

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.*,

Respondents.

On Writ of Certiorari Before Judgment to the United
States Court of Appeals for the D.C. Circuit

**BRIEF OF AMICUS CURIAE THE REPORTERS
COMMITTEE FOR FREEDOM OF THE PRESS
IN SUPPORT OF RESPONDENT**

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INTEREST OF AMICUS CURIAE¹

Amicus the Reporters Committee for Freedom of the Press (“Reporters Committee”) is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970, when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

As an organization that defends the rights of journalists and news organizations, *amicus* has a strong interest in ensuring that the powers of federal regulatory agencies are not misused to retaliate against the press—a risk compounded when agencies face direct political pressure from the White House.

¹ Pursuant to Supreme Court Rule 37, counsel for *amicus curiae* states that no party’s counsel authored this brief in whole or in part; no party or party’s counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than the *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

“The Government’s power to censor the press was abolished so that the press would remain forever free to censure the Government.” *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring). But because the business of informing the public remains a business, federal regulators exercise significant authority over the economics of the news industry. See *Associated Press v. NLRB*, 301 U.S. 103, 132 (1937) (labor policy); *Associated Press v. United States*, 326 U.S. 1, 20 (1945) (competition policy). Predictably, agencies face temptation to leverage that power to achieve goals the First Amendment forbids. See *Media Matters for Am. v. FTC*, No. 25-5302, 2025 WL 2988966, at *4 (D.C. Cir. Oct. 23, 2025) (FTC inquiry threatened to “suppress speech and journalism”); *SEC v. McGoff*, 647 F.2d 185, 191 (D.C. Cir. 1981) (SEC inquiry must “avoid unnecessary encroachment upon [a journalist’s] activities and associations as a newspaper publisher”); *Passaic Daily News v. NLRB*, 736 F.2d 1543, 1558–59 (D.C. Cir. 1984) (NLRB order “invite[d] the Board . . . to become directly involved with [a newspaper’s] exercise of editorial control”). And predictably, too, the temptation redoubles when accompanied by pressure from the White House.

Agency independence therefore provides an important safeguard for the freedom of the press. Few (if any) administrations have hesitated to urge regulators to help shape news coverage of the President’s agenda. But Congress has structured many of the agencies whose powers might otherwise provide a means of retaliating against the news media

as “independent agencies”—a group “commonly understood to include, among many others, the CFTC, the FCC, the Federal Reserve, the FTC, FERC, the NLRB, and the SEC,” whose leadership are insulated against summary removal by the President. *Free Enter. Fund v. PCAOB*, 537 F.3d 667, 695 (D.C. Cir. 2008) (Kavanaugh, J., dissenting), *aff’d in part, rev’d in part, and remanded*, 561 U.S. 477 (2010). And thanks to that measure of independence, when President John F. Kennedy—to take one example—urged the FCC to punish NBC for reporting he thought biased, Chairman Newton Minow instead told an aide the President was “lucky” to have a chair “who knew not to pay attention to the president when the president was angry.” Newton N. Minow, *A Medal After Ignoring Presidential Orders*, Chi. Trib. (Dec. 7, 2016), <https://perma.cc/89FM-JYHM>.²

In this case, the government asks this Court to ensure regulators *must* pay attention to the President when the President is angry—by stripping from Congress the power to insulate agencies like the FTC, the FCC, and more, against direct political control. The result would be to ratchet up substantially the risk of regulatory retaliation against the news media for coverage the President finds unfair, and this Court should reject the invitation. Because Congress’s power to structure independent agencies plays an important role in protecting First Amendment values—including the freedom of the press—the decision under review should be affirmed.

² The administration now takes the position that the FCC was never in fact an independent agency, but it has traditionally been understood to be one. *See FCC v. Consumers’ Research*, 606 U.S. 656, 708 (2025) (Kavanaugh, J., concurring).

ARGUMENT

I. Agency independence plays an important role in safeguarding freedom of the press.

The mandates of many federal regulatory agencies sweep in the day-to-day business of news organizations. The Federal Trade Commission scrutinizes their sales practices for unfair methods of competition. *See, e.g., Sarah Scire, The End of “Click to Subscribe, Call to Cancel”? One of the News Industry’s Favorite Retention Tactics Is Illegal, FTC Says*, Nieman Lab (Nov. 15, 2021), <https://perma.cc/5KED-4C8B>. The Securities and Exchange Commission examines their financial disclosures. *See, e.g., Jacques Steinberg, S.E.C. Inquiry on Circulation of Newspapers Said to Widen*, N.Y. Times (Oct. 13, 2004), <https://perma.cc/T4U4-8A55>. The National Labor Relations Board monitors their union elections. *See Associated Press*, 301 U.S. at 132. And the Federal Communications Commission, of course, exercises substantial authority over broadcast airwaves and has claimed the authority to police content by licensees, including news reporting. *See generally* 42 U.S.C. § 151; The FCC and Speech, Federal Commc’ns Comm’n at 1–2 (Aug. 31, 2022), <https://perma.cc/3VZ5-MDHK>. But while a news organization may have “no special immunity from the application of general laws” or the attention of the agencies tasked with enforcing them, *Associated Press*, 301 U.S. at 132, it is equally true that a regulator’s powers—put to improper purposes—can undermine “the full freedom and liberty of [the press] to publish the news,” *id.* at 133.

The FTC’s consumer-fairness mission, for instance, can be distorted to enforce the government’s vision of editorial fairness instead. *See* Press Release, Fed. Trade Comm’n, Statement of Federal Trade Commission Chairman Timothy J. Muris on the Complaint Filed Today by MoveOn.org (July 19, 2004), <https://perma.cc/X6X9-H8VM> (noting complaint asking the FTC to judge whether Fox News’s use of the slogan “Fair and Balanced” is a deceptive trade practice); *Media Matters for Am. v. FTC*, No. 25-5302, 2025 WL 2988966, at *4. The SEC’s hunt for financial wrongdoing—stretched too far—can chill the work of financial journalists. *See* Kara Scannell, *SEC Adopts Subpoena Policy for Media in Wake of Dispute*, Wall St. J. (Apr. 13, 2006), <https://perma.cc/KWQ4-XCJP>. The NLRB’s role in supervising fair labor standards can brush up against a news organization’s freedom to establish editorial standards. *See Newspaper Guild of Greater Phila., Loc. 10 v. NLRB*, 636 F.2d 550, 560 (D.C. Cir. 1980); *McDermott v. Ampersand Pub., LLC*, 593 F.3d 950, 962 (9th Cir. 2010). And the FCC must take care that its regulatory actions not cross the line into “censorship.” 47 U.S.C. § 326.

On each front, pressure from the White House magnifies the risk that these regulatory authorities can trench on freedom of the press. The dynamic has perhaps been most pronounced at the FCC, where President after President has pushed the Commission to target perceived opponents in the news media. Under President Franklin Delano Roosevelt, for instance, Chairman Larry Fly “deftly handled a presidential desire with authoritarian overtones” by

slow-walking the President’s drive for restrictions on newspaper ownership of radio stations—a push motivated by Roosevelt’s belief that the newspaper industry was unfair to his candidacy—and warning the President against the appearance of “punitive political considerations towards the press.” Daniel R. Ernst, *The Shallow State: The Federal Communications Commission and the New Deal*, 4 U. Penn. J. L. & Pub. Affs. 403, 452 (2019); *see also id.* at 455 (emphasizing Fly’s willingness to “challeng[e] the influence of the president’s confidantes”). As already referenced above, President Kennedy—after seeing an NBC report that “had featured steel executives bitterly attacking Kennedy”—called Chairman Minow to rant, “Did you see how those guys lied about me? Outrageous! Do something about it!” Minow, *supra*. But Minow refused to act. *See id.*

President Nixon, for his part, encouraged his political allies to challenge the broadcast licenses of stations owned by the *Washington Post*—but the FCC “was not so malleable as the Nixon partisans had hoped . . . and the licenses were renewed.” Bill Mitchell, *A Remembrance of Courage*, Poynter (Aug. 20, 2002), <https://bit.ly/3JLjwQK>. And Chair Richard Wiley, who served from 1974 to 1977, would later insist that, “having had personal knowledge of the views and the character of every FCC Commissioner who has served during the past 20 years, I cannot believe that any of these men and women would have taken instructions from the White House, especially in a politically-charged area that is fraught with extremely serious first amendment implications.” Richard E. Wiley, “*Political*” *Influence at the FCC*, 1988 Duke L.J. 280, 284 (1988).

That history of “resist[ing] illiberal policies emanating from the president,” Ernst, *supra*, at 408, was made possible in part because “the FCC is an independent agency, whose commissioners may be removed only for cause,” *Consumers’ Research v. FCC*, 88 F.4th 917, 937–38 (11th Cir. 2023) (Newsom, J., concurring).³ And Congress structured other agencies whose powers might readily be misused around similar accountability mechanisms—constituting regulators like the FTC, NLRB, and SEC as independent, multimember boards rather than direct extensions of the White House. The hope, in each case, was that the agencies would “be nonpartisan,” would “act with entire impartiality,” and would “exercise the trained judgment of a body of experts” rather than pursue the private preferences of the President. *Humphrey’s Ex’r v. United States*, 295 U.S. 602, 624 (1935).

To tear down those guardrails now would run a grave risk that regulators—faced with the threat of summary removal by the President—will bow, going forward, to “punitive political considerations towards the press.” Ernst, *supra*, at 452. And the fear, in turn, that any coverage that displeases the President could seed regulatory retaliation down the road would chill the ability of the news media to serve as the “powerful antidote to any abuses of power by governmental officials” that the Constitution envisions. *Mills v. Alabama*, 384 U.S. 214, 219 (1966). In a world

³ The FCC’s governing statute is not express on the question, but the restriction has long been inferred from context and the agency’s structure. See *In re Aiken County*, 645 F.3d 428, 447 (D.C. Cir. 2011) (Kavanaugh, J., concurring).

without regulators who know “not to pay attention to the president when the president [is] angry,” a free press and the public’s right to know ultimately lose out. Minow, *supra*. To avoid just that outcome, *amicus* respectfully urges this Court to affirm the decision under review.

CONCLUSION

For the foregoing reasons, *amicus* respectfully urges this Court to affirm the decision under review.

Respectfully submitted,

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