

No. 25-332

In the Supreme Court of the United States

DONALD TRUMP, PRESIDENT OF THE UNITED STATES,
et al.,

Petitioners,

v.

REBECCA KELLY SLAUGHTER, *et al.*,

Respondents.

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

**BRIEF OF BIPARTISAN FORMER CHAIRS OF THE
FEDERAL TRADE COMMISSION AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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<i>Myers v. United States</i> , 272 U.S. 52 (1926)	4, 23, 24, 28
<i>PHH Corp. v. CFPB</i> , 881 F.3d 75 (CA DC 2018)	6, 15, 19, 28, 29
<i>Schering-Plough Corp. v. F.T.C.</i> , 402 F.3d 1056 (CA11 2005)	17
<i>Seila Law LLC v. CFPB</i> , 591 U.S. 197 (2020)	5, 15, 18, 19, 21, 24
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<i>Zivotofsky ex rel. Zivotofsky v. Kerry</i> , 576 U.S. 1 (2015)	27
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U.S. Const. Art. II § 2, cl. 2	4, 23

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Exec. Order 13,402, 71 Fed. Reg. 27945 (2006).....	11
Exec. Order 13,681, 79 Fed. Reg. 63491 (2014).....	12
Exec. Order 14,036, 86 Fed. Reg. 36987 (2021).....	13
Exec. Order 14,215 (Feb. 21, 2025).....	15

Other Authorities

Rachel E. Barkow, <i>Insulating Agencies: Avoiding Capture Through Institutional Design</i> , 89 Tex. L. Rev. 15, 31 (2010).....	16
Br. for the United States as <i>Amicus Curiae</i> , <i>F.T.C. v. Schering-Plough Corp.</i> , (No. 05-273), 2006 WL 1358441	17
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<i>Congressional Oversight of the White House</i> , OLC slip op. 2021 WL 222744 (Jan. 8, 2021).....	25
Kirti Datla & Richard L. Revesz, <i>Deconstructing Independent Agencies (and Executive Agen- cies)</i> , 98 Cornell L. Rev. 769 (2013)	19
Andrew I. Gavil and William E. Kovacic, <i>A De- fense of the “For Cause” Termination Provisions of the Federal Trade Commission Act</i> , Progres- sive Policy Institute (July 31, 2025)	9
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Thomas B. Leary, Commissioner, Fed. Trade. Comm’n, <i>The Bipartisan Legacy</i> (June 21, 2005) (transcript available at <a href="https://www.ftc.gov/sites/default/files/documents/public_statements/bipartisan-leg-
acy/050803bipartisanlegacy.pdf">https://www.ftc.gov/sites/default/files/docu- ments/public_statements/bipartisan-leg- acy/050803bipartisanlegacy.pdf)	30
Letter from Andrew Ferguson, FTC Chairman, to Tech Companies (Aug. 21, 2025), <a href="https://www.ftc.gov/legal-library/browse/cases-
proceedings/staff-letters/model-letter-sent-
tech-companies-chairman-andrew-n-ferguson">https://www.ftc.gov/legal-library/browse/cases- proceedings/staff-letters/model-letter-sent- tech-companies-chairman-andrew-n-ferguson	13
Caleb Nelson, <i>Must Administrative Officers Serve at the President’s Pleasure?</i> , NYU De- mocracy Project, <a href="https://democracypro-
ject.org/posts/must-administrative-officers-
serve-at-the-presidents-pleasure">https://democracypro- ject.org/posts/must-administrative-officers- serve-at-the-presidents-pleasure (Sept. 29, 2025)	24

Jane Manners & Lev Menand, <i>The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence</i> , 121 Colum. L. Rev. 1 (2021)	15
James C. Miller III, <i>The Economist as Reformer: Revamping the FTC, 1981-1985</i> , Am. Enterprise Inst. (1989)	11
Memorandum from FTC Chair Lina Khan on Vision and Priorities for the FTC to Commission Staff and Commissioners (Sept. 22, 2021), https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/memo-chair-lina-m-khan-commission-staff-commissioners-regarding-vision-priorities-ftc	13
Michael B. Mukasey and William E. Kovacic, <i>The President's Identity Theft Task Force Report</i> , at 9, 12, 14-15, 17 (Sept. 2008), https://www.ftc.gov/sites/default/files/documents/reports/presidents-identity-theft-task-force-report/081021taskforcereport.pdf	11-12
Timothy J. Muris, <i>More than Law Enforcement: The FTC's Many Tools: a Conversation with Tim Muris and Bob Pitofsky</i> , 72 Antitrust L.J. 773 (2005).	29
<i>National Do Not Call Registry Opens</i> , https://www.ftc.gov/news-events/news/press-releases/2003/06/national-do-not-call-registry-opens	11
Daniel Oliver, <i>Federal and State Antitrust Enforcement: Constitutional Principles and Policy Considerations</i> , 9 Cardozo L. Rev. 1245 (1988)....	11

Petition for Writ of Certiorari, <i>F.T.C. v. Schering-Plough Corp.</i> , (No. 05-273), 2005 WL 2105243	17
Press Release, Federal Trade Commission, Revised Children’s Online Privacy Protection Rule Goes Into Effect Today (July 1, 2013), https://www.ftc.gov/news-events/news/press-releases/2013/07/revised-childrens-online-privacy-protection-rule-goes-effect-today	12
Edith Ramirez, <i>The FTC: A Framework for Promoting Competition and Protecting Consumers</i> , 83 Geo. Wash. L. Rev. 2049 (2015)	29
Reorganization Plan No. 8 of 1950 § 1, 64 Stat. 1264 (Mar. 13, 1950)	6
Reorganization Plan No. 8 of 1950 § 1(a)	8
Reorganization Plan No. 8 of 1950 § 1(b)(2)	8
S. Rep. No. 63-597 (1914)	5, 32
Josh Sisco and Leah Nylen, <i>Trump to Name White House Aide Baasch as FTC Commissioner</i> (Oct. 29, 2025 at 5:09 PM), Bloomberg News, https://www.bloomberg.com/news/articles/2025-10-29/trump-plans-to-tap-white-house-aide-baasch-as-ftc-commissioner	26
Statement of FTC Chairman Jon Leibowitz on Updated FTC COPPA Rule (As Prepared For Delivery) (December 19, 2012), https://www.ftc.gov/news-events/news/speeches/statement-ftc-chairman-jon-leibowitz-updated-coppa-rule-prepared-delivery	12

Cass R. Sunstein, <i>Commentary: The Office of Information and Regulatory Affairs: Myths and Realities</i> , 126 Harv. L. Rev. 1838 (2013)	16
<i>Timeline of Commissioners, Chairwomen, and Chairmen of the Federal Trade Commission: 1915-2024</i> , Federal Trade Commission, https://www.ftc.gov/about-ftc/commissioners-staff/commissioners	14
<i>Trump Aides Interviewing Replacement for Embattled FTC Chair</i> , Politico (Aug. 28, 2020), https://www.politico.com/news/2020/08/28/trump-ftc-chair-simons-replacement-404479	10
United States' Statement of Interest Concerning Qualcomm's Mot. for Partial Stay of Inj. Pending Appeal, <i>F.T.C. v. Qualcomm Inc.</i> , No. 19-16122 (CA9 2019), Dkt. No. 25-1	17
Marc Winerman, <i>The FTC at Ninety: History through Headlines</i> , 72 Antitrust L.J. 871 (2005)	9

INTEREST OF *AMICI CURIAE*¹

Amici are former Republican and Democratic Chairs of the Federal Trade Commission (“FTC”), a bipartisan, multimember agency charged with protecting the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education. The experiences of *amici* as former leaders of the FTC give them firsthand insight into the important role that the Chair plays within the agency, as well as the extent to which the agency, principally through the Chair, is subject to presidential supervision and influence. *Amici* also have a deep appreciation of the importance of the agency’s bipartisan, multimember structure, which ensures stable, nonpartisan decision making for regulated parties and the national economy. *Amici* are:

- **Edith Ramirez**, who served as the 54th Chair of the FTC from 2013 to 2017. Ms. Ramirez also served as a Commissioner from 2010 to 2017.
- **Jon Leibowitz**, who served as the 53rd Chair of the FTC from 2009 to 2013. Mr. Leibowitz also served as a Commissioner from 2004 to 2013.

¹ No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or its counsel made a monetary contribution to the preparation or submission of this brief.

- **William Kovacic**, who served as the 52nd Chair of the FTC from 2008 to 2009. Mr. Kovacic also served as a Commissioner from 2006 to 2011 and General Counsel from 2001 to 2004.
- **Terry Calvani**, who served as Acting Chair of the FTC from 1985 to 1986. Mr. Calvani also served as a Commissioner from 1983 to 1990.

SUMMARY OF ARGUMENT

In designing the structure of the FTC in 1914 and revising it in 1950, Congress struck a careful balance between protecting the agency from undue political influence and granting the President adequate power over the agency to implement presidential policy priorities. Exercising Congress's constitutional authority to create and structure agencies, lawmakers enacting the FTC Act of 1914 deliberately structured the agency as a bipartisan, five-member commission, relying on historical models of such commissions. Congress created this structure to insulate the agency's actions from undue political influence, promote transparency, and ensure wise decision-making driven by bipartisan consensus. This structure, in Congress's view, would provide stability and predictability to private parties who would be subject to the FTC's broad regulatory powers over the national economy.

Later, Congress revised the FTC's initial structure through its adoption of Reorganization Plan No. 8 of 1950, which ensured that the agency's architecture preserved the President's authority to exercise

substantial control over the agency. The Reorganization Plan accomplished this by giving the President sole authority to appoint the agency's Chair and remove the Chair from that position at will. At the same time, Congress also shifted to the Chair significant authority over the resources and policy priorities of the agency. Congress layered this important lever of presidential control over a powerful Chair on top of other features that provide the President with significant mechanisms of influence, including: the ability to appoint agency commissioners and remove them for inefficiency, neglect of duty, or malfeasance in office; control over the agency's budget submission to Congress; review of the agency's regulations; and, through the Department of Justice, the ability to intervene in enforcement matters which the Administration opposes. Rather than impeding the President's exercise of Article II power, the FTC's structure, including its removal provisions, fully respects the President's constitutional role as chief executive.

Allowing the President to exercise at-will removal power over the commissioners would undermine the bipartisan, multimember structure that Congress deliberately established. The FTC Act's removal provisions are essential to preserve the agency's fundamental structure as a bipartisan, multimember agency; they cannot be excised without threatening to undo that structure. If the President could remove FTC commissioners based on their political affiliation, there would be nothing to prevent him from remaking the FTC in a way that contradicts the express will of Congress. Nothing would prohibit the President, for example, from removing all commissioners of the

opposing political party (leaving only those of a single party in place), or even removing all commissioners but the Chair, rendering the FTC a bipartisan, multi-member commission on paper only.

Purportedly to resolve a separation of powers problem, this result would instead create one by allowing an assertion of presidential power to dangerously encroach on Congress's constitutional authority. The President enjoys constitutional discretion to nominate and appoint officers of the United States. U.S. Const. Art. II, § 2, cl. 2. But Congress simultaneously possesses authority under Article I to "establish[] . . . offices" and prescribe for them "reasonable and relevant qualifications," *Myers v. United States*, 272 U.S. 52, 129 (1926). It has for over a hundred years used that power validly to prescribe the structure of executive agencies. By effectively negating Congress's power to structure the FTC as a bipartisan, multimember commission, the President's assertion of at-will removal power over Commissioner Slaughter upsets the balance between co-equal branches that the constitutional separation of powers demands. The Court should therefore reject the President's assertion of such power.

ARGUMENT

I. THE PRESIDENT HAS CONSTITUTIONALLY ADEQUATE CONTROL OVER THE EXECUTIVE POWERS EXERCISED BY THE FTC.

Exercising its Article I powers to legislate the structure of executive branch agencies, Congress

created the FTC over 100 years ago as a bipartisan, multimember commission composed of five commissioners appointed by the President, by and with the advice and consent of the Senate. 15 U.S.C. § 41. Conscious that an institution tasked with regulating the national economy must “act with entire impartiality,” *Humphrey’s Ex’r v. United States*, 295 U.S. 602, 624 (1935); *Seila Law LLC v. CFPB*, 591 U.S. 197, 216 (2020), Congress deliberately structured the commission to be bipartisan in nature. S. Rep. No. 63-597, at 11 (1914).

Looking at historical models of multimember commissions, Congress established staggered, seven-year terms for the Commissioners and imposed a political balance requirement by requiring that “[n]ot more than three of the Commissioners shall be members of the same political party.” 15 U.S.C. § 41. It also took care to ensure that the staggering of terms that it established at the outset would endure across time. See *id.* (providing that a person “chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed”). By establishing enduring, staggered terms for the five commissioners, Congress secured the prerogative of Presidents across different administrations to nominate commissioners, thereby “guard[ing] against any appointing official’s being able to exercise ‘undue’ political influence.” *Duration of the Term of a Member of the Civil Rights Comm’n*, 25 Op. OLC 225 (2001).

Although it is common to speak of the FTC as an “independent” agency, it is not the case that the FTC is “walled off from Presidential control.” U.S. Br. 5.

Insulation from political power does not work like an on-off switch; it instead lies on a spectrum. Regarding the FTC specifically, Congress preserved adequate control for the President over any executive power that the agency exercises by vesting the FTC Chair with considerable authority within the agency and making the position inherently responsive to presidential influence and control. In adopting Reorganization Plan No. 8 in 1950, Congress shifted to the Chair significant power over the executive functions of the agency, including its investigations and enforcement actions by granting the Chair control over personnel appointments, the agency’s budget, and resource allocation within the agency. Reorganization Plan No. 8 of 1950 § 1, 64 Stat. 1264, 1264 (Mar. 13, 1950). Congress also transferred from the Commission to the President the sole authority to appoint the Chair from among the Commissioners, and correspondingly, to remove the Chair at will from that position, § 3, thus assuring the Chair would be responsive to presidential policies and priorities. *PHH Corp. v. CFPB*, 881 F.3d 75, 189 (CA DC 2018) (Kavanaugh, J., dissenting).

This and other features of the FTC’s structure preserve “adequate control” for the President over the FTC’s exercise of executive power. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 508 (2010). As explained in more detail below, the FTC’s structure maintains sufficient control for the President principally through the ability to supervise and influence the Chair, who in turn wields substantial power over the agency’s executive functions. And insofar as the Commissioners share in some measure in the Chair’s responsibility to supervise the agency’s executive

actions, they too are subject to significant levers of presidential control that enable the President ultimately to implement his policies and priorities and to ensure that the agency’s exercise of executive power remains accountable to the President, and through the President, to the American people.

A. Through the Chair, the President Wields Significant Control Over the FTC.

Both on paper and in practice, the Chair of the FTC possesses significant power to chart the regulatory and enforcement direction of the FTC, as *amici* experienced first-hand during their tenures in agency leadership. As the “executive and administrative head of the agency,” 16 C.F.R. § 0.8 (2023), the Chair’s authority is unique among the commissioners. Relative to the agency’s other commissioners, the Chair wields disproportionate control over the executive functions of the agency, including its investigations and enforcement actions. In practicality, and as *amici* can attest, the executive power to “set[] the agency’s enforcement agenda, including priorities, initiation of investigations, and decisions to prosecute,” has “rested almost exclusively with the Chair since the Reorganization Plan No. 8 of 1950.” Terry Calvani & Angela M. Diveley, *The FTC at 100: A Modest Proposal for Change*, 21 Geo. Mason L. Rev. 1169, 1184 (2014).

When Congress reorganized the FTC in 1950, it transferred “the executive and administrative functions of the Commission” to the Chair, including “(1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of

business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.” Reorganization Plan No. 8 of 1950, § 1(a). The Chair directly appoints and supervises key personnel within the agency, including the directors of the Office of Policy Planning, the Office of Congressional Relations, and the Office of Public Affairs, which play important roles in setting the agency’s policy initiatives and communicating with Congress and the public. 16 C.F.R. § 0.8. The Chair also appoints (with Commission approval, Reorganization Plan No. 8, § 1(b)(2)) and supervises the directors of the agency’s Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics, which carry out the FTC’s core regulatory and enforcement functions, and allocates resources within the Bureaus. *Id.* In performing this role, the Chair is assisted by the agency’s Executive Director who, appointed and “under the direction of the Chair[],” “develops and implements management and administrative policies, programs, and directives for the Commission” and “works closely with the Bureaus on strategic planning and assessing the management and resource implications of any proposed action.” 16 C.F.R. § 0.10 (2021). To the extent personnel is policy, as the saying goes, the Chair’s authority over the FTC’s people and budget is significant indeed.

In addition to the Chair’s power over the FTC’s senior personnel and budget, the Chair also sets the agenda for Commission meetings and may prioritize certain issues and bring them forward for a vote. See 16 C.F.R. § 0.8 (the Chair “presides at meetings of and hearings before the Commission.”). In controlling the

flow of items to the agenda, the Chair influences when and whether an item is voted on by the full Commission and how the various offices and their staff allocate their time. Thus, although the Chair must “muster a majority of a quorum to implement their programs,” FTC Chairs “play[] a disproportionate role both in speaking for the agency and setting its agenda.” Marc Winerman, *The FTC at Ninety: History through Headlines*, 72 Antitrust L.J. 871, 873 (2005). The Chair also serves as the “Chief Presiding Officer” over the agency’s rulemaking proceedings and may designate another official to do so. 16 C.F.R. § 0.8.

Together these powers allow the Chair to wield effective control over the FTC’s enforcement priorities, including specific investigations and enforcement actions. Andrew I. Gavil and William E. Kovacic, *A Defense of the “For Cause” Termination Provisions of the Federal Trade Commission Act*, Progressive Policy Institute (July 31, 2025). To be sure, the FTC’s commissioners share in these enforcement responsibilities. But their power is eclipsed by that of the Chair, and they play a largely reactive role: they vote on regulatory and enforcement initiatives, but they cannot affirmatively bring cases without the support of senior staff in the Bureau of Competition, Consumer Protection, and Economics and Office of Policy Planning who are supervised by—and therefore must be responsive to—the Chair. *Id.* at 14 n.10.

The FTC’s powerful Chair is subject to considerable presidential control. In contrast with the Commissioners, who may be removed only for “inefficiency, neglect of duty, or malfeasance in office,” 15 U.S.C. § 41,

the President designates the Chair and may remove the Chair at will from that position. Presidents may remove the Chair as such for being insufficiently responsive to the President’s priorities and policies, or because of a disagreement with the Chair’s stewardship of the agency, to give some examples.² Congress’s placement in the Chair of substantial power over the executive powers of the agency, combined with this important power of at-will removal, plays a critical role in ensuring that the agency’s competition and consumer protection agenda will align with the incumbent President’s goals.

Historical examples illustrate the power that FTC Chairs have flexed across the administrations of every recent President to shape the regulatory and enforcement priorities of the agency in alignment with the policies of the Presidents they serve. They have used their power to emphasize certain types of investigations or even targets of investigations. For example:

- *Amicus* Terry Calvani focused on maintaining the Reagan administration’s broader goals of deregulation. Calvani and other Chairs designated by President Reagan, James Miller and Daniel Oliver, achieved

² As one illustrative scenario, news reports indicated that during President Trump’s first term, he considered replacing then-FTC Chair Joe Simons because of his resistance to the President’s desire to address alleged political bias in social media. *Trump Aides Interviewing Replacement for Embattled FTC Chair*, Politico (Aug. 28, 2020), <https://www.politico.com/news/2020/08/28/trump-ftc-chair-simons-replacement-404479>. It is also commonplace for Presidents to replace the Chair when the party in control of the presidency changes.

those goals by positioning the FTC to focus less on government intervention and more on consumer education. See generally James C. Miller III, *The Economist as Reformer: Revamping the FTC, 1981-1985*, Am. Enterprise Inst. (1989); Daniel Oliver, *Federal and State Antitrust Enforcement: Constitutional Principles and Policy Considerations*, 9 Cardozo L. Rev. 1245 (1988).

- Former Chair Timothy Muris worked in close coordination with the White House and Federal Communications Commission to establish the Do Not Call Registry in 2003 (which Congress subsequently codified in legislation), appearing at the White House for a press conference to announce the initiative and participating in a “Ask the White House” radio show. *National Do Not Call Registry Opens*, <https://www.ftc.gov/news-events/news/press-releases/2003/06/national-do-not-call-registry-opens>.
- *Amicus* William Kovacic worked as Chair to implement and advance President George W. Bush’s policy focus on identity theft, co-chairing the President’s Identity Theft Task Force, Exec. Order 13,402, 71 Fed. Reg. 27945 (2006), and developing privacy and security tutorials and data security workshops for both consumers and businesses, Michael B. Mukasey and William E. Kovacic, *The President’s Identity Theft Task Force Report*, at 9, 12, 14-15, 17 (Sept. 2008),

<https://www.ftc.gov/sites/default/files/documents/reports/presidents-identity-theft-task-force-report/081021taskforcereport.pdf>.

- Under the leadership of *amici* Jon Leibowitz and Edith Ramirez, the FTC sharpened its focus on data privacy and online deceptive practices, including children’s online privacy, as core consumer protection issues. Public Statement, Federal Trade Commission, Statement of FTC Chairman Jon Leibowitz on Updated FTC COPPA Rule (As Prepared For Delivery) (December 19, 2012), <https://www.ftc.gov/news-events/news/speeches/statement-ftc-chairman-jon-leibowitz-updated-coppa-rule-prepared-delivery>; Press Release, Federal Trade Commission, Revised Children’s Online Privacy Protection Rule Goes Into Effect Today (July 1, 2013), <https://www.ftc.gov/news-events/news/press-releases/2013/07/revised-childrens-online-privacy-protection-rule-goes-effect-today>. These initiatives closely aligned with increased focus on consumer protection and privacy across multiple agencies under President Obama. See Exec. Order 13,681, 79 Fed. Reg. 63491 (2014) (directing several agencies to take steps to protect consumers from identity and payment fraud).

- In alignment with an Executive Order issued by President Biden, former FTC Chair Lina Khan directed that the FTC engage in increased merger enforcement to address market consolidation and dominance and focused on certain types of targets in the technology sector. Memorandum from FTC Chair Lina Khan on Vision and Priorities for the FTC to Commission Staff and Commissioners (Sept. 22, 2021), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/memo-chair-lina-m-khan-commission-staff-commissioners-regarding-vision-priorities-ftc>; Exec. Order 14,036, 86 Fed. Reg. 36987 (2021).
- And the current Chair, Andrew Ferguson, designated by President Trump, has signaled an interest in using the agency's powers to address concerns related to foreign government influence over technology companies, citing "priorities for the Trump-Vance FTC." Letter from Andrew Ferguson, FTC Chairman, to Tech Companies, at 3 (Aug. 21, 2025), <https://www.ftc.gov/legal-library/browse/cases-proceedings/staff-letters/model-letter-sent-tech-companies-chairman-andrew-n-ferguson>.

Consistent with *amici's* collective experience over many years and across numerous presidential administrations, each FTC Chair's establishment of regulatory and enforcement priorities shaped the types of

investigations brought, the targets of investigations, and the nature and extent of any enforcement resolutions in a manner that aligned with the incumbent President’s agenda. The President’s control over the Chair on paper is thus matched by the President’s supervision and influence in action.

B. The President Has Other Significant Levers of Control Over the Commission.

The President’s power to appoint and remove the FTC’s Chair at will from that role is layered on top of other significant levers of presidential control over the agency as a whole. First, the President appoints the agency’s Commissioners, by and with the advice and consent of the Senate. Because of Congress’s deliberate establishment of enduring staggered terms, Presidents of every administration since Congress’s reorganization of the FTC in 1950 have appointed one or more commissioners. Indeed, past presidents have appointed five (President Biden), six (President Clinton), and even seven (Presidents Reagan and Nixon) commissioners to the agency during their terms in office. *Timeline of Commissioners, Chairwomen, and Chairmen of the Federal Trade Commission: 1915-2024*, Federal Trade Commission, <https://www.ftc.gov/about-ftc/commissioners-staff/commissioners>. President Trump himself (across his first and second terms) has appointed six individuals to the Commission, including Commissioner Slaughter. *Id.* And the President may of course remove the Commissioners for “inefficiency, neglect of duty, or malfeasance in office,” 15 U.S.C. § 41, broad terms that permit the President to ensure that the

Commission is governed by able stewards. See Jane Manners & Lev Menand, *The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence*, 121 Colum. L. Rev. 1, 28 (2021) (“Neglect of duty and malfeasance in office . . . are terms that have been used for hundreds of years to address the problem of an officer’s failure to faithfully execute the laws” while “[i]nefficiency” historically was “used . . . to describe wasteful government administration caused by inept officers.”).

Second, the President controls the FTC’s budget and reviews the FTC’s rulemaking actions and regulatory agenda. The agency’s budget requests go through review and approval by the Office of Management and Budget (“OMB”) within the White House—a process that “Presidents frequently use” to “influence the policies of independent agencies.” *Seila Law*, 591 U.S. at 226. See also *PHH Corp. v. CFPB*, 881 F.3d 75, 147 (CA DC 2018) (Henderson, J., dissenting) (“Acting through OMB, the President uses his annual budget to influence the policies of independent agencies, including the FTC.”); *Meyer v. Bush*, 981 F.2d 1288 (CA DC 1993) (Wald, J., dissenting) (“[T]he preparation of the budget [is] . . . an instrument of presidential and policymaking control over the executive bureaucracy.”). The FTC also now submits its proposed regulations and certain information requests to the Office of Information and Regulatory Affairs (“OIRA”) within OMB for review and approval. Exec. Order 14215, (Feb. 21, 2025). This is in addition to the longstanding requirement that the FTC “prepare an agenda of all regulations under development or review” to allow OIRA to evaluate the agency’s agenda to ensure it

“promotes the President’s priorities.” Exec. Order 12866, § 4, 58 Fed. Reg. 51735 (Sept. 30, 1993). See also Cass R. Sunstein, *Commentary: The Office of Information and Regulatory Affairs: Myths and Realities*, 126 Harv. L. Rev. 1838, 1840-44 (2013) (describing the role of OIRA in rulemaking, particularly in ensuring transparency and interagency coordination). This “[c]hanneling” of “regulations through OIRA is an effective way for the President to monitor their compliance with his or her overall agenda and to pressure the agency to make changes if necessary.” Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 Tex. L. Rev. 15, 31 (2010).

Finally, through the Department of Justice, headed by the Attorney General (who of course serves at the President’s pleasure), the President maintains influence over specific enforcement actions brought by the FTC. The Department has the right of first refusal to litigate several categories of civil enforcement actions brought by the FTC, including actions to collect civil penalties, 15 U.S.C. § 56(a)(1), and has complete responsibility for any criminal enforcement matters that the FTC seeks to bring, *id.* § 56(b). The FTC must also notify the Department of all civil actions that the Commission may commence, and the Department may intervene against the Commission in litigation should it disagree with any position asserted by the agency. *Id.* § 56(a)(2).

The Department has in fact exercised this prerogative to shape the FTC’s enforcement actions. For example, when the FTC sued Qualcomm alleging that

the company used anticompetitive tactics to maintain a monopoly in the supply of cellular modem chips, the Department intervened publicly, filing a Statement of Interest opposing the FTC's position. United States' Statement of Interest Concerning Qualcomm's Mot. for Partial Stay of Inj. Pending Appeal, *F.T.C. v. Qualcomm Inc.*, No. 19-16122 (CA9 2019), Dkt. No. 25-1. The Ninth Circuit ultimately sided with the Department of Justice's position against the FTC and granted relief to Qualcomm, vacating the district court's injunction against the company. *F.T.C. v. Qualcomm Inc.*, 969 F.3d 974 (CA9 2020). The Department similarly was able to influence the Commission's enforcement action in an antitrust action against Schering-Plough. There, the FTC filed an administrative complaint alleging that the company had unlawfully restrained trade by paying off its competitors to stay out of the market. The Commission lost before the Eleventh Circuit, *Schering-Plough Corp. v. F.T.C.*, 402 F.3d 1056 (CA11 2005), and petitioned this Court for review, Petition for Writ of Certiorari, *F.T.C. v. Schering-Plough Corp.*, (No. 05-273), 2005 WL 2105243. The Solicitor General submitted an *amicus* brief opposing the FTC's request for certiorari, Br. for the United States as *Amicus Curiae*, *F.T.C. v. Schering-Plough Corp.*, (No. 05-273), 2006 WL 1358441, and the Court denied the petition, *F.T.C. v. Schering-Plough Corp.*, 548 U.S. 919 (2006).

In other instances, the mere fact that the Department *may* intervene, and possesses certain statutory authorities to represent the FTC in appeals and before the Supreme Court, 15 U.S.C. § 56(a), has sometimes resulted in the FTC modifying its position in specific

cases without a need for public intervention by the Department. Although these instances are deliberative and thus inherently non-public, *amici* witnessed during their tenures a dynamic, ongoing dialogue between the FTC and the Department that demonstrates the Department’s influence over FTC’s enforcement matters.

C. Taken Together, the President’s Levers of Control Over the FTC Are Constitutionally Adequate.

Taken together, the FTC’s structural features described above provide the President with constitutionally adequate control over the agency’s exercise of executive power. In its recent decisions concerning the President’s removal power, this Court has focused on the need for the President’s subordinates to “remain accountable to the President” in their exercise of the executive powers that “belong[] to the President alone.” *Seila Law*, 591 U.S. at 213; *Collins v. Yellen*, 594 U.S. 220, 252 (2021). The Court has assessed whether the President possesses “adequate control” to satisfy the need for accountability over the exercise of executive powers, *Free Enter. Fund*, 561 U.S. at 508, or whether instead Congress’s enactment of removal restrictions “impede[s] the President’s ability to perform his constitutional duty.” *Seila Law*, 591 U.S. at 217 (quoting *Morrison v. Olson*, 487 U.S. at 691).

It is true, as this Court has intimated, *Seila Law*, 591 U.S. at 219 n.4, that the FTC wields much power that in modern times might be considered “executive”—the FTC initiates investigations, uses

compulsory process to compel documents and information to support these investigations, and brings civil enforcement actions in court (assuming the Department of Justice does not take on such actions where it has power to do so). But the significant power of the Chair over any such executive actions ensures that the FTC and its personnel “remain accountable to the President, whose authority they wield.” *Id.* at 213. As demonstrated above, the Chair wields power disproportionate to the agency’s other commissioners, over the enforcement priorities of the agency, and indeed over specific cases and investigations. And to the extent the President disagrees with the FTC’s enforcement priorities, he can communicate that message to the Chair backed by the threat of removal from the Chair position if necessary. This by itself is a powerful tool of control over the agency, as members of this Court have recognized. See *PHH Corp. v. CFPB*, 881 F.3d 75, 189 (CA DC 2018) (Kavanaugh, J. dissenting) *abrogated by Seila Law*, 591 U.S. 197 (2020) (“The power to designate and remove chairs at will is important because, by statute, the chairs of multimember agencies have been granted budget, personnel, and agenda control.”); Kirti Datla & Richard L. Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 Cornell L. Rev. 769, 796 (2013) (“Chairs [of multi-member commissions] are typically seen as a presidential proxy because they usually hold their position as chair . . . at the will of the President.”).

The President’s control over the FTC Chair—and the Chair’s significant power in turn over the executive functions of the agency—fully addresses any

concern that *Humphrey's Executor*, 295 U.S. 602, failed to appreciate the significant enforcement powers of the FTC when it considered whether President Roosevelt had the power to remove FTC Commissioner William Humphrey over a policy disagreement or that the agency's enforcement powers have expanded in the years since that case. *Humphrey's* was decided when the Commission, not the President, selected the Chair. In 1950, Congress adopted Reorganization Plan No. 8, giving the President sole discretion to designate and remove the Chair from that role at will, while simultaneously transferring "the executive and administrative functions of the Commission" to that position. *Supra* Part I.A. Were the scenario in *Humphrey's* re-run today, the Chair would have greater power over the Commission, and William Humphrey's views, as a Commissioner, would hold comparatively less sway over any exercise of executive power by the agency. And if President Roosevelt had any disagreement with the FTC's handling of policy matters, he could remove the Chair and select a new one from among the other commissioners.

Although the non-Chair commissioners share to some extent in the exercise of the executive powers of the FTC, their role is not so substantial as to dictate that they must be subject to at-will removal when the President has at his disposal other effective means of control over the executive powers of the agency. In addition to the President's critical leverage over the Chair, the President's ability to appoint and remove commissioners for inefficiency, neglect, or malfeasance in office, control over the agency's budget requests to Congress and review the FTC's proposed

regulations, and ability to influence specific enforcement actions through the Department of Justice are all important levers of presidential control.

This Court recognized as much in its criticism of the Consumer Financial Protection Bureau’s (“CFPB”) tenure-protected single Director structure in *Seila Law*. There the Court pointed to the very features the FTC possesses in explaining the deficiencies in presidential control over the CFPB—thus impliedly approving of such features as means of securing presidential control. See 591 U.S. at 225 (noting that CFPB’s “structure . . . forecloses certain indirect methods of presidential control”). The Court noted, for instance, that the CFPB’s single-Director model deprived some Presidents of the “opportunity to shape its leadership and thereby influence its activities,” and that the agency’s lack of other leadership—“such as a chair or fellow members of a Commission or Board”—similarly deprived the President of a “check on the Director’s authority” and a means to “help bring the agency in line with the President’s preferred priorities.” *Id.* And finally, the Court noted that the CFPB’s receipt of funds outside the budget review and appropriations process denied the President an important tool “to influence the policies of independent agencies.” *Id.* at 226 (quotation omitted).

The FTC possesses the accountability features that the Court noted were missing from the CFPB in *Seila Law*, and then some. In addition to the features referenced in *Seila Law*, the FTC has a powerful Chair who is fully subject to the President’s supervision. Given these existing mechanisms of presidential control over

the FTC, Article II does not demand an overturning of the removal restrictions that Congress—exercising its constitutional prerogative to structure executive agencies—enacted in establishing the FTC.

II. ASSERTION OF AT-WILL REMOVAL POWER BY THE PRESIDENT EN-CROACHES ON CONGRESS’S CONSTITUTIONAL AUTHORITY TO STRUCTURE THE FTC AS A BIPARTISAN, MULTI-MEMBER AGENCY.

A. Allowing At-Will Removal Would Fundamentally Threaten the Bipartisan, Multi-member Agency Structure that is Within the Congress’s Authority to Legislate.

As explained above, because Congress’s design of the FTC preserves adequate control for the President over the agency’s exercise of executive power, Article II does not require that the President be able to remove FTC commissioners at will. But the question presented here is not just a matter of construing the scope of the President’s Article II power. What is at stake is instead the “equilibrium established by our constitutional system” between two co-equal branches of government. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 638 (1952) (Jackson, J., concurring). Allowing the President to exercise at-will removal power over the FTC’s commissioners would encroach on Congress’s constitutional power to create and structure constitutional offices, upsetting the proper balance of power between the branches secured by the Constitution.

This Court has long recognized that Article I confers on Congress the authority to create and structure executive agencies. Through its Necessary and Proper Clause, Article I confers on Congress the authority to “make all Laws which shall be necessary and proper for carrying into Execution” its enumerated powers, U.S. Const. Art. I § 8, cl. 18, which include the authority to provide for constitutional offices that Congress may “establish[] by Law,” U.S. Const. Art. II, § 2, cl. 2. See *Myers*, 272 U.S. at 129 (Congress may structure executive agencies through “the establishment of offices” and “the determination of their functions and jurisdiction.”); *Free Enter. Fund*, 561 U.S. at 499 (“No one doubts Congress’s power to create a vast and *varied* federal bureaucracy.” (emphasis added)); *id.* at 515 (Breyer, J., dissenting) (Necessary and Proper Clause “affords Congress broad authority to ‘create’ governmental ‘offices’ and to structure those offices ‘as it chooses’” (quoting *Buckley v. Valeo*, 424 U.S. 1, 138 (1976) (per curiam))). Although the President has discretion under the Appointments Clause to nominate and appoint constitutional officers of the President’s choosing, Congress has the power to set “reasonable and relevant qualifications and rules of eligibility” of the individuals who may hold those offices and to “fix[] . . . the term for which they are to be appointed.” *Myers*, 272 U.S. at 129. See also *Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 397-98 (1995) (describing statutory qualifications as a valid “restriction imposed by one of the political branches upon the other”).

Just as Congress may not wield its authority in a manner that intrudes on the President’s discretion to

nominate and appoint officers of the United States, *Myers*, 272 U.S. at 127, so too must the President’s power yield to Congress’s legitimate choice of the structure of offices and the “reasonable and relevant qualifications” of the officers who hold them, *id.* at 129. Article II grants to the President the authority to “execute the laws,” but gives the President no power to override the qualifications for office or agency structure established by Congress. See *Seila Law*, 591 U.S. at 266 (Kagan, J., concurring in part and dissenting in part) (Article II “does not . . . give the President authority to decide what kinds of officers—in what departments, with what responsibilities—the Executive Branch requires.”); Caleb Nelson, *Must Administrative Officers Serve at the President’s Pleasure?*, NYU Democracy Project, <https://democracyproject.org/posts/must-administrative-officers-serve-at-the-presidents-pleasure> (Sept. 29, 2025) (“Congress is in charge of creating offices within the executive branch, and the Constitution does not give the President unilateral power to dictate who will fill those offices or what their authorities and duties will be.”).

The encroachment on congressional power at stake here is not just the familiar tension between the presidential removal power and Congress’s power to impose removal restrictions on officers. Rather, it is a full-scale incursion on Congress’s Article I authority to structure executive agencies. The sanctioning of presidential at-will removal power here would effectively negate Congress’s constitutional power to legislate the structure of the FTC as a bipartisan, multimember commission—a power that none appear to dispute. If the President were allowed to remove the FTC’s

commissioners at will, it would fundamentally alter the structure of the agency that Congress exercised its Article I powers to design. Congress created a bipartisan, multimember agency of which removal restrictions are an integral part.

Consider the following. Unconstrained by any restrictions on removal, the President would be able to fire commissioners because of their political affiliation; indeed, the President could fire all commissioners of the opposing political party, leaving only members of the President's party serving on the Commission. Although the President would be constrained by the FTC Act to fill the seats vacated by his removals with members not of his party, see 15 U.S.C. § 41 (“[N]ot more than three of the Commissioners shall be members of the same political party.”), that offers little comfort because the President may also choose simply not to nominate anyone to fill these roles. And there presumably would be no mechanism to force him to do so. See *Congressional Oversight of the White House*, OLC slip op. at 18, 2021 WL 222744, at *13 (Jan. 8, 2021) (“The President’s exclusive powers include the power[] to . . . nominate and appoint officers of the United States.”). Without the FTC Act’s removal provisions, there are no guardrails to prevent the Commission from becoming an entity that is no longer bipartisan in nature.

One might even reasonably infer this is happening now. President Trump fired Commissioners Slaughter and Bedoya—the two Democratic Commissioners on the Commission when President Trump took office—without offering any reason or cause, while leaving the

Republican Commissioners in place. Recent news reports indicate that the President is preparing to nominate a Republican to fill an anticipated vacancy in a Republican Commissioner seat, without any similar plans to fill the Commission's current vacant slot (or second vacant slot, should the President prevail in this case) that by statute must be filled by those who are not Republicans. Josh Sisco and Leah Nylen, *Trump to Name White House Aide Baasch as FTC Commissioner* (Oct. 29, 2025 at 5:09 PM), Bloomberg News, <https://www.bloomberg.com/news/articles/2025-10-29/trump-plans-to-tap-white-house-aide-baasch-as-ftc-commissioner>. Thus, despite the clarity of Congress's intent to structure the FTC as a multimember commission balanced across political parties, *supra* Part I.A., it is not at present constituted as such, and it is not clear when, if at all, the bipartisan character of the agency will be restored. If the President prevails in this action, future presidential administrations could follow the same approach. No longer needing to balance and consider competing viewpoints, an FTC led by a leader or leaders from a single political party would pose a risk of its investigations being driven by political whims rather than the long-term, bipartisan interests of the Commission in protecting consumers.

The elimination of the FTC Act's removal provisions would also threaten the multimember nature of the agency's structure. If at-will removal is sanctioned, there would be no legal barrier to the President removing all but one Commissioner who could serve as Chair and perform the functions of the FTC despite the vacancies in four of the five seats on the Commission. See 15 U.S.C. § 41 ("A vacancy in the Commission

shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.”). This would thus transform the agency from a bipartisan, multimember commission into a body of one, again in direct contradiction to the express will of Congress articulated plainly in the FTC Act. *Id.*

Thus, by firing Commissioner Slaughter without cause, the President contravened the will of Congress, as expressed in the FTC Act—not just its prescription of the circumstances of removal, but also its creation of the FTC fundamentally as a bipartisan, multimember commission. In taking such action, the President’s inherent Article II powers are at their “lowest ebb,” *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring), and the President “can rely only upon his own constitutional powers *minus any constitutional powers of Congress over the matter.*” *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) (emphasis added and quotation marks omitted).

As explained, Congress possesses its own constitutional powers over the matter: Article I gives Congress power to prescribe reasonable qualifications for office, and thereby to establish the structure of executive agencies. The President’s power to “take Care that the Laws be faithfully executed”—including through the exercise of an unenumerated power to remove constitutional officers—may not be construed so broadly as to encroach upon the constitutional domain reserved to Congress. See *Youngstown*, 343 U.S. at 638 n.4 (Jackson, J., concurring) (“President Roosevelt’s effort to remove a Federal Trade Commissioner was found to be contrary to the policy of Congress and impinging

upon an area of congressional control, and so his removal power was cut down accordingly” by the Court in *Humphrey’s*.); *Myers*, 272 U.S. at 85 (Holmes, J., dissenting) (“We have to deal with an office that owes its existence to Congress and that . . . depend[s] on Congress alone. . . . The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power.”).

“The Framers ‘viewed the principle of separation of powers as the absolute central guarantee of a just government.’” *PHH*, 881 F.3d at 187 (Kavanaugh, J., dissenting) (quoting *Morrison*, 487 U.S. 697 (Scalia, J., dissenting)). This Court has therefore strived mightily to ensure that “the carefully defined limits on the power of each Branch” are not “eroded.” *INS v. Chadha*, 462 U.S. 919, 957-58 (1983); *Free Enter. Fund*, 561 U.S. at 497-98. Properly observed here, the separation of powers requires recognizing that presidential removal power may not be exercised at the expense of Congress’s constitutional authority to structure the FTC as a bipartisan, multimember commission.

B. The FTC’s Bipartisan, Multimember Structure Fosters Deliberation and Dissent and Secures Stable Regulation Over the Economy.

In *amici*’s view, the FTC’s bipartisan, multimember structure has served the agency, regulated parties, consumers, and other stakeholders well for over one hundred years. This is principally because the

bipartisan structure ensures that important agency decisions are the subject of careful deliberation across party lines and serves as a check against drastic swings in agency policy driven by political winds. As then-Judge Kavanaugh wrote, “Multi-member independent agencies benefit from diverse perspectives and different points of view among the commissioners and board members. The multiple voices and perspectives make it more likely that the costs and downsides of proposed decisions will be more fully ventilated.” *PHH*, 844 F.3d at 184 (Kavanaugh, J., dissenting). Such deliberation—and critically, dissent—improve the quality of agency decision making and temper the influence of extreme positions.

In the words of one *amicus* and former Chair, the architects of the FTC believed “that decisions made by consensus through a collective body, rather than by a single agency head, would make for better policy. . . . Five independent decisionmakers, with a diversity of views and experiences, help ensure that the main issues in FTC matters are fully explored and weaknesses fully debated.” Edith Ramirez, *The FTC: A Framework for Promoting Competition and Protecting Consumers*, 83 Geo. Wash. L. Rev. 2049, 2052-53 (2015). Another former Chair, Timothy Muris, put it similarly, explaining that “[t]he give and take” of the FTC’s collaborative process “can improve the quality of [its] decisions, reports, and rules,” “particularly when contributions reach across party lines.” Timothy J. Muris, *More than Law Enforcement: The FTC’s Many Tools: a Conversation with Tim Muris and Bob Pitofsky*, 72 Antitrust L.J. 773, 773-860 (2005).

Amici can recall several instances (albeit largely nonpublic) where matters that originally held majority support among the Commission were eventually abandoned or significantly altered through the agency’s deliberative process. And dissents, especially those that accompany the agency’s adjudicative function, provide Congress, reviewing courts, and the public with alternative viewpoints to aid their understanding or oversight of the agency’s actions. See, e.g., *FTC v. Qualcomm Inc.*, 935 F.3d 752, 756 n.1 (CA9 2019) (favorably citing a dissent by former Commission Maureen Ohlhausen in staying district court order pending appeal); *FTC v. Qualcomm Inc.*, 969 F.3d 974, 982 (CA9 2020) (ultimately reversing district court’s order).

Although FTC Chairs exercise their substantial power to shape the regulatory and enforcement powers under the Presidents they serve, *supra* Part I.A., the agency’s bipartisan, multimember structure serves as a check on the possibility of any *undue* political influence. See Thomas B. Leary, Commissioner, Fed. Trade. Comm’n, *The Bipartisan Legacy*, 18 (June 21, 2005) (transcript available at https://www.ftc.gov/sites/default/files/documents/public_statements/bipartisan-legacy/050803bipartisanlegacy.pdf) (“The fact that I am only one of five Federal Trade Commissioners is both constraining and liberating. The constraining part is obvious. Absent recusals, it takes three votes to authorize affirmative action. The statutory restraints on single-party domination of the FTC, the staggered terms, and the politics of nomination and confirmation tend to promote some diversity of opinions. All commissioners,

including the chairman, have to take account of the views of others, whether they want to or not.”).

This has assured continuity and stability in the pursuit of the agency’s mission across presidential administrations and enhanced the legitimacy of the agency’s regulatory and enforcement actions—all to the benefit of American consumers. For example, the FTC’s victory over unlawful pay-for-delay agreements between brand and generic drug companies in *FTC v. Actavis, Inc.*, 570 U.S. 136 (2013), was initiated under Republican leadership, but ultimately resolved by this Court during the term of a Democratic Chair. So was the FTC’s successful challenge to a health care monopoly in *FTC v. Phoebe Putney Health System, Inc.*, 568 U.S. 216 (2013), as was the enforcement action filed against Amazon for deceptive practices under the Biden administration and settled in September by the Trump administration for \$2.5 billion, *FTC v. Amazon.com*, No. 23-cv-932 (W.D. Wash. Sept. 25, 2025). See also William Kovacic, *The Modern Evolution of U.S. Competition Policy Enforcement Norms*, 71 *Antitrust L.J.* 377, 428 (2003) (collecting additional examples of agency accomplishments that “resulted from initiatives pursued continuously across presidential administrations”).

Congress understood that it was crucial that the FTC provide stable and predictable guidance to regulated entities given its role in the nation’s economy. It therefore structured the agency to maintain a continuity “of experience” among the agency’s leadership, and it considered but rejected a proposal to situate the agency’s powers in a cabinet office, finding that

cabinet oversight would be too “varying [in its] policies” to provide the consistency demanded by the FTC’s mandate. S. Rep. No. 63-597, at 6, 11. This Court has recognized the importance of these same regulatory ideals, explaining that “unwarranted instability in the law” would “leav[e] those attempting to plan around agency action in an eternal fog of uncertainty.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024).

To put it differently, the FTC’s bipartisan, multi-member structure, which has endured for over a century, reflects Congress’s measured judgment regarding the structure best suited to achieve the important policy goals the agency was created to pursue. By undermining the bipartisan, multimember structure of the FTC, the President’s assertion of at-will removal power also threatens Congress’s efforts to ensure that FTC’s decision making remains reasoned and deliberative. The President’s assertion of at-will removal power over a minority commissioner who does not hold the position of Chair threatens to eliminate the debate and dissent within the Commission that has been vital to the FTC’s most important regulatory and enforcement actions.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Federal District Court for the District of Columbia.

Respectfully submitted,

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