as a significant expansion of the FTC's responsibilities, but the actual language of the amendment was far more modest (and more closely related to FTC Act's original objectives). Specifically, the Wheeler-Lea Act modified Section 5 of the FTC Act—which already targeted "unfair methods of competition in commerce"—to add "unfair or deceptive acts or practices in commerce." *Compare* FTC Act § 5, 38 Stat. at 719, *with* Wheeler-Lea Act § 3, 52 Stat. at 111-12. This certainly altered the ambit of the FTC's mandate to "protect[] consumers as well as competitors," *Fed. Trade Comm'n v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972), but a mere adjustment in purpose does not fundamentally change the way in which the FTC *wields* its power or the structure of the agency. Congress may have given the FTC a new type of conduct to regulate, but adding consumer protection as a goal is not the same as inflating or augmenting the mechanisms by which the FTC pursues potential law breakers.

Meanwhile, the FTC's power to seek injunctive relief is closely tied to its original ability to issue and enforce cease-and-desist orders. For example, from the agency's inception, the FTC could level charges against entities it suspected of violating the FTC Act, order them to cease whatever conduct gave rise to the charges, and then seek enforcement in federal court. FTC Act § 5, 38 Stat. at 719-21. On the flip side, parties subject to such an order could seek review in federal court to try and dissolve it. *Id.* These orders had the force of law and "as affirmed, [are] in essence a judicial decree."

Floersheim v. Engman, 494 F.2d 949, 953 (D.C. Cir. 1973); *see Kellogg Co. v. Fed. Trade Comm'n*, No. 80-2292, 1981 WL 2021, at *3 (D.D.C. Feb. 17, 1981) (observing that the FTC's rulings have the "force of law" once "embodied in a cease and desist order"). In many ways, a cease-and-desist order functions as a type of injunction: both "address the same behavior and contain the same command: discontinue engaging in a specific unfair act or practice." *LabMD, Inc. v. Fed. Trade Comm'n*, 894 F.3d 1221, 1233 (11th Cir. 2018). In short, "the FTC's current power to seek injunctive relief . . . does not so materially differ from the power to seek cease and desist orders as to render *Humphrey's Executor* inapposite." *Fed. Trade Comm'n v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511, 1514 (9th Cir. 1987); *see Fed. Trade Comm'n v. Kochava Inc.*, 671 F. Supp. 3d 1161, 1179 (D. Idaho 2023) (concluding that *Seila Law* did not alter the Ninth Circuit's holding in *American National Cellular*).[8]

For the most part, the same goes for the FTC's authority to pursue monetary penalties.[9]

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[8] The court also notes that the FTC possessed the ability to seek injunctions against deceptive advertising practices as early as 1938. Wheeler-Lea Act § 4, 52 Stat. at 114-15 (allowing "the Commission . . . [to] bring suit in a district court of the United States . . . to enjoin the dissemination or the causing of the dissemination of [a false] advertisement"). This power did *not* require a preexisting cease-and-desist order related to the violative conduct. While this change post-dated *Humphrey's Executor*, it blunts Defendants' implication that the FTC received a groundbreaking increase of power in 1975 with its injunctive authority.

[9] The court draws a sharp distinction between the FTC's and the Attorney General's separate abilities to seek monetary penalties. Two years before the FTC gained this power, the Trans-

While different in nature from injunctions, this power is partially intertwined with the FTC's cease-and-desist powers. Under the Magnuson-Moss Act of 1975, the FTC gained the ability to "commence a civil action to obtain a civil penalty" in federal court, but only if the FTC had previously issued a cease-and-desist order relating to the penalized conduct. Magnuson-Moss Act § 205(a), 88 Stat. at 2201; 15 U.S.C. § 45(m)(1)(B). Similarly, Congress gave the FTC power to pursue such penalties against entities that knowingly violated the Commission's rules. Magnuson-Moss Act § 205(a), 88 Stat. at 2200-01; 15 U.S.C. § 45(m)(1)(A). Admittedly, this second method was not restricted to violations of cease-and-desist orders. But that alone does not place the FTC in an entirely different realm from where it existed in 1935.

While the "power to seek daunting monetary penalties against private parties in federal court" is "a quintessentially executive power not considered in *Humphrey's Executor*," *Seila Law*, 591 U.S. at 219, even the Supreme Court has acknowledged that some executive powers may be exercised by officers with removal protections. *See Wiener*, 357 U.S. at 352 (disavowing any implication that *Myers* enabled the President "to remove officials, *no matter what the relation of the execu-*

Alaska Oil Pipeline Act of 1973 provided that any entity "who violates an order of the Commission . . . shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation." Trans-Alaska Oil Pipeline Act § 408(c), 87 Stat. at 591. Critically, this sum could only "be recovered in a civil action brought by the *Attorney General* of the United States." *Id.* (emphasis added). Because this enforcement mechanism is vested in the Attorney General, it does not bear on the FTC's ability to wield executive power.

tive to the discharge of their duties" (emphasis added)). In *Morrison*, for example, the Court considered the constitutionality of removal protections for independent counsels—officials tasked with investigating and prosecuting crimes committed by "high-ranking Government officials." 487 U.S. at 660. Under the Ethics in Government Act, 28 U.S.C. § 591 *et seq.*, an independent counsel has "full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice" and "handl[e] all aspects of any case[] in the name of the United States." *Id.* § 594(a). In short, their powers are expansive and touch on the Executive Branch's "law enforcement functions." *Morrison*, 487 U.S. at 691. The plaintiffs in *Morrison* thus argued that removal protections under *Humphrey's Executor* could not apply to such officials because they "performed a 'core executive function'" and were neither "quasi-legislative" nor "quasi-judicial." *Id.* at 688-89. The Court disagreed. Even though it had "rel[ied] on the terms 'quasi-legislative' and 'quasi-judicial' to distinguish the officials involved in *Humphrey's Executor* . . . from those in *Myers*," it held that the constitutionality of for-cause removal protections "cannot be made to turn on whether or not [the] official is classified as 'purely executive.'" *Id.* at 689. The Court doubled down, explaining that it "ha[d] *never* held that the Constitution prevents Congress from imposing limitations on the President's power to remove *all* executive officials simply because they wield 'executive' power." *Id.* at 689 n.27 (first emphasis added). In the Court's view, this fit neatly within the *Humphrey's Executor* rule because "the powers of the FTC [in 1935] would"—at the time of *Morrison* in 1988—"be considered 'executive,' at least to some degree." *Id.* at 689 n.28. Therefore, the executive nature of some of the FTC's powers cannot be a death knell for its removal protections.

Defendants' claims are further undermined by the Supreme Court's adherence to *Humphrey's Executor* even after the FTC gained each of its "immense" and "new" powers. ECF No. 32-1, at 15. As another judge of this court observed when responding to precisely the same argument: "most of [the] changes [to the FTC's enforcement authority] occurred before *W*[*ie*]*ner*, and all occurred before *Morrison*, yet both of those Supreme Court decisions relied upon the central holding of *Humphrey's Executor*." *Meta Platforms, Inc. v. Fed. Trade Comm'n*, 723 F. Supp. 3d 64, 87 (D.D.C.) (citations omitted), *inj. pending appeal denied*, No. 24-5054, 2024 WL 1549732, at *1 (D.C. Cir. Mar. 29, 2024). Through *Wiener*, *Morrison*, *Free Enterprise Fund*, *Seila Law*, and *Collins*, the Supreme Court "left [*Humphrey's Executor*] in place." *Seila Law*, 591 U.S. at 215.[10]

As alluded to above, *see supra*, Part V.C.1, there is no doubt that the Supreme Court has retrenched from the holding of *Humphrey's Executor*. The Court has certainly suggested that the modern-day FTC has outgrown its 1935 counterpart. *See Seila Law*, 591 U.S. at 215-18 (referring specifically to the "1935 FTC" through-

[10] Rather than simply leaving *Humphrey's Executor* "in place," the Court's decision in *Free Enterprise Fund* necessarily relied on the case's continued vitality. The central holding of *Free Enterprise Fund* was that "multilevel protection from removal"—i.e., concentric layers of removal protection for principal *and* inferior officers—"is contrary to Article II's vesting of the executive power in the President." 561 U.S. at 484. That holding only makes sense if certain principal officers are shielded from at-will removal (a shield that *Humphrey's Executor* provides).

out the opinion). But even if that is true, and even if this court were confident that the *Humphrey's Executor* Court or current Supreme Court would eliminate the FTC's removal protections, it still could not rule in Defendants' favor in *this* case.

It is not the role of this court to decide the correctness, prudence, or wisdom of the Supreme Court's decisions—even one from ninety years ago. Whatever the *Humphrey's Executor* Court may have thought at the time of that decision, this court will not second-guess it now. *See Mallory*, 600 U.S. at 136 (explaining that lower courts should "leav[e] to [the Supreme] Court the prerogative of overruling its own decisions." (quoting *Rodriguez de Quijas*, 490 U.S. at 484)); *Nat'l Sec. Archive. v. Cent. Intel. Agency*, 104 F.4th 267, 272 n.1 (D.C. Cir. 2024) ("This court is charged with following case law that directly controls a particular issue, 'leaving to [the Supreme] Court the prerogative of overruling its own decisions.'" (alteration in original) (quoting *Mallory*, 600 U.S. at 136)). This holds true even where a lower court believes that "intervening decisions from [the Supreme] Court ha[ve] 'implicitly overruled'" a previous holding. *Mallory*, 600 U.S. at 136 (quoting *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 559 (Pa. 2021)); *see Agostini*, 521 U.S. at 237 ("We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent.").

Countless other courts have dutifully abided by this instruction. Faced with a nearly identical challenge to the FTC's removal protections, the Fifth Circuit held that "the question of whether the FTC's authority has changed so fundamentally as to render *Humphrey's Executor* no longer binding is for the Supreme Court, not us, to answer." *Illumina*, 88 F.4th at 1047; *see id.* ("While the Supreme Court has cabined the reach of *Humphrey's Executor* in recent years, it has expressly declined to overrule it."). It rebuffed a similar challenge only a few months later, explaining:

> As middle-management circuit judges, we must follow binding precedent, even if that precedent strikes us as out of step with prevailing Supreme Court sentiment. The logic of *Humphrey's* may have been overtaken, but the decision has not been overruled—at least not yet. Until that happens, *Humphrey's* controls.

Consumers' Rsch., 91 F.4th at 346. A district court may not turn even substantial doubt about the endurance of Supreme Court precedent into a decision that effectively contravenes it. *See Mallory*, 600 U.S. at 136 (explaining that lower courts should adhere to established precedent "even if [they] think[] the precedent is in tension with 'some other line of decisions'" (quoting *Rodriguez de Quijas*, 490 U.S. at 484)).

This point is best illustrated by the decision in *Meta Platforms*, a case this court finds quite persuasive. Like here, the plaintiff in *Meta Platforms* argued that the FTC Act's "for-cause removal protection constitutes an unconstitutional restriction on the president's removal powers." 723 F. Supp. 3d at 86. Also like this case, the plaintiff relied on dicta from *Seila Law* to claim that "*Humphrey's Executor* does not dictate the outcome . . . because the [FTC] that exists today is a fundamentally different body from the one that existed in 1935, when *Humphrey's Executor* was decided." *Id.*; *see* ECF No. 32-1, at 14 ("[T]he question is not whether *Humphrey's Executor* remains good law, but whether the Supreme Court's characterization of a 1935 FTC Commissioner—the characterization on which its holding rested—remains true of today's FTC Commissioners."). The *Meta Platforms* court rejected this argument because it "ignore[d] the obligation of the lower courts to comply with on-point Supreme Court precedent, *even when the foundation of the precedent has arguably been eroded* by the passage of time and more recent precedent." 723 F. Supp. 3d at 87 (emphasis added).[11] This court agrees, not only because *Meta Platforms* is persuasive, but also because it has no other choice under ninety years of established law.

* * *

Defendants are, of course, free to take their quarrels with *Humphrey's Executor* to the Supreme Court. This court has no illusions about where this case's journey leads. But for the time being, Defendants' attempt to remove Ms. Slaughter from her position as an FTC Commissioner did not comply with the FTC Act's removal protections. Because those protections remain constitutional, as they have for almost a century, Ms. Slaughter's purported removal was unlawful and without legal effect.

D. Whether Ms. Slaughter Is Entitled to Declaratory and Injunctive Relief

The illegality of Defendants' actions, while plain, does not settle the availability of relief to Ms. Slaughter.

[11] The *Meta Platforms* court went on to reject the premises of the plaintiff's argument, much like this court does here. *See* 723 F. Supp. 3d at 87 ("Even placing [the] dispositive difficulties to the side, the premises of Meta's argument are far from convincing."); *see supra*, pp. 22-31.

She seeks a declaration that Defendants' actions violated the law, ECF No. 1 ¶¶ 47-49; *id.* at 19, and requests injunctive or mandamus relief preventing her removal as an FTC Commissioner, *id.* ¶¶ 52-56; *id.* at 20. Defendants, meanwhile, argue that the court cannot provide any such relief. ECF No. 32-1, at 17-27. The court agrees with Ms. Slaughter.

1. Declaratory relief

The dispute over the propriety of a declaratory judgment is easily settled. Under the Declaratory Judgment Act, 28 U.S.C. § 2201, any court presiding over an "actual controversy within its jurisdiction . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." *Id.* § 2201(a). Whether to grant such a remedy "always rests within the sound discretion of the court," *President v. Vance*, 627 F.2d 353, 364 n.76 (D.C. Cir. 1980), and doing so is appropriate if (1) "the judgment will serve a useful purpose in clarifying the legal relations at issue," or (2) "the judgment will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding," *New York v. Biden*, 636 F. Supp. 3d 1, 31 (D.D.C. 2022) (quoting *Glenn v. Thomas Fortune Fay*, 222 F. Supp. 3d 31, 36 (D.D.C. 2016)).

While the law governing this case was already clear, a reminder seems—unfortunately—necessary. As explained at length above, *supra*, Part V.C, Defendants' removal of Ms. Slaughter was blatantly unlawful according to the FTC Act, *Humphrey's Executor*, and a chorus of courts that have rejected identical arguments time and again. That removal was therefore without legal effect. Issuing a declaratory judgment settles Ms.

Slaughter's status, as Defendants' actions have left her in legal limbo pending the outcome of this case.

Defendants assert that declaratory relief is unavailable here because injunctive relief—a related equitable remedy—cannot issue against the President. ECF No. 32-1, at 25-26. The court is unpersuaded. Although equitable principles governing declaratory judgments and injunctive relief are somewhat intertwined, they do not rise and fall together in every conceivable case. *See Samuels v. Mackell*, 401 U.S. 66, 73 (1971) (explaining that there may be circumstances warranting declaratory relief in the absence of injunctive relief). The Supreme Court expressly disavowed any "suggest[ion] that a declaratory judgment should never be issued . . . if it has been concluded that injunctive relief would be improper." *Id.* In fact, "a declaratory judgment might be appropriate and . . . [not] contrary to the basic equitable doctrines governing the availability of relief" in certain situations, like where the plaintiff has a "strong claim for relief" but an injunction would be "particularly intrusive or offensive." *Id.*

The court faces that precise scenario here. It may not enjoin the President directly, *see Franklin v. Massachusetts*, 505 U.S. 788, 802 (1992) (plurality opinion), making this a unique situation in which the nature of the legal violation is obvious, but where Ms. Slaughter cannot acquire relief against the specific actor responsible. A declaratory judgment here clarifies the legal landscape and eliminates the "uncertainty, insecurity, and controversy giving rise to the proceeding": Ms. Slaughter's status vis-à-vis the Commission. *Glenn*, 222 F. Supp. 3d at 36. For that reason, the court will issue a declaratory judgment that the President's purported removal of Ms. Slaughter was invalid and that she is a rightful Commissioner of the FTC.

2. Injunctive relief

Defendants next argue that the court cannot reinstate an executive officer after she has been removed and that Ms. Slaughter's only recourse is through a suit for backpay. ECF No. 32-1, at 18-21. Ms. Slaughter counters that she does not seek "reinstatement," per se, because her original removal was a "legal nullity." ECF No. 20-2, at 31. In the end, this semantic quibble makes little difference because the D.C. Circuit has already spoken directly to the available remedies for wrongly terminated officers.

It is well established that the President is the only person who can appoint principal officers. *See United States v. Arthrex, Inc.*, 594 U.S. 1, 12 (2021). And "enjoining the President to make a formal appointment"—or reinstatement—"would be a constitutionally exceptional step" because a "court generally may not 'enjoin the President in the performance of his official duties.'" *Severino v. Biden*, 71 F.4th 1038, 1042 (D.C. Cir. 2023) (quoting *Franklin*, 505 U.S. at 803). But in *Swan v. Clinton*, 100 F.3d 973 (D.C. Cir. 1996), the D.C. Circuit held that a court can provide adequate equitable remedies to "removed" officers by enjoining *subordinate* officials instead:

> While these officials cannot officially . . . reinstate [the plaintiff], they can accomplish these deeds *de facto* by treating [the plaintiff] as a member of the . . . Board and allowing him to exercise the privileges of that office—i.e., including [the plaintiff] in Board meetings, giving him access to his former office, recording his votes as official votes of a Board

> member, allowing him to draw the salary of a Board member, etc. . . .

Id. at 980. The D.C. Circuit reaffirmed this holding only two years ago in *Severino*, explaining that a court may "enjoin 'subordinate executive officials' to reinstate a wrongly terminated official '*de facto*,' even without a formal presidential reappointment." 71 F.4th at 1042-43 (quoting *Swan*, 100 F.3d at 980).

Defendants try to undercut *Swan*'s and *Severino*'s usefulness by cabining both cases as only analyzing standing, ECF No. 32-1, at 21 n.3, but the court disagrees. While both opinions dealt with redressability, their core holdings—that the plaintiffs' injuries were redressable *because* injunctions could issue against subordinate officials—are directly applicable here. If the opposite were true, then there would have been no redressability in either case. It would make no sense for the D.C. Circuit to hold that wrongly terminated officials can remedy their injuries through targeted injunctions if courts cannot grant those injunctions.

Accordingly, injunctive relief is available here. But to show that such relief is *warranted*, a plaintiff must demonstrate (1) that she has "suffered an irreparable injury"; (2) that the "remedies available at law, such as money damages, are inadequate to compensate for that injury"; (3) that the "balance of hardships between the plaintiff and defendant" warrants a remedy in equity; and (4) that "the public interest would not be disserved by a permanent injunction." *Anatol Zukerman & Charles Krause Reporting, LLC*, 64 F.4th at 1364 (quoting *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006)). The third and fourth factors merge when the government is the opposing party. *Id.*

a. Irreparable harm

Simply losing one's employment is ordinarily insufficient to show irreparable harm because a plaintiff can be made whole through backpay. *See Sampson v. Murray*, 415 U.S. 61, 91-92 (1974) (holding that a "loss of income . . . falls far short of the type of irreparable injury which is a necessary predicate to the issuance of a temporary injunction"). That said, "the circumstances surrounding an employee's discharge" can sometimes "so far depart from the normal situation that irreparable injury might be found." *Id.* at 92 n.68. Here, Ms. Slaughter asserts a unique injury in being deprived of a "statutory right" to serve on the FTC. ECF No. 20-2, at 28.

Courts and advocates have spilled entire inkwells over this particular type of harm and whether it qualifies as "irreparable." *See Harris*, 775 F. 3d. at 185-87; *Wilcox*, 775 F. 3d at 235-36; *Grundmann*, 770 F. Supp. 3d at 187-88. Almost every court to address the question in the recent slew of wrongful-removal cases has agreed that this harm meets the irreparable threshold. *See id. But see Brehm v. Marocco*, No. 25-CV-660, at 4-9 (D.D.C. Mar. 11, 2025) (order denying motion for a temporary restraining order).

Being deprived of employment in the normal course does not compare to being removed from a Presidentially appointed, Senate-confirmed, high-ranking, public-servant role. Serving on the FTC is different in caliber and kind from working as a Library of Congress employee, *see Davis v. Billington*, 76 F. Supp. 3d 59, 65-66 (D.D.C. 2014), in the Foreign Service, *see Farris v. Rice*, 453 F. Supp. 2d 76, 79-81 (D.D.C. 2006), or as part of the General Services Administration, *see Sampson*, 415 U.S. at 90-92. In losing her position on the Commission, Ms. Slaughter lost the ability to influence federal decision-making on anticompetitive practices or take steps to protect American consumers from deceptive and exploitive businesses.

Aside from the subject matter of the work, the unique role of an FTC Commissioner also includes the opportunity to serve as part of a bipartisan, congressionally protected agency that is designed to operate "independent of executive authority." *Humphrey's Ex'r*, 295 U.S. at 625. Serving in a "presidentially appointed and congressionally confirmed position of high importance" is already unique enough, *Wilcox*, 775 F. Supp. 3d at 223, but Ms. Slaughter also helps run a multimember commission that is "free to exercise its judgment without the leave or hindrance of any other official or any department of the government," *Humphrey's Ex'r*, 295 U.S. at 625-26. Permitting her removal necessarily destroys that legislatively crafted independence in a way that injures Ms. Slaughter, the FTC, *and* Congress. Defendants repeatedly want the FTC to be something it is not: a subservient agency subject to the whims of the President and wholly lacking in autonomy. But that is not how Congress structured it. Undermining that autonomy by allowing the President to remove Commissioners at will inflicts an exceptionally unique harm distinct from the mine run of wrongful termination cases. *See id.* at 629 ("[I]t is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will."); *see also Harris*, 775 F. Supp. 3d. at 185 (emphasizing the loss of independence as a uniquely irreparable harm); *Wilcox*, 775 F. Supp. 3d at 236 (same); *Grundmann*, 770 F. Supp.

3d at 188 (same). Ms. Slaughter has therefore demonstrated an irreparable injury.

b. Available remedies at law

In the wrongful-termination context, irreparable injury and the availability of remedies at law tend to collapse into one another. *See Grundmann*, 770 F. Supp. 3d at 187 ("The first two factors 'are often considered together.'" (quoting *Wilcox*, 775 F. Supp. 3d at 235 n.20)). The very reasons why Ms. Slaughter's unique injuries are irremediable are why monetary compensation is inadequate. Backpay does not restore her ability to influence FTC decision-making in the past or in the future. Nor does it restore independence to her role or the agency after it has been stripped away. *See Harris*, 775 F. Supp. 3d. at 185; *Wilcox*, 775 F. Supp. 3d at 235-36; *Grundmann*, 770 F. Supp. 3d at 188 ("A check in the mail does not address the gravamen of this lawsuit. Perhaps that is why Ms. [Slaughter] has not even asked for one."). A remedial paycheck is cold comfort if the FTC's very independence can be tossed aside at the relatively low cost of providing backpay. Accordingly, the court concludes that remedies at law are insufficient here.

c. Balance of the equities and the public interest

Defendants protest that requiring the President to retain officials who refuse to do his bidding inflicts a grave constitutional harm and hinders his Article II duties under the Take Care Clause. ECF No. 32-1, at 24-25. But Defendants have it backward. The Constitution does not task the President with taking care that *his preferred policies* be faithfully executed; it requires that he faithfully execute *the laws of the United States*. U.S. Const. art. II, § 3. One of those laws is the FTC

Act, in which Congress enshrined independence-preserving removal protections for FTC Commissioners more than a century ago. Defendants repeatedly conflate the President's desired policy goals with the "Laws" of the country, but a president cannot faithfully execute the laws or "preserve, protect[,] and defend the Constitution," U.S. Const. art. II, § 1, by running roughshod over congressionally enacted legislation. The delicate balance between our three branches of government is sacrosanct; it lies at the heart of our democratic republic and cannot be cast aside in the name of one administration's political whims.

Defendants further argue that "prevent[ing] the President from implementing his electoral mandate through his subordinates . . . is an affront to the Constitution and to the American people[] who elected President Trump to manage the Executive Branch of their government." ECF No. 32-1, at 24-25. Not so. Member of Congress, too, are elected by the people. And Congress made a deliberate choice to build the FTC as an independent agency, comprised of a "multimember body of experts, balanced along partisan lines," to protect the American population from unfair, deceptive, and exploitive business practices. *Seila Law*, 591 U.S. at 216. For ninety years, Congress, the courts, and thirteen Presidents have respected that institution. That the current President now views it as an obstacle does not inflict a grave injury to the public interest, it is by design. As the Supreme Court has recognized repeatedly, Congress safeguarded the FTC from unfettered removal *to serve* the public interest:

> The [C]ommission is to be nonpartisan; and it must, from the very nature of its duties, act with entire impartiality. . . . [I]ts members are called upon to ex-

> ercise the trained judgment of a body of experts "appointed by law and informed by experience." . . . "The work of this [C]ommission will be of a most exacting and difficult character, [and] . . . [i]t is manifestly desirable that the terms of the [C]ommissioners shall be long enough to give them an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience."

Humphrey's Ex'r, 295 U.S. at 624 (quoted sources omitted). With respect to the importance of the FTC's independence, the Court observed:

> [O]ne advantage which the [C]ommission possessed . . . lay in the fact of its independence, and that it was essential that [it] should not be open to the suspicion of partisan direction. . . . [T]he prevailing view was that the Commission was not to be "subject to anybody in the government but . . . *only to the people of the United States*"; free from "political domination or control" or the "probability or possibility of such a thing"; to be "separate and apart from any existing department of the government—*not subject to the orders of the President*."

Id. at 625 (emphases added) (seventh alteration in original) (quoted source omitted). In essence, to grant Defendants' wish and subject a Commissioner to "the mere will of the President" would "be to thwart . . . the very ends which Congress sought to realize by definitely fixing the term of office." *Id.* at 626.

The court does not measure equities or the public interest from a single perspective. It must evaluate them in "totality." *Fund For Animals v. Clark*, 27 F. Supp. 2d 8, 15 (D.D.C. 1998). And it is entirely unclear how removing a Commissioner who has dutifully fulfilled her public-service role will benefit the public interest, especially when her removal contravenes federal law and established Supreme Court precedent. It goes without saying that "there is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operations.'" *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)). That substantial interest does not disappear simply because the President dislikes the laws he seeks to invalidate. Because Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required," *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015), the court concludes that the balance of the equities and public interest support equitable relief for Ms. Slaughter.

d. The effect of the Supreme Court's stay in Trump v. Wilcox

Of course, the court cannot ignore the Supreme Court's recent stay in *Wilcox* and *Harris*—two district court decisions that granted permanent injunctions to wrongfully terminated members of the NLRB and MSPB, respectively. *See Wilcox*, 145 S. at 1415. The Court's stay "reflect[ed] [its] judgment that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Id.* Such a statement certainly weighs against Ms. Slaughter's arguments regarding irreparable harm and the balance of the equities in this case. But at this early stage, when the Supreme Court has yet to pass judgment "after full briefing and argument," *id.*, this court is unsure of what to make of the Court's one-sentence pronouncement in a four-paragraph grant of a stay application. It does not represent a final, definitive, and reasoned decision on the merits. And the order does not cite any substantive case law to support its brief statement on irreparable harm or the balance of the equities. In fact, the only case law it cites in this portion of the order reinforces the notion that the stay does not "conclusively determine the rights of the parties." *Id.* (quoting *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (per curiam)). Because the Supreme Court explicitly reserved judgment on the legal questions until the litigation can run its course, this court will not upend its own analysis on the basis of a procedural order that fails to address *Humphrey's Executor* or the FTC.

* * *

As the preceding paragraphs make clear, Ms. Slaughter has met her burden of showing entitlement to a permanent injunction. Such relief is available through targeted means, as evidenced by *Swan* and *Severino*. It would also remedy an irreparable injury given the unique nature of her role as part of a specially crafted independent agency—an injury that cannot be alleviated through monetary means. Finally, the balance of the equities and public interest heavily favor enforcing clearly established law that has been enacted by a coequal branch of government, reaffirmed by another coequal branch, and acquiesced to by thirteen executives over the course of ninety years.[12]

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[12] In the alternative, Ms. Slaughter also requests a writ of mandamus prohibiting her removal from office. ECF No. 20-2, at 32-34. Because mandamus is only proper where "there is no other

VI. CONCLUSION

For the foregoing reasons, the court will dismiss Mr. Bedoya's claims as moot, will grant Ms. Slaughter's Motion for Summary Judgment, ECF No. 20, and will deny Defendants' Cross-Motion for Summary Judgment, ECF No. 32. A contemporaneous order will issue.

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adequate remedy available," *In re Nat'l Nurses United*, 47 F.4th 746, 752 n.4 (D.C. Cir. 2022), and because the court concludes that an injunction is clearly warranted, the court need not issue mandamus relief. That said, for the same reasons discussed at length in this opinion, mandamus relief *would* be proper if injunctive relief were to become unavailable. The remaining two requirements of mandamus relief are satisfied here: (1) Ms. Slaughter's right to relief is "clear" under existing Supreme Court precedent and the FTC Act, and (2) Defendants' duty to act in upholding their commitment to that law is plain. *See id.* In fact, as other judges of this court have meticulously explained, requests for "reinstatement" have historically been "styled as writs of mandamus or *quo warranto* before courts of law instead of requests for injunctions before courts of equity." *Wilcox*, 775 F. Supp. 3d at 237 n.22. And "[t]o the extent that English equity courts declined to issue injunctions reinstating officials to their positions, they likely did so because the King's Bench, a court of law, would readily issue mandamus instead." *Harris*, 775 F. Supp. 3d at 182. Even the predecessor court to the D.C. Circuit observed this distinction at the time the FTC was created: "[W]hen a person in office *de jure* [and] *de facto* is interfered with . . . it is not only proper, but best, to settle the question by mandamus." *Kalbfus v. Siddons*, 42 App. D.C. 310, 320 (D.C. Cir. 1914) (quoting *Lawrence v. Hanley*, 47 N.W. 753, 754 (Mich. 1891)). The upshot of this history is that, when the right to relief is glaringly apparent in a removal case, the plaintiff is entitled to *some* form of remedy that prevents her removal. Whether that relief takes the form of an injunction or a writ of mandamus is less important than whether it issues at all.

/s/ <u>LOREN L. ALIKHAN</u>
LOREN L. ALIKHAN
United States District Judge

Date: July 17, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-909 (LLA)

REBECCA KELLY SLAUGHTER, ET AL.,
IN THEIR OFFICIAL AND PERSONAL CAPACITIES,
PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

Filed: July 17, 2025

ORDER

For the reasons stated in the court's Memorandum Opinion, ECF No. 51, it is hereby **ORDERED** that Plaintiff Alvaro Bedoya's claims are **DISMISSED** without prejudice. It is further

ORDERED that Plaintiff Rebecca Slaughter's Motion for Summary Judgment, ECF No. 20, is **GRANTED** and Defendants' Cross-Motion for Summary Judgment, ECF No. 32, is **DENIED**. It is further

DECLARED that the purported removal of Ms. Slaughter from the Federal Trade Commission was unlawful under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, and is therefore without legal effect. It is further

DECLARED that Ms. Slaughter remains a rightful member of the Federal Trade Commission until the expiration of her Senate-confirmed term on September 25, 2029; and that she may only be removed by the President for "inefficiency, neglect of duty, or malfeasance in office" pursuant to 15 U.S.C. § 41. It is further

ORDERED that Defendants Andrew Ferguson, Melissa Holyoak, David Robbins, and their subordinates and agents are **ENJOINED** from removing Ms. Slaughter from her lawful position as an FTC Commissioner or otherwise interfering with Ms. Slaughter's right to perform her lawful duties as an FTC Commissioner until the expiration of her term or unless she is lawfully removed by the President for "inefficiency, neglect of duty, or malfeasance in office" pursuant to 15 U.S.C. § 41. This injunction accordingly requires Mr. Ferguson, Ms. Holyoak, Mr. Robbins, and their subordinates and agents to provide Ms. Slaughter with access to any government facilities, resources, and equipment necessary for her to perform her lawful duties as an FTC Commissioner during the remainder of her term.

This Order constitutes a final judgment of the court within the meaning of Rule 58(a) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to terminate the case.

SO ORDERED.

/s/ LOREN L. ALIKHAN
LOREN L. ALIKHAN
United States District Judge

Date: July 17, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-909 (LLA)

REBECCA KELLY SLAUGHTER, ET AL.,
IN THEIR OFFICIAL AND PERSONAL CAPACITIES,
PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

Filed: July 24, 2025

ORDER

In March 2025, Plaintiff Rebecca Slaughter brought this action against President Donald J. Trump, Federal Trade Commission ("FTC") Chair Andrew Ferguson, FTC Commissioner Melissa Holyoak, and FTC Executive Director David Robbins to challenge President Trump's decision to remove her as an FTC Commissioner. ECF No. 1. On July 17, 2025, this court issued an order granting Ms. Slaughter's Motion for Summary Judgment and denying Defendants' Cross-Motion for Summary Judgment. ECF No. 52. Accordingly, the court enjoined Mr. Ferguson, Ms. Holyoak, Mr. Robbins, and their subordinates and agents "from removing Ms. Slaughter from her lawful position as an FTC Commissioner or otherwise interfering with Ms. Slaughter's right to perform her lawful duties as an FTC Commissioner until the expiration of her term or unless she is lawfully removed by the President for 'inefficiency, neglect of duty, or malfeasance in office' pursuant to 15 U.S.C. § 41." *Id.* at 2. That same day, Defendants noticed an appeal to the U.S. Court of Appeals for the D.C. Circuit, ECF No. 53, and filed—in this court—a motion to stay the order pending appeal, ECF No. 54. Such a motion was consistent with Federal Rule of Appellate Procedure 8(a), which explains that "[a] party must ordinarily move first in the district court for . . . a stay of the judgment or order of a district court pending appeal [or] an order suspending, modifying, restoring, or granting an injunction while an appeal is pending." Fed. R. App. P. 8(a); *see* Fed. R. Civ. P. 62(c)(1), (d). On July 20, this court set a briefing schedule on Defendants' stay motion, with briefing to conclude on July 23. *See* July 20, 2025 Minute Order.

While the D.C. Circuit's internal procedures instruct that "[i]f the district court . . . denies the [stay] relief requested, an application may *then* be made to [the D.C. Circuit]," D.C. Cir. Handbook of Practice & Internal Procedures VIII.A (Dec. 12, 2024) (emphasis added), Defendants declined to wait for the ordinary stay process to play out. On July 21, only a day after this court set its briefing schedule, they filed an emergency motion for a stay pending appeal and an administrative stay of this court's order in the D.C. Circuit. Emergency Mot. to Stay, *Slaughter v. Trump*, No. 25-5261 (D.C. Cir. July 21, 2025). While Defendants briefly mentioned that they had sought a stay in this court, *id.* at 9 n.2, they neglected to inform the Circuit that briefing on the motion was ongoing, nor did they assert that seeking a stay in the district court would be "impracticable," Fed. R. App. P. 8(a)(2)(A)(i). On the evening of July 21, the D.C. Circuit issued a brief order granting an administrative stay "to give the court sufficient opportunity to consider the motion for a stay pending appeal." Order, *Slaughter*, No. 25-5261 (D.C. Cir. July 21, 2025) (per curiam). The panel explained that the order was "not [to] be construed in any way as a ruling on the merits of [the] motion [for a stay pending appeal]." *Id.*

The parties completed briefing on this court's stay motion yesterday, *see* ECF No. 57, and they will compete briefing on their stay motion in the D.C. Circuit by July 29, Order, *Slaughter*, No. 25-5261 (D.C. Cir. July 21, 2025). While the D.C. Circuit's administrative stay freezes the proceedings independently of any action by this court, the court nevertheless feels obligated to discharge its independent duty under Federal Rule of Civil Procedure 62(c) & (d) and Federal Rule of Appellate Procedure 8(a) to rule on the stay motion pending before it. And, for the reasons explained below, the court denies the motion to stay.

In deciding whether to grant a stay pending appeal, the district court considers: "(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the [c]ourt grants the stay; and (4) the public interest in granting the stay." *Nat'l Ass'n of Mfrs. v. Taylor*, 549 F. Supp. 2d 68, 71 (D.D.C. 2008) (quoting *Cuomo v. U.S. Nuclear Regul. Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985)). The movant bears the burden of "justify[ing] the court's exercise of such an extraordinary remedy." *Id.* (quoting *Cuomo*, 772 F.2d at 978). The court addresses each factor in turn.[1]

[1] Both parties cite *Nken v. Holder*, 556 U.S. 418 (2009), for the proposition that the third and fourth factors merge "in cases in-

Likelihood of success on the merits. Having suffered a defeat at the summary-judgment stage, Defendants now insist that they are likely to prevail on the merits before the D.C. Circuit. Defendants chiefly rely on the Supreme Court's recent stay of two district court orders that enabled members of the National Labor Relations Board ("NLRB") and Merit Systems Protection Board ("MSPB") to continue serving in their appointed roles. *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025) (staying *Wilcox v. Trump*, 775 F. Supp. 3d 215 (D.D.C. 2025), and *Harris v. Bessent*, 775 F. Supp. 3d 164 (D.D.C. 2025)).[2] The court disagrees for two primary reasons.

First, while the Supreme Court's stay "reflect[ed] [its] judgment that the Government is likely to show

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volving the government." ECF No. 54, at 4; *see* ECF No. 56, at 6. Under *Nken*, however, these factors only merge "when the Government is the [party] *opposing* [the stay]." 556 U.S. at 435 (emphasis added); *see U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 353 (5th Cir. 2022) (explaining that when the government is the party seeking a stay, "[t]he public interest factor is . . . distinct"). In any event, because both Ms. Slaughter and Defendants are government officials with conflicting interests, merger is all the more inappropriate.

[2] Defendants also rely on the D.C. Circuit's recent stay of a similar district court order effectively reinstating a member of the Federal Labor Relations Authority ("FLRA"). *Grundmann v. Trump*, No. 25-5165, 2025 WL 1840641, at *1 (D.C. Cir. July 3, 2025) (per curiam) (staying *Grundmann v. Trump*, 770 F. Supp. 3d 166 (D.D.C. 2025)). Because the *Grundmann* stay order relies entirely on the reasoning of the Supreme Court's stay in *Wilcox*, *see Grundmann*, 2025 WL 1840641, at *1 ("The Supreme Court's reasoning [in *Wilcox*] fully applies to the FLRA, which possesses powers substantially similar to those of the NLRB."), the court will focus its analysis on the Supreme Court's order.

that both the *NLRB* and *MSPB* exercise considerable executive power," the order made no mention of the *FTC* and did not once cite *Humphrey's Executor*, 295 U.S. 602 (1935)—the pivotal decision at the heart of *this* case. *See Wilcox*, 145 S. Ct. at 1415 (emphases added); *id.* at 1419 (Kagan, J., dissenting) (explaining that the majority contravened *Humphrey's Executor* "without so much as mentioning *Humphrey's*"). Defendants assert that *Wilcox* "applies with equal force to the FTC, which wields as much or more executive power as those agencies." ECF No. 54, at 3. But unless the Supreme Court expressly overrules *Humphrey's Executor*, which speaks directly to removal protections for FTC Commissioners, this court will not usurp the Supreme Court's "prerogative . . . to overrule one of its [own] precedents." *United States v. Hatter*, 532 U.S. 557, 567 (2001) (quoting *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997)).[3] Even when a lower court believes that existing "precedent is in tension with 'some other line of decisions,'" it cannot unilaterally assume that established

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[3] For the same reason, the court also distinguishes the Supreme Court's recent stay of a district court order effectively reinstating several members of the Consumer Products Safety Commission ("CPSC"). *See Trump v. Boyle*, No. 25A11, 2025 WL 2056889, at *1 (July 23, 2025) (staying *Boyle v. Trump*, No. 25-CV-1628, 2025 WL 1677099 (D. Md. June 13, 2025)). That ruling again made no mention of *Humphrey's Executor* or the FTC. Instead, it relied entirely on the existing stay order in *Wilcox* because "the [CPSC] exercises executive power in a similar manner as the [NLRB], and the case does not otherwise differ from *Wilcox* in any pertinent respect." *Boyle*, 2025 WL 2056889, at *1. If the Supreme Court determines that this same logic applies to an FTC Commissioner—the very same position at issue in *Humphrey's Executor*—it must say so itself. *See Agostini v. Felton*, 521 U.S. 203, 238 (1997) (holding that a trial court must apply "binding precedent" "unless and until [the Supreme] Court reinterpret[s] [it]").

law has been "'implicitly overruled.'" *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (first quoting *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989), then quoting *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 559 (Pa. 2021)). Until the current Supreme Court speaks clearly as to the fate of *Humphrey's Executor*, this court cannot—and will not—presume that a ninety-year-old ruling is no longer good law.[4]

Second, the Supreme Court's stay order was an initial, four-paragraph assessment of two complicated cases without "full briefing and argument." *Wilcox*, 145 S. Ct. at 1415. The Court expressly "d[id] not ultimately decide . . . whether the NLRB or MSPB falls within . . . a recognized [Presidential-removal] exception." *Id.* This court will not turn a preliminary determination (about agencies not at issue here) into a license to contravene Supreme Court precedent that has stood for almost a century.

Irreparable harm to the movant. On irreparable harm, Defendants' motion is woefully deficient. Instead of elucidating the precise injuries they will face, Defendants again rely on the Supreme Court's stay order in *Wilcox*. That reliance is misplaced. As Ms. Slaughter points out, the factual posture of both *Wilcox* and *Harris* differs significantly from that of this case. In both of those cases, the continued service of the allegedly removed commissioners "threatened to tip the balance of power of the NLRB . . . and the MSPB." ECF No. 56, at 4; *see* Appl. to Stay at 33, *Trump v. Wilcox*, No. 24A966

[4] Additionally, as this court explained in its memorandum opinion, the FTC's modern-day powers are either direct descendants of or logical outgrowths from its authority in 1935, when *Humphrey's Executor* was decided. *See* ECF No. 51, at 21-31.

(Apr. 9, 2025) ("With Wilcox, the NLRB would have two Democratic members, one Republican member, and two vacancies. With Harris, the MSPB would have one Democratic member, one Republican member, and one vacancy."). Here, in contrast, the FTC currently has three Republican Commissioners—Mr. Ferguson, Ms. Holyoak, and Mark Meador—in addition to Ms. Slaughter, a Democrat. ECF No. 20-1 ¶¶ 23-24; ECF No. 32-2. Allowing Ms. Slaughter to continue serving in her lawful role does not dramatically upend the makeup of the Commission. Even if she may exercise certain powers unilaterally, *see* ECF No. 57, at 3, that is a far cry from altering the course of the agency. *See PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 183 (D.C. Cir. 2018) (Kavanaugh, J., dissenting) ("The point is simple but profound. In a multi-member independent agency, no single commissioner or board member can *affirmatively* do much of anything."). And while Defendants contend that recusals may potentially eliminate one political party's advantage, *see* ECF No. 57, at 3, that remote possibility is not enough to meet the demanding standard of irreparable harm. This court will not permit Defendants to continue engaging in unlawful action on the mere basis of "some 'possibility of irreparable injury.'" *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoted source omitted).

Balance of the equities. On the balance of the equities, Defendants make no effort to contest the court's harm analysis as it pertains to Ms. Slaughter. *See generally* ECF No. 54. By "losing her position on the Commission, [she] lost the ability to influence federal decision-making on anticompetitive practices or take steps to protect American consumers from deceptive and exploitive businesses." ECF No. 51, at 36. This significantly differs from the typical loss-of-employment case and has serious repercussions beyond the immediate consequences for Ms. Slaughter. Permitting her removal further destroys the independence of the FTC and hinders its ability to carry out its Congressionally mandated task.

Public interest. With respect to the public interest, Defendants—again hitching their wagon to *Wilcox*—argue that President Trump should be allowed to enforce his preferred policy agenda through unfettered removal power. ECF No. 54, at 4. Put differently, they complain that the court's order blocks them from illegally dismantling the independence of an agency that Congress deliberately shielded from executive overreach. To entertain that complaint would make a mockery of the FTC, to say nothing of the separation of powers. As always, the public maintains a heavy interest "in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)). No matter how Defendants try to spin it, this court cannot grant them relief without contravening that critical interest. Because the court refuses to allow Defendants to continue breaking the law while this litigation proceeds, it is hereby **ORDERED** that Defendants' Motion to Stay, ECF No. 54, is **DENIED**.

SO ORDERED.

/s/ LOREN L. ALIKHAN
LOREN L. ALIKHAN
United States District Judge

Date: July 24, 2025

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM 2024

No. 25-5261
1:25-cv-00909-LLA

REBECCA KELLY SLAUGHTER, IN HER OFFICIAL AND PERSONAL CAPACITIES AND ALVARO M. BEDOYA, IN HIS OFFICIAL AND PERSONAL CAPACITIES,
APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL.,
APPELLANTS

Filed: July 21, 2025

ORDER

BEFORE: MILLETT, PILLARD, and RAO, Circuit Judges

Upon consideration of the emergency motion for administrative stay and stay pending appeal, it is

ORDERED that the district court's July 17, 2025 order be administratively stayed pending further order of this court. The purpose of this administrative stay is to give the court sufficient opportunity to consider the motion for a stay pending appeal and should not be construed in any way as a ruling on the merits of that motion. See D.C. Circuit Handbook of Practice and Internal Procedures 33 (2024). It is

FURTHER ORDERED that appellees file a response to the motion by 12:00 noon on Friday, July 25, 2025. Any reply is due by 12:00 noon on Tuesday, July 29, 2025.

<u>Per Curiam</u>

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM 2025

No. 25-5261
1:25-cv-00909-LLA

REBECCA KELLY SLAUGHTER, IN HER OFFICIAL AND PERSONAL CAPACITIES AND ALVARO M. BEDOYA, IN HIS OFFICIAL AND PERSONAL CAPACITIES,
APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL.,
APPELLANTS

Filed: Sept. 2, 2025

ORDER

BEFORE: MILLETT, PILLARD, and RAO*, Circuit Judges

Upon consideration of the emergency motion for stay pending appeal, the response thereto, and the reply; and the motion to expedite the appeal and the response thereto, it is

ORDERED that the administrative stay entered on July 21, 2025, be dissolved. It is

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* A statement by Circuit Judge Rao dissenting from the denial of a stay is attached.

FURTHER ORDERED that the motion for stay pending appeal be denied. It is

FURTHER ORDERED that the motion to expedite the appeal be denied. Appellee's claims with respect to irreparable harm and to the public interest in a fully constituted Federal Trade Commission are rendered moot by the dissolution of the administrative stay and the denial of appellants' motion for stay pending appeal. Appellee's remaining arguments do not justify expedition of this appeal.

President Trump fired Federal Trade Commissioner Rebecca Slaughter without cause. The district court ordered her reinstatement. The government now seeks a stay of that decision pending appeal. That motion must be denied. The government has no likelihood of success on appeal given controlling and directly on point Supreme Court precedent. Specifically, ninety years ago, a unanimous Supreme Court upheld the constitutionality of the Federal Trade Commission Act's for-cause removal protection for Federal Trade Commissioners. *See Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Over the ensuing decades—and fully informed of the substantial executive power exercised by the Commission—the Supreme Court has repeatedly and expressly left *Humphrey's Executor* in place, and so precluded Presidents from removing Commissioners at will. Then just four months ago, the Supreme Court stated that adherence to extant precedent like *Humphrey's Executor* controls in resolving stay motions.

To grant a stay would be to defy the Supreme Court's decisions that bind our judgments. That we will not do.

I

A stay pending appeal is an "extraordinary" remedy. *Citizens for Resp. & Ethics in Washington v. Federal Election Comm'n*, 904 F.3d 1014, 1017 (D.C. Cir. 2018) (per curiam). To obtain such exceptional relief, the stay applicant must (1) make a "strong showing that [it] is likely to succeed on the merits" of the appeal; (2) demonstrate that it will be "irreparably injured" before the appeal concludes; (3) show that issuing a stay will not "substantially injure the other parties interested in the proceeding"; and (4) establish that "the public interest" favors a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

The "first two" of these factors—the applicant's likelihood of success on the merits and the existence of an irreparable injury absent a stay—"are the most critical." *Nken*, 556 U.S. at 434. Further, because federal courts have no freestanding ability to dispense remedies apart from a favorable judgment for a party, the likelihood of success necessarily carries great weight in the stay analysis. *See generally Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926) ("A stay is not a matter of right, even if irreparable injury might otherwise result to the appellant."); *Curry v. Baker*, 479 U.S. 1301, 1302 (1986) (Powell, J., in chambers) ("It is no doubt true that, absent [a stay], the applicant here will suffer irreparable injury. This fact alone is not sufficient to justify a stay[.]"); *Citizens for Resp. & Ethics in Washington*, 904 F.3d at 1019 ("Crossroads' appeal shows little prospect of success—an arguably fatal flaw for a stay application.").

II

The government is not likely to succeed on appeal because any ruling in its favor from this court would have to defy binding, on-point, and repeatedly preserved Supreme Court precedent. Bucking such precedent is not within this court's job description.

More than 100 years ago, Congress established the Federal Trade Commission. *See* Federal Trade Commission Act, Pub. L. No. 63-203, 38 Stat. 717 (1914) (codified as amended at 15 U.S.C. § 41 *et seq.*). The Commission is led by a group of five Commissioners, no more than three of whom may be members of the same political party. 15 U.S.C. § 41. Once nominated by the President and confirmed by the Senate, Commissioners serve seven-year terms. *Id.* A duly appointed Commissioner may be removed by the President only "for inefficiency, neglect of duty, or malfeasance in office." *Id.*

The key substantive question presented by the government's appeal is whether the statute providing the Commissioners for-cause removal protection unconstitutionally infringes on the President's Article II power. The government is highly unlikely to succeed on appeal because that exact question was already asked and unanimously answered by the Supreme Court adversely to the government's position 90 years ago in *Humphrey's Executor*, 295 U.S. 602. Since then, the Supreme Court has expressly refused five times to reconsider *Humphrey's Executor*, including as recently as 2021. *See Wiener v. United States*, 357 U.S. 349, 356 (1958); *Morrison v. Olson*, 487 U.S. 654, 686-696 (1988); *Free Enter. Fund v. Public Co. Acct. Oversight Board*, 561 U.S. 477, 483 (2010); *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 228 (2020); *Collins v. Yellen*, 594 U.S. 220, 250-251 (2021).

Humphrey's Executor controls this case and binds this court. And recent developments on the Supreme Court's emergency docket do not permit this court to do the Supreme Court's job of reconsidering that precedent.

A

By default, Article II vests the President with the authority to remove Executive officers. *See Myers v. United States*, 272 U.S. 52, 117, 163-164 (1926). But that power is not unlimited. In *Humphrey's Executor*, the Supreme Court unanimously held that the Federal Trade Commission Act does not violate Article II by limiting the President's power to remove Commissioners except for cause. 295 U.S. at 626-632. In so ruling, the Supreme Court held that it is "plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers" wielding power of what it then termed a "quasi-judicial" or "quasi-legislative" "character." *Humphrey's Executor*, 295 U.S. at 624, 628-629. The Court concluded "that no removal can be made during the prescribed term for which the [Commissioner] is appointed, except for one or more of the causes named in the applicable statute." *Id.* at 631-632.

That statutory removal provision is the exact same statute at issue in this litigation: 15 U.S.C. § 41.

In the intervening decades, the Supreme Court has not overruled *Humphrey's Executor*. Quite the opposite, it has preserved *Humphrey's Executor* at every turn.

In *Wiener*, the Court expressly relied on the "philosophy" and "explicit language" of *Humphrey's Executor* to unanimously uphold for-cause removal protection for members of the War Claims Commission. 357 U.S. at 356. That Commission resolved Americans' injury and property claims arising from World War II. *Id.* at 350. In carrying out that task, the War Claims Commission issued final and unreviewable decisions that required funds to be paid from the Treasury Department's War Claims Fund to Americans. *Id.* at 354-356.

Thirty years later, in *Morrison*, the Supreme Court again preserved *Humphrey's Executor* in upholding a statutory removal protection for the independent counsel. 487 U.S. at 686-696. In so ruling, the Court acknowledged that the powers the Federal Trade Commission exercises would be recognized today as exercises of the "executive" power. *Id.* at 686-691, 689 n.28 (applying *Humphrey's Executor* even though the "powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered 'executive,' at least to some degree").

This trend has continued in recent years even as the Supreme Court has narrowed the constitutional scope of limits on the removal power in other contexts. *See Free Enter. Fund*, 561 U.S. at 483 (acknowledging and leaving intact *Humphrey's Executor*); *Seila Law*, 591 U.S. at 228 ("[W]e do not revisit *Humphrey's Executor* or any other precedent today * * * * "); *Collins*, 594 U.S. at 250-251 (reiterating that *Seila Law* did not overrule *Humphrey's Executor*, but merely "found 'compelling reasons not to extend'" *Humphrey's Executor* to a "novel context") (quoting *Seila Law*, 591 U.S. at 204). In fact, in *Seila Law*, a majority of the Supreme Court invited Congress to remake the Consumer Financial

Protection Bureau in the same mold as the Federal Trade Commission, which *Humphrey's Executor* had upheld. *See* 591 U.S. at 237 (Roberts, C.J., joined by Alito and Kavanaugh, JJ., concurring in the judgment); *id.* at 298 (Kagan, J., joined by Ginsburg, Breyer, and Sotomayor, JJ., concurring in the judgment with respect to severability and dissenting in part).

For 90 years, then, *Humphrey's Executor* has remained "in place" as an exception to the general rule that the President enjoys unrestricted removal power over executive officers. *Seila Law*, 591 U.S. at 215. And prior decisions of this court have repeatedly—and recently—recognized as much. *See Severino v. Biden*, 71 F.4th 1038, 1047-48 (D.C. Cir. 2023); *Federal Election Comm'n v. National Rifle Ass'n Political Victory Fund*, 6 F.3d 821, 826 (D.C. Cir. 1993); *see also Meta Platforms, Inc. v. Federal Trade Comm'n*, No. 24-5054, 2024 WL 1549732, at *2 (D.C. Cir. Mar. 29, 2024).

B

The government acknowledges that *Humphrey's Executor* "remains binding on this Court," but nevertheless argues that this court should disregard that binding precedent and enter a stay. Gov't Stay Mot. 15. Because we take the Supreme Court at its word, the government's arguments have no prospect of success on appeal, which weighs heavily against granting a stay.

1

First, the government claims that the Federal Trade Commission has outgrown *Humphrey's Executor*. In the government's view, the Commission's authority has expanded since 1935 such that its Commissioners now wield the kind of executive power that requires they be removable at will. Gov't Stay Mot. 17. That argument fails to persuade.

As the district court well explained, the present-day Commission exercises the same powers that the Court understood it to have in 1935 when *Humphrey's Executor* was decided. *See Slaughter v. Trump*, No. CV 25-909, 2025 WL 1984396, at *11-13 (D.D.C. July 17, 2025); *see also Seila Law*, 591 U.S. at 219 n.4 ("[W]hat matters" for assessing *Humphrey's Executor* "is the set of powers the Court considered as the basis for its decision[.]").

Then, as now, the Commission could investigate potential violations of federal law, including by issuing subpoenas and seeking their enforcement. As the Supreme Court recognized, the 1935 Commission had "wide powers of investigation[,]" *Humphrey's Executor*, 295 U.S. at 621, including the power to launch investigations "at its own instance[,]" Brief for Samuel F. Rathbun, Executor, at 46 n.21, *Humphrey's Executor*, 295 U.S. 602 (1935) (No. 667). In particular, the Federal Trade Commission Act, which the Court closely examined in *Humphrey's Executor*, 295 U.S. at 619-620, authorized the 1935 Commission to "gather and compile information * * * and to investigate" corporate practices; to demand "both annual and special[] reports or answers" from corporations; and to issue subpoenas and enforce them in federal court. Federal Trade Commission Act, §§ 6, 9, 38 Stat. at 721-723. The modern-day Commission's investigatory powers fit the same mold. The Commission continues to "gather and compile" information, 15 U.S.C. § 46(a); and issue subpoenas, *id.* § 49, and civil investigative demands, *id.* § 57b-1(c).

In 1935, as now, the Commission could also prosecute violations by issuing administrative complaints. *Compare Humphrey's Executor*, 295 U.S. at 620 ("[T]he [C]ommission must issue a complaint stating its charges and giving notice of hearing upon a day to be fixed."), *with* 15 U.S.C. § 45(b) (The Commission "shall issue * * * a complaint stating its charges * * * and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint."). As part of this authority, the Commission could order parties to show cause and cease and desist from certain actions. *Humphrey's Executor*, 295 U.S. at 620. And, if a cease-and-desist order were disobeyed, the Commission itself could "apply" directly to circuit courts for "enforcement" of those orders, *id.* at 620-662—a power that parallels the Commission's current authority to seek injunctions in federal court, 15 U.S.C. § 53(b); *see also Slaughter*, 2025 WL 1984396, at *13; *LabMD, Inc. v. Federal Trade Comm'n*, 894 F.3d 1221, 1233 (11th Cir. 2018) ("The cease and desist order and the injunction address the same behavior and contain the same command: discontinue engaging in a specific unfair act or practice.").

And in 1935, as now, the Commission could promulgate rules and regulations, as well as issue reports. *See Humphrey's Executor*, 295 U.S. at 624, 628; *see also Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919, 953 n.16 (1983) (noting that the Court in *Humphrey's Executor* referred to "rule making" as "quasi-legislative"); *see also* Federal Trade Commission Act § 6(g), 38 Stat. at 722 (permitting the Commission to "make rules and regulations"); *National Petroleum Refiners Ass'n v. Federal Trade Comm'n*, 482 F.2d 672, 685-686 (D.C. Cir. 1973) (holding that the plain language of the Federal Trade Commission Act "confirms the framers' intent to allow exercise of [substantive rulemaking] power").

The government emphasizes that the present-day Commission can seek monetary penalties against private parties in federal court. Gov't Stay Mot. 13-14; *see also Meredith v. Federal Mine Safety & Health Rev. Comm'n*, 177 F.3d 1042, 1050 n.5 (D.C. Cir. 1999) ("[A] civil penalty constitutes something other than monetary damages, which the Supreme Court has described as 'a sum of money used as compensatory relief[.]'") (quoting *Department of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 262 (1999)). But much of that authority stems from the Commission's 1935 authority to issue cease-and-desist orders. *See* 15 U.S.C. § 45(*l*), (m)(1)(B). This power is therefore an "outgrowth[]" of the Commission's original enforcement and remedial powers, not a "dramatic transformation[] of the 'character of the office.'" *Slaughter*, 2025 WL 1984396, at *12 (quoting *Humphrey's Executor*, 295 U.S. at 632).

To be sure, the Supreme Court has characterized the Consumer Financial Protection Bureau's power to seek civil "monetary penalties" as a "quintessentially executive power not considered in *Humphrey's Executor*." *Seila Law*, 591 U.S. at 219. But the Commission's authority to seek such penalties is far less "daunting" than the Bureau's. *Id.*

Unlike the Consumer Financial Protection Bureau, which—when *Seila Law* was decided—could impose monetary penalties of its own accord in administrative proceedings as well as seek them in court actions, the Commission can seek such penalties only in court. *Compare* 12 U.S.C. §§ 5564(a), 5565(a)(1)-(2) (authorizing the Bureau to obtain monetary penalties in judicial and administrative proceedings), *with* 15 U.S.C. §§ 45(*l*)-(m)(1), 1681s(a)(2) (authorizing the Commission to seek monetary penalties only in court). *But see SEC v. Jarkesy*, 603 U.S. 109, 115, 125 (2024) (holding, post-*Seila Law*, that the Seventh Amendment does not permit the SEC to compel individuals to defend against civil-penalty actions in administrative proceedings, rather than before juries in federal court).

Once the Commission elects to pursue a civil action to collect monetary penalties, it again faces procedural constraints that the Consumer Financial Protection Bureau does not. The Commission can "commenc[e] * * * an action to collect a civil penalty" only after notifying and consulting with the Department of Justice and only if the Department declines to litigate the case itself. 15 U.S.C. § 56(a)(1); *see also id.* § 56(a)(2) (permitting the Commission to bypass the Department of Justice in certain cases not involving monetary penalties). The Bureau, by contrast, need only notify and consult the Department. 12 U.S.C. § 5564(a), (d).

Even in court, the Commission's substantive authority to seek monetary penalties pales in comparison to the Consumer Financial Protection Bureau's. Under the Bureau's organic statute, "*[a]ny* person that violates, through *any* act or omission, *any* provision of Federal consumer financial law shall forfeit and pay a civil penalty[.]" 12 U.S.C. § 5565(c)(1) (emphases added). By contrast, and as the Supreme Court unanimously recognized just four years ago, Congress has authorized the Commission to pursue only "*conditioned* and *limited* monetary relief[.]" *AMG Cap. Mgmt., LLC v. Federal Trade Comm'n*, 593 U.S. 67, 77 (2021). The Commission may seek monetary penalties only against a party who violates a cease-and-desist order issued against it, *see* 15 U.S.C. § 45(*l*); or who *knowingly* violates a Commission rule, a cease-and-desist order issued against others, or the Fair Credit Reporting Act, *see id.* §§ 45(m)(1)(A) (requiring "actual" or "fairly implied" knowledge that an action "is prohibited" by a rule), 45(m)(1)(B) (requiring "actual knowledge" that a violation of a cease-and-desist order "is unlawful"), 1681s(a)(2)(A) (requiring "a knowing violation" of the Fair Credit Reporting Act). In short, the Commission's authority to seek civil penalties is closely circumscribed. *Cf. AMG Cap. Mgmt.*, 593 U.S. at 82 (inviting the Commission to "ask Congress to grant it further remedial authority" if it believes its existing power to secure monetary relief is "too cumbersome or otherwise inadequate").

Finally, that some of the Commission's authority, like the power to prosecute or seek monetary penalties subject to circumscribed procedures, might be classified as "executive," does not render the Commissioners' removal protection unconstitutional. In *Morrison*, which was decided after Congress granted the Commission the power to pursue monetary penalties, the Supreme Court recognized that the "powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered 'executive,' at least to some degree[,]" 487 U.S. at 689 n.28, yet left *Humphrey's Executor* intact. In the wake of *Morrison*, the Court has continued to assure that *Humphrey's Executor* remains in place despite the fact that the Federal Trade Commission exercises the very executive powers cited by the government here, including the ability for the last half century to seek monetary penalties. *See* Magnuson-Moss Act, Pub. L. No. 93-637, § 205(a), 88 Stat. 2183, 2200-2201 (1975) (giving the Commission the authority to "commence a civil action to recover a civil penalty"). *Compare Seila Law*, 591 U.S. at 228 ("not revisit[ing] *Humphrey's Executor*"), *with id.* at 286 (Kagan, J., concurring in the judgment with respect to severability and dissenting in part) (noting that the Federal Trade Commission, along with the Consumer Financial Protection Bureau, "can issue regulations, conduct its own adjudications, and bring civil enforcement actions in court—all backed by the threat of penalties"); *compare Collins*, 594 U.S. 220, 250-251 (2021) (recognizing that *Seila Law* did "not revisit [] prior decisions") (quoting *Seila Law*, 591 U.S. at 204), *with id.* at 285 (Sotomayor, J., concurring in part and dissenting in part) (noting that the Federal Housing Finance Agency may initiate administrative proceedings, issue subpoenas, and impose monetary penalties); *see generally Free Enter. Fund*, 561 U.S. at 483 (in case involving multimember board, declining to "reexamine" *Humphrey's Executor*).

Those repeated decisions of the Supreme Court to preserve *Humphrey's Executor* with full knowledge of the executive powers exercised by the Commission—the same ones relied on by the government here as purported grounds for discarding precedent—control this court's decisionmaking. For when a precedent of the Supreme Court "has direct application in a case," as *Humphrey's Executor* does here, "the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). A lower court is bound by that rule "even if the lower court thinks the precedent is in tension with 'some other line of decisions'" or that "intervening decisions from [the Supreme] Court had 'implicitly overruled' [the precedent.]" *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quoting *Rodriguez de Quijas*, 490 U.S. at 484); *see also Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent.").

The Fifth Circuit has faithfully hewed to this rule with respect to the very precedent at issue here—*Humphrey's Executor*. *Illumina, Inc. v. Federal Trade Comm'n*, 88 F.4th 1036, 1047 (5th Cir. 2023) ("[A]lthough the FTC's powers may have changed since *Humphrey's Executor* was decided, the question of whether the FTC's authority has changed so fundamentally as to render *Humphrey's Executor* no longer binding is for the Supreme Court, not us, to answer."). This court likewise has repeatedly acknowledged that its role is to apply Supreme Court precedent, not to declare its overruling. *See National Security Archive v. CIA*, 104 F.4th 267, 272 n.1 (D.C. Cir. 2024) ("This Court is charged with following case law that directly controls a particular issue[.]"); *Shea v. Kerry*, 796 F.3d 42, 54 (D.C. Cir. 2015) (quoting *Agostini*, 521 U.S. at 237); *Sierra Club v. EPA*, 322 F.3d 718, 725 (D.C. Cir. 2003) (quoting *Rodriquez de Quijas*, 490 U.S. at 484); *see generally Sherman v. Community Consol. Sch. Dist. 21 of Wheeling Township*, 980 F.2d 437, 448 (7th Cir. 1992) (Easterbrook, J.) (When the Supreme Court makes and expressly preserves precedent, "we take its assurances seriously. If the Justices [were] just pulling our leg, let them say so.").[1]

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[1] The government also argues it is likely to succeed on the merits because the district court lacked the authority to reinstate Ms.

Next, the government argues that recent Supreme Court stay orders override *Humphrey's Executor* as to an application for a stay. Gov't Stay Mot. 15; Gov't Reply 3-4, 6.

The present case, however, differs in material respects from recent removal cases in which the Supreme Court has granted the government's request for a stay. *See Trump v. Wilcox*, 605 U.S. ___, 145 S. Ct. 1415 (2025); *Trump v. Boyle*, 605 U.S. ___, No. 25A11, slip op. (U.S. July 23, 2025). In those cases, an *extension* of *Humphrey's Executor* to a new context would have been required for the removed officials to prevail on the merits. In contrast, the present case involves the exact same agency, the exact same removal provision, and the same exercises of executive power already addressed by the Supreme Court in *Humphrey's Executor* and subsequent decisions, and so is squarely controlled by that precedent.

Slaughter. Gov't Stay Mot. 18-23. This court sitting *en banc* has already found the government unlikely to succeed on that very same argument. *See Harris v. Bessent*, No. 25-5037, 2025 WL 1021435, at *2 (D.C. Cir. Apr. 7, 2025) (en banc) (per curiam) ("The government likewise has not shown a strong likelihood of success on the merits of its claim that there is no available remedy for Harris or Wilcox, or that allowing the district court's injunctions to remain in place pending appeal is impermissible."); *see also Aviel v. Gor*, No. 25-5105, 2025 WL 1600446, at *2 (D.C. Cir. June 5, 2025) (Pillard and Katsas, JJ., concurring) ("[I]t seems appropriate to defer to the views expressed by our *en banc* Court in denying a stay pending appeal in *Harris*, which found the government unlikely to succeed in its contention that reinstatement is rarely if ever an available remedy for unlawfully removed officials.").

As a result, to conclude that the government has any prospect for success on appeal would require this court to declare Supreme Court precedent moribund even when the Supreme Court has expressly preserved it. That is something this court may not do. *See Mallory*, 600 U.S. at 136; *Rodriguez de Quijas*, 490 U.S. at 484.

In *Wilcox* and *Boyle*, the government applied for stays of orders from district courts enjoining the President's removal of a member of the National Labor Relations Board (NLRB), a member of the Merit Systems Protection Board (MSPB), and members of the Consumer Product Safety Commission (CPSC). Each of those cases presented the never-before-decided question of whether *Humphrey's Executor* should be extended to the statutes providing for-cause removal protection to those officials.

In granting a stay, the Supreme Court determined that the government was "likely to show" that the NLRB, MSPB, and CPSC each exercised "considerable executive power[.]" *See Wilcox*, 145 S. Ct. at 1415 ("[T]he Government is likely to show that both the NLRB and MSPB exercise considerable executive power."); *see Boyle*, slip op. at 1 ("[T]he Consumer Product Safety Commission exercises executive power in a similar manner as the National Labor Relations Board, and the case does not otherwise differ from *Wilcox* in any pertinent respect.").

Critically, the Supreme Court's stay order in *Wilcox* expressly reaffirmed that the President's removal authority remains "subject to narrow exceptions recognized by our precedents." *Wilcox*, 145 S. Ct. at 1415. The order then cites the portion of *Seila Law* that discusses how one of those "exceptions" is the Court's decision in *Humphrey's Executor* to uphold for-cause removal protection for the Members of the Federal Trade Commission. *Id.* (citing *Seila Law*, 591 U.S. at 215-218).

Granting the government's motion would ignore the Supreme Court's stay order in *Wilcox*, not comply with it. That order said, less than three months ago, that stay decisions by the courts of appeals remain controlled by extant precedent including *Humphrey's Executor*. *Wilcox*, 145 S. Ct. at 1415.

Justice Kavanaugh's concurrence in the *Boyle* stay order reconfirmed this point, reasoning that "[w]hen the question is *whether to narrow or overrule one of this Court's precedents* rather than how to resolve an open or disputed question of federal law, * * * *lower courts cannot alter or overrule this Court's precedents*." *Boyle*, slip op. at 2 (Kavanaugh, J., concurring in the grant of the application for stay) (emphases added).

* * *

All of that is a long way of saying that the government is not likely to succeed on the merits of its appeal because Supreme Court precedent expressly recognizes the constitutionality of 15 U.S.C. § 41's removal protections, and all of the government's counter arguments disregard not just *Humphrey's Executor*, but also recent Supreme Court decisions preserving that precedent and the *Wilcox* stay order's admonition that removal protections already upheld by the Supreme Court remain in full effect unless and until the Supreme Court says otherwise.

III

As for the remaining stay factors, the Supreme Court's stay orders in *Wilcox* and *Boyle* teach that the balance of equities in removal cases not governed by on-point Supreme Court precedent generally favors the government. *See Wilcox*, 145 S. Ct. at 1415 ("The stay * * * reflects our judgment that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty."); *Boyle*, slip op. at 1 (same).

But the equitable calculus in this case differs in relevant respects.

First, the Supreme Court has not applied that harm determination to a case where binding Supreme Court precedent establishes the wrongfulness of the removal.

Second, Ms. Slaughter is the sole remaining Democrat on a Commission with a governing majority of three Republicans. Gov't Stay Mot. 4-5; Slaughter Opp. 20. In *Wilcox*, *Grundmann v. Trump*, and *Boyle*, the government articulated a concern that the reinstatement of the removed officers could affect the agency's composition in a way that would empower it to take meaningful regulatory actions that conflict with the President's agenda. *See, e.g.*, App. to Stay at 33, *Trump v. Wilcox*, No. 24A966, 145 S. Ct. 141 (2025), 2025 WL 1101716, at *33; *Grundmann v. Trump*, No. CV 25-425, 2025 WL 1671173, at *3-4 (D.D.C. June 13, 2025); App. to Stay at 1-3, *Trump v. Boyle*, No. 25A11, 606 U.S. ___ (2025), 2025 WL 1867283, at *1-3. That concern does not apply here because, given the Commission's composition, there is no reasonable prospect that returning Ms. Slaughter to her position will result in any meaningful regulatory action opposed by the Commission majority. *See* Slaughter Opp. 20-22.

Third, individual Commissioners wield no unilateral authority. Instead, the Commission functions as a collegial body, and every significant action requires at least a majority vote of a quorum of Commissioners: issuance of legal process, *see* 16 C.F.R. § 2.7(a); initiation of enforcement proceedings, *see id.* § 2.13(a); and even rulings on petitions, *see id.* § 2.10(c); *see also id.* § 4.14(c).[2]

Finally, the public interest favors denying the government's application. There is a substantial public interest in having lower courts stay in their lane and leave to the Supreme Court "the prerogative of overruling its own decisions." *Rodriguez de Quijas*, 490 U.S. at 484. That rule ensures stability and consistency in the law.

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[2] By regulation, if the Commission passes a resolution authorizing the use of compulsory process, then individual commissioners are authorized to issue civil investigative demands and subpoenas. 16 C.F.R. § 2.7(a). The Commission has adopted several such resolutions in recent years. *See, e.g.*, Federal Trade Commission, Resolution Directing Use of Compulsory Process Regarding Acts or Practices Related to the COVID-19 Public Health Emergency (July 1, 2021), https://perma.cc/YG96-P458; Federal Trade Commission, Resolution Directing Use of Compulsory Process Regarding Consummated Merger and Acquisition Investigations (July 1, 2021), https://perma.cc/5XXS-FK97. But individual Commissioners have no power to compel enforcement of those investigative demands or subpoenas. Enforcement may be initiated only by the Commission or the Attorney General, and only the Commission can rule on petitions to limit or quash compulsory process. 16 C.F.R. §§ 2.10(c), 2.13(a). In addition, if Ms. Slaughter were reinstated, the Commission could withdraw the resolutions authorizing the use of compulsory process. *See* Remarks of Chair Lina M. Khan on the Investigatory Resolutions (July 1, 2021) ("The resolutions provide for compulsory process authorization in these areas for 10 years, unless rescinded by the Commission at an earlier point."), https://perma.cc/YCX5-8BKG.

See Hilton v. South Carolina Pub. Rys. Comm'n, 502 U.S. 197, 202 (1991) ("Adherence to precedent promotes stability, predictability, and respect for judicial authority.").

* * * * *

For the foregoing reasons, the government's motion for a stay pending appeal is denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

RAO, *Circuit Judge*, dissenting: This case presents a now-familiar set of facts. President Donald Trump fired a commissioner of a so-called independent agency without cause. The district court held that such removal was unlawful, ordered reinstatement of the officer, and entered a sweeping permanent injunction that, among other things, ordered everyone at the agency to treat the officer as if she were never removed by the President. In two virtually identical cases, the Supreme Court has stayed similar injunctions.

While it is true the removed officer here is a commissioner of the Federal Trade Commission, and the Supreme Court upheld the removal restriction for such commissioners in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), a stay is nonetheless appropriate. The Commission unquestionably exercises significant executive power, and the other equities favor the government. These grounds were sufficient to support the Supreme Court's judgment that a stay was warranted in two recent cases in which the district court ordered reinstatement of an officer removed by the President. The Court determined that "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025); *see also Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). Because we are required to exercise our equitable discretion in accordance with the Court's directives, the district court's order must be stayed. I respectfully dissent.

I.

The Federal Trade Commission ("FTC") is led by five commissioners appointed by the President with the advice and consent of the Senate. 15 U.S.C. § 41. Commissioners "may be removed by the President for inefficiency, neglect of duty, or malfeasance in office." *Id.* As relevant here, President Trump removed FTC Commissioner Rebecca Slaughter, explaining that her continued service would be "inconsistent with [the] Administration's priorities."[1] *Slaughter v. Trump*, No. 25-cv-909, 2025 WL 1984396, at *2 (D.D.C. July 17, 2025).

Slaughter sued the President and the three remaining FTC Commissioners, arguing that her removal was unlawful because the President did not offer any statutory cause for removing her. *See id.* at *3. The district court granted summary judgment to Slaughter and declared that her removal was unlawful and that she "remains a rightful member of the [FTC]." Order at 1, *Slaughter v. Trump*, No. 25-cv-909, Dkt. No. 52 (D.D.C. July 17, 2025). The district court also entered a permanent injunction against the three remaining FTC Commissioners "and their subordinates and agents," ordering them not to "remov[e] Ms. Slaughter from her lawful position as an FTC Commissioner or otherwise interfer[e] with Ms. Slaughter's right to perform her lawful duties as an FTC Commissioner." *Id.* at 2. The government moved for a stay pending appeal.

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[1] The President also removed FTC Commissioner Alvaro Bedoya, likewise citing Administration priorities. Bedoya challenged his removal, but his claims were dismissed as moot after he "resigned" from the FTC.

II.

I would grant the government's motion for a stay because the government is likely to prevail on the merits of its challenge, and the Supreme Court has reaffirmed that when a court orders reinstatement of an officer removed by the President, the balance of harms favors the government and warrants a stay. *See Wilcox*, 145 S. Ct. at 1415; *Boyle*, 145 S. Ct. at 2654; *see also Nken v. Holder*, 556 U.S. 418, 434 (2009) (outlining the four stay factors).

A.

Even recognizing that *Humphrey's Executor* remains binding on this court, the government is likely to succeed in its challenge to the district court's remarkable injunction. First, the district court's purported reinstatement of a removed Executive Branch officer exceeds the traditional equitable powers of an Article III court. Second, the district court clearly erred in its conclusion that Slaughter is irreparably harmed by her removal. And finally, we need not definitively determine whether Slaughter's removal was lawful, because we must follow the Supreme Court's conclusion that an injunction reinstating an officer the President has removed harms the government by intruding on the President's power and responsibility over the Executive Branch.

1.

Even assuming that Slaughter's removal was unlawful, the district court nonetheless lacked the power to issue the injunction. The district court purported to order the reinstatement of Slaughter and to bar the other FTC Commissioners from removing her from office or interfering with her "right to perform her lawful duties as an FTC Commissioner." Order at 2, *Slaughter*, Dkt. No. 52. Such injunctive relief is unprecedented and creates a direct confrontation with the President over his core Article II powers. *See Aviel v. Gor*, No. 25-5105, 2025 WL 1600446, at *5-6 (D.C. Cir. June 5, 2025) (Rao, J., dissenting).

To begin with, the injunction interferes with the President's exclusive powers. The district court nominally ordered the remaining FTC Commissioners and their subordinates and agents not to remove Slaughter, but these officials have no power to remove her. By statute, only the President may remove an FTC commissioner. *See* 15 U.S.C. § 41. The district court employs a toothless remedial fiction because it cannot enjoin removal by the President.[2]

More to the point, by ordering the remaining FTC Commissioners and their subordinates to treat Slaughter as though she is still in office, the district court ex-

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[2] The district court cannot directly enjoin the President in "the performance of his official duties." *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867). "[I]mplicit in the separation of powers established by the Constitution" is the idea that "the principals in whom the executive and legislative powers are ultimately vested —viz., the President and the Congress (as opposed to their agents) —may not be ordered to perform particular executive or legislative acts at the behest of the Judiciary." *Franklin v. Massachusetts*, 505 U.S. 788, 827 (1992) (Scalia, J., concurring in part and concurring in the judgment). While courts may have a limited ability to enjoin the President to carry out ministerial, nondiscretionary duties, "the President's exercise of his appointment and removal authority, core Article II powers essential to his control and supervision of the Executive Branch, can in no way be denominated as ministerial." *Aviel*, 2025 WL 1600446, at *5 (Rao, J., dissenting) (cleaned up).

pressly orders them to disregard the President's directive. Although the district court refrained from enjoining the President explicitly, the injunction attempts to countermand the President's removal by ordering the remaining Commissioners to ignore and to act contrary to the President's removal of Slaughter.[3] The injunction directly interferes with the President's supervision of the Executive Branch and therefore goes beyond the power of the federal courts. *See Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867); *Trump v. United States*, 144 S. Ct. 2312, 2327 (2024) ("[T]he courts have no power to control the President's discretion when he acts pursuant to the powers invested exclusively in him by the Constitution.") (cleaned up).

Moreover, federal courts likely have no equitable authority to order the reinstatement of an officer removed by the President. The Article III courts may grant only those equitable remedies "traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). As a

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[3] The district court relied on our decisions in *Swan v. Clinton* and *Severino v. Biden* to justify enjoining subordinate officials as a workaround to an injunction against the President. *Slaughter*, 2025 WL 1984396, at *17 (citing *Swan v. Clinton*, 100 F.3d 973, 980 (D.C. Cir. 1996), and *Severino v. Biden*, 71 F.4th 1038, 1042-43 (D.C. Cir. 2023)). *Swan* contemplated the *potential* availability of de facto reinstatement through mandamus against subordinate Executive Branch officials to satisfy the redressability prong of standing. *See* 100 F.3d at 976-81; *see also Severino*, 71 F.4th at 1042-43 (following *Swan*'s redressability analysis). But this extraordinary relief was never imposed because the court ruled against the official on the merits. *See Swan*, 100 F.3d at 988. Read in the context of longstanding Supreme Court precedent and the Constitution's separation of powers, these narrow decisions did not create the remedial authority claimed by the district court.

historical matter, it is "well settled that a court of equity has no jurisdiction over the appointment and removal of public officers."[4] *In re Sawyer*, 124 U.S. 200, 212 (1888); *White v. Berry*, 171 U.S. 366, 377 (1898); *see also Bessent v. Dellinger*, 145 S. Ct. 515, 517 (2025) (Gorsuch, J., dissenting). These limitations on the remedial powers of the Article III courts accord with our constitutional structure.

Executive officers challenging their removal by the President have previously sought backpay, not reinstatement. My colleagues discuss at great length the ongoing vitality of *Humphrey's Executor*, but the relief sought in that case was only backpay. 295 U.S. at 618; *see also Myers v. United States*, 272 U.S. 52, 106 (1926). And neither the district court nor the Order explains how the remedy of reinstatement is consistent with *Humphrey's Executor* or the historical remedies available for an unlawful removal.[5]

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[4] My colleagues inexplicably stick to this court's en banc decision in *Harris v. Bessent*, which denied a motion to stay a similar reinstatement injunction. Order at 10 n.1 (citing *Harris v. Bessent*, No. 25-5037, 2025 WL 1021435, at *2 (D.C. Cir. Apr. 7, 2025) (en banc) (per curiam)). But the en banc court was reversed by the Supreme Court, which granted a stay of the injunction. *Wilcox*, 145 S. Ct. at 1415. I see no reason to follow overruled circuit precedent rather than *Wilcox* and longstanding Supreme Court precedent.

[5] The district court suggested that, alternatively, "mandamus relief *would* be proper if injunctive relief were to become unavailable." *Slaughter*, 2025 WL 1984396, at *20 n.12. That is unlikely. The district court has no authority to issue mandamus against the remaining FTC Commissioners because they have not violated a "clear duty to act." *Muthana v. Pompeo*, 985 F.3d 893, 910 (D.C. Cir. 2021). The Commissioners did not, and could not, remove Slaughter from office. Nor did they violate any "clear duty" when

In sum, the government is likely to succeed in its appeal of the district court's injunction, which orders relief that exceeds the Article III judicial authority and intrudes on the President's exercise of executive power.

2.

In addition to lacking authority to order the reinstatement of an officer removed by the President, the district court erred in concluding that Slaughter had demonstrated the irreparable harm necessary to support a permanent injunction. "This circuit has set a high standard for irreparable injury." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). The claimed injury must be "both certain and great" and "beyond remediation." *Id.* The Supreme Court has already held that loss of employment ordinarily does not constitute irreparable injury. *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974) (recognizing that, except in "extraordinary cases," the "circumstances surrounding an employee's discharge" will not support a finding of irreparable injury). The district court recognized this general rule but nonetheless found irreparable injury because after her removal Slaughter "lost the ability to influence federal decision-making" on the policies governed by the FTC and lost "the opportunity to serve as part of a bipartisan, congressionally protected agency that is designed to operate independent of exec-

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effectuating the President's removal. If the district court was suggesting that mandamus could issue against the President, that would be unprecedented and inconsistent with the respect due to the President in the exercise of his exclusive powers. Moreover, in light of the uncertainty surrounding *Humphrey's Executor*, it is hard to see how Slaughter's removal could be "so plainly and palpably wrong as a matter of law" to justify this extraordinary step. *Harris*, 2025 WL 1021435, at *7 (Rao, J., dissenting) (cleaned up).

utive authority." *Slaughter*, 2025 WL 1984396, at *17-18 (cleaned up). The district court concluded that Slaughter's removal destroys the "independence" of the FTC in a way that "injures Ms. Slaughter, the FTC, *and* Congress." *Id.* at *18.

The loss of the ability to "influence" FTC policies or to participate in decisionmaking is not a personal injury to Slaughter. She has no private right to the powers of an FTC commissioner's office. "[N]o officers of the United States, of whatever Branch, exercise their governmental powers as personal prerogatives in which they have a judicially cognizable private interest. They wield those powers not as private citizens but only through the public office which they hold." *Moore v. U.S. House of Reps.*, 733 F.2d 946, 959 (D.C. Cir. 1984) (Scalia, J., concurring in result). Slaughter's "loss of political power" has deprived her of nothing to which she is personally entitled. *Cf. Raines v. Byrd*, 521 U.S. 811, 821 (1997) (rejecting a "loss of political power" as a basis for congressional standing). To conclude otherwise would be to embrace a theory of government power "alien to the concept of a republican form of government." *Barnes v. Kline*, 759 F.2d 21, 50 (D.C. Cir. 1985) (Bork, J., dissenting). Slaughter no doubt considers that she has suffered professionally from her removal. The personal loss of this office, however, is remediable through damages. *See Moore*, 733 F.2d at 959 (Scalia, J., concurring in result) (recognizing a private right to "the emoluments of the office" but not the "powers of the office," which "belong to the people").

Nor does Slaughter have a private right to the so-called independence of the FTC or to the general enforcement of the statutory for-cause removal protection. Any "claimed injury" to those interests is not personal, but rather "runs . . . with the [commissioner's] seat." *Raines*, 521 U.S. at 821. Individual officers may not turn to the federal courts to redress injuries to the institutions in which they serve. *See Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1953 (2019) (explaining that "individual members lack standing to assert the institutional interests of a legislature"); *Raines*, 521 U.S. at 833 (Souter, J., concurring in the judgment) ("[A] dispute involving only officials, and the official interests of those, who serve in the branches of the National Government lies far from the model of the traditional common-law cause of action at the conceptual core of the case-or-controversy requirement."); *Maloney v. Carnahan*, 45 F.4th 215, 225 (D.C. Cir. 2022) (Rao, J., dissenting from the denial of rehearing en banc) (explaining that "[i]njuries to the official interests of a member of Congress," like other institutional harms, "lie outside the traditional understanding of the 'Cases' and 'Controversies' cognizable by the Article III courts"). Slaughter's personal harms from being fired are compensable through backpay, and she has no standing to vindicate the institutional harms to the FTC or whatever injury the district court believes has been inflicted on Congress.

My colleagues also reinforce the absence of irreparable injury to Slaughter. They maintain that Slaughter's role as a minority commissioner is powerless and that she cannot affect policymaking or enforcement. Order at 12-13. If my colleagues are correct on this score, the injunction must be stayed because the district court clearly erred in finding irreparable injury to Slaughter and the FTC. *See Slaughter*, 2025 WL 1984396, at *18 (finding irreparable injury in part because "the unique role of an FTC Commissioner . . . includes the opportunity to serve as part of a bipartisan, congressionally protected agency that is designed to operate independent of executive authority") (cleaned up). It can't be that Slaughter's continued service on the Commission is both essential to preserving its statutory independence and has no meaningful effect on its work.

The district court clearly erred in finding irreparable harm, and this independently justifies a stay of the injunction.

3.

I next turn to the lawfulness of Slaughter's removal, a question on which the government maintains it is likely to prevail on appeal because the modern FTC does not fit within any exception to the general rule that the President may remove officers at will.

The Constitution vests the entirety of the executive power in the President. U.S. Const. art. II, § 1, cl. 1. It is well established that this grant includes the power to remove officers who exercise the executive power on the President's behalf. *Myers*, 272 U.S. at 117, 163-64; *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2197-98 (2020); *see Collins v. Yellen*, 141 S. Ct. 1761, 1786-87 (2021). The removal power ensures that officers "remain accountable to the President, whose authority they wield." *Seila Law*, 140 S. Ct. at 2197. The President must be able to control and supervise his subordinates in order to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3; *see Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 483 (2010).

Of course, as my colleagues emphasize, the Supreme Court has continued to recognize an exception to the President's removal power for members of "a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions and was said not to exercise any executive power." *Seila Law*, 140 S. Ct. at 2198-99 (discussing *Humphrey's Executor*). Although the Court has explicitly declined to overrule *Humphrey's Executor*, it has eviscerated its reasoning and rejected attempts to extend it to "new situation[s]." *Seila Law*, 140 S. Ct. at 2211; *Free Enter. Fund.*, 561 U.S. at 483-84; *see also Boyle*, 145 S. Ct. at 2654-55 (Kavanaugh, J., concurring) (suggesting "at least a fair prospect (not certainty, but at least some reasonable prospect)" that *Humphrey's Executor* will be further "narrow[ed]" or "overrule[d]"). Without further guidance from the Supreme Court, lower courts are put in a somewhat difficult position because we are required to adhere to *both* the Court's holdings and its reasoning. With respect to *Humphrey's Executor*, however, the Court's holding and reasoning have diverged.

I have long thought that *Humphrey's Executor* should be overruled because it is inconsistent with the Constitution's vesting of all executive power in the President and with more recent Supreme Court decisions.[6] Of

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[6] The text, structure, and original meaning of the Constitution all point in the same direction—the President's control and supervision of the Executive Branch requires that he be able to remove his officers at will. It follows that Congress cannot limit his removal power. *See Myers*, 272 U.S. at 134 ("The imperative reasons requiring [the President's] unrestricted power to remove the most important of his subordinates in their most important duties must therefore control the interpretation of the Constitution as to all appointed by him."); *Seila Law*, 140 S. Ct. at 2212 (Thomas, J., concurring in part and dissenting in part) (explaining that officer removal restrictions are irreconcilable with "the clear vesting of executive power in the President"); *see also* Neomi Rao, *Removal:*

course, I agree with my colleagues that only the Supreme Court may overrule its precedents. *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2038 (2023) (emphasizing that lower courts must "leav[e] to [the] Court the prerogative of overruling its own decisions").

Granting a stay of the district court's injunction, however, does not require this court to claim that *Humphrey's Executor* has been overruled. Instead, the stay is warranted by the Supreme Court's decisions to stay injunctions ordering the reinstatement of removed officers. *See Wilcox*, 145 S. Ct. at 1415; *Boyle*, 145 S. Ct. at 2654. Even while leaving *Humphrey's Executor* on the books, the Court has recognized that members of the National Labor Relations Board ("NLRB"), the Merit Systems Protection Board ("MSPB"), and the Consumer Product Safety Commission ("CPSC"), all so-called independent multi-member agencies, exercise "considerable executive power." *Wilcox*, 145 S. Ct. at 1415; *see Boyle*, 145 S. Ct. at 2654. The Court explicitly declined in an emergency stay posture to decide whether these agencies would fit within the *Humphrey's Executor* exception. Nonetheless, the Court stayed injunctions that ordered the reinstatement of officers of those agencies removed by the President. *Wilcox*, 145 S. Ct. at 1415; *see Boyle*, 145 S. Ct. at 2654.

The reasoning of these orders must be applied to stay Slaughter's reinstatement. Everyone agrees that FTC commissioners are principal officers who exercise "substantial executive power." Order at 1, 5-9 (recounting the executive powers of the FTC). While leaving *Humphrey's Executor* in place, the Supreme Court has

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Necessary and Sufficient for Presidential Control, 65 Ala. L. Rev. 1205, 1212-16, 1244 (2014).

explicitly recognized that the "conclusion that the FTC did not exercise executive power has not withstood the test of time."[7] *Seila Law*, 140 S. Ct. at 2198 n.2. The Constitution establishes three departments of the federal government, and the so-called independent agencies are necessarily part of the Executive Branch, not some headless fourth branch. Commissioners of the FTC exercise "considerable executive power," and such officers are not entitled to reinstatement while they litigate the lawfulness of their removal. *Wilcox*, 145 S. Ct. at 1415; *see Boyle*, 145 S. Ct. at 2654.

In the stay posture, the Supreme Court has withheld judgment on the lawfulness of the President's removals of so-called independent agency heads, focusing instead on the harm to the government from reinstatement. That reasoning similarly requires a stay here while the merits of the removal, and the ongoing validity of *Humphrey's Executor*, continue to be litigated.

B.

The balance of the equities also favors the government. *Cf. Nken*, 556 U.S. at 434. The Supreme Court's recent stay decisions in similar removal cases must inform how we "exercise [our] equitable discretion in like cases." *Boyle*, 145 S. Ct. at 2654; *see Nat'l Institutes of Health v. Am. Pub. Health Ass'n*, No. 25A103, 2025 WL

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[7] In light of the Supreme Court's explicit recognition that, despite the reasoning of *Humphrey's Executor*, the 1935 FTC exercised executive power, there is no need to parse the past and present powers of the FTC. The Commission exercised executive power in 1935, and Congress has only expanded the powers of the FTC in the intervening years. *See* Eli Nachmany, *The Original FTC*, 77 Ala. L. Rev. 1 (forthcoming 2025) (unpublished manuscript at 42-49).

2415669, at *3-5 (Aug. 21, 2025) (Gorsuch, J., concurring in part and dissenting in part).

In *Wilcox*, the Supreme Court determined that "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." 145 S. Ct. at 1415. The Court expressly reaffirmed this conclusion in *Boyle*—and chided a lower court for failing to follow *Wilcox*. *See Boyle*, 145 S. Ct. at 2654 ("The application is squarely controlled by *Trump v. Wilcox*. Although our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases.") (cleaned up). On the logic of *Wilcox* and *Boyle*, the balance of equities here likewise favors a stay because the district court's reinstatement order encroaches on the President's constitutional control over the Executive Branch, and this harm is greater than any harm to Slaughter from an allegedly unlawful removal.

Despite the Supreme Court's explicit directions, my colleagues apply a different "equitable calculus." Order at 12-13. But they fail to distinguish this case from *Wilcox* and *Boyle*. They primarily rely on *Humphrey's Executor* as establishing the wrongfulness of Slaughter's removal. *See id.* at 12. But the Supreme Court's balancing in *Wilcox* and *Boyle* explicitly held that the government's risk of harm from reinstatement of a removed officer is greater than the harm "a *wrongfully removed* officer faces from being unable to perform her statutory duty." *Wilcox*, 145 S. Ct. at 1415 (emphasis added); *accord Boyle*, 145 S. Ct. at 2654. The Court's equitable judgment was that—even assuming the removals were unlawful—the government faced the greater harm from reinstatement. That same equitable judgment must be applied here.

My colleagues also rely on their observation that, because Slaughter is a minority commissioner, she cannot take any action opposed by the Commission majority. *See* Order at 12. But nothing in *Wilcox* or *Boyle* turned on the extent of the removed officer's *functional* power based on the party affiliation of the remaining board or commission members. My colleagues offer an equitable balance that turns in part on whether there are currently one, two, or three commissioners of the President's party serving on the FTC. This unprecedented principle suggests that injunctive relief turns on a judicial assessment of just how much reinstatement would impede the President's execution of the laws at a multimember agency. But such functional reasoning is at odds with the simple fact that the President is vested with all of the "executive Power," not some of it. U.S. Const. art. II, § 1.

As a commissioner of the FTC, Slaughter exercised substantial executive power, no less than members of the NLRB, MSPB, and CPSC. The harm to the government from judicial reinstatement of Slaughter after the President's removal is the same harm the Supreme Court identified in *Wilcox* and *Boyle*.

Finally, my colleagues attempt to rely on the fact that individual commissioners of the multi-member FTC "wield no unilateral authority." Order at 13. But again, that is equally true for the members of the NLRB, MSPB, and CPSC. The fact that only a majority of commissioners may exercise many of the powers of the FTC does nothing to diminish the fact that each commissioner is a principal officer exercising executive power. The government suffers a harm from the judicial reinstatement of an executive officer removed by the President. In these circumstances, the Supreme Court has held that the government is entitled to a stay.

The balance of equities here is ultimately indistinguishable from that in *Wilcox* and *Boyle* and therefore favors the government.

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Following the Supreme Court's direction, the district court's far-reaching injunction must be stayed. An injunction ordering reinstatement of an officer removed by the President likely exceeds the Article III judicial power and encroaches on the President's exercise of the Article II executive power. I respectfully dissent.