No. 25A264

IN THE

Supreme Court of the United States

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

Applicants,

v.

REBECCA KELLY SLAUGHTER, *et al.*,

Respondents.

ON APPLICATION TO STAY THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND REQUEST FOR ADMINISTRATIVE STAY

OPPOSITION TO APPLICANTS' REQUEST FOR AN ADMINISTRATIVE STAY

AARON CROWELL
GREGORY A. CLARICK
DAVID KIMBALL STANLEY
Clarick Gueron Reisbaum LLP
41 Madison Avenue, 23rd Floor
New York, New York 10010

LAURENCE M. SCHWARTZTOL
DEMOCRACY AND RULE OF LAW CLINIC,
HARVARD LAW SCHOOL
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138

AMIT AGARWAL
Counsel of Record
BEAU TREMITIERE
PROTECT DEMOCRACY PROJECT
2020 Pennsylvania Avenue NW,
Suite 163
Washington, DC 20006
(202) 579-4582
amit.agarwal@protectdemocracy.org

BENJAMIN L. BERWICK
15 Main Street, Suite 312
Watertown, Massachusetts 02472

Counsel for Respondents

385333

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

Applicants Donald J. Trump, Andrew N. Ferguson, Melissa Holyoak, and David B. Robbins ask this Court to stay a July 17, 2025, order of the U.S. District Court for the District of Columbia declaring unlawful President Trump's purported termination of Respondent Rebecca Kelly Slaughter as a Commissioner of the Federal Trade Commission ("FTC") and enjoining Ferguson, Holyoak, and Robbins from effectuating that termination. Applicants also seek an administrative stay while this Court resolves their stay application. Respondent respectfully requests that this Court deny Applicants' request for an administrative stay and set a deadline for Respondent to oppose their stay application.

ARGUMENT

President Trump's attempt to terminate Commissioner Slaughter without cause "def[ied] binding, on-point, and repeatedly preserved Supreme Court precedent," namely, *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and the numerous decisions of this Court that "expressly refused . . . to reconsider" it. App.3a. Not only did *Humphrey's Executor* "involve[] the exact same provision of the FTC Act that Ms. Slaughter seeks to enforce here," but also, as the District Court found in granting summary judgment, this case presents "facts [that] almost identically mirror those of *Humphrey's Executor*." App.54a. This Court should not grant an administrative stay where the court below simply "follow[ed] the case which directly controls," as it was required to do. *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quotation marks omitted).

Moreover, in seeking an administrative stay, Applicants identify no harm that will result from Commissioner Slaughter's continued service while their stay application is pending. Applicants claim only that "[a]n administrative stay would . . . avoid the kind of disruption that reinstated officers have caused in previous cases," asserting that members of the Merit Systems Protection Board and Consumer Products Safety Commission took "unilateral" actions and "nullif[ied]" agency decisions after their terminations were enjoined, *see* Application at 24-25, 28. But it is precisely because Commissioner Slaughter can take no such actions that the Court of Appeals held that the equities of this stay application "differ[] in material respects" from those in *Trump v. Wilcox*, 145 S. Ct. 1415 (2025), and *Trump v. Boyle*, 145 S. Ct. 2653 (2025). *See* App.10a.

Specifically, in *Wilcox* and *Boyle*, the rulings below "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," App.12a; indeed, Applicants assert that those agencies did precisely that, *see* Application at 24-25. Here, however, Commissioner Slaughter is the sole Democratic member on a Commission with a three-Republican majority; thus, under Commission rules, "there is no reasonable prospect that returning Ms. Slaughter to her position will result in any meaningful regulatory action opposed by the Commission majority." App.12a, 13a & n.2.

In sum, "[i]n a multi-member independent agency, no single commissioner or board member can *affirmatively* do much of anything," but minority members can be a "built-in monitoring system" that "alerts Congress and the public at large that the

agency's decision might merit closer scrutiny." *PHH Corp. v. CFPB*, 881 F.3d 75, 183-85 (D.C. Cir. 2018) (Kavanaugh, J., dissenting).[1] Applicants' failure to identify any threat posed by Commissioner Slaughter's service during the pendency of this stay application should be fatal to their request for an administrative stay.

Finally, as Respondent's briefing in opposition to the Application will detail, an administrative stay is inappropriate because the underlying stay application should also be denied. As the Court of Appeals explained in denying Applicants' motion below, Applicants are "not likely to succeed on the merits of [their] appeal because Supreme Court precedent expressly recognizes the constitutionality of 15 U.S.C. § 41's removal protections," and, while this Court concluded that the equities favored a stay in *Wilcox* and *Boyle*, "the equitable calculus in this case differs in relevant respects" for the reasons stated above. App.10a.

CONCLUSION

Respondent respectfully requests that this Court deny Applicants' request for an administrative stay and set a deadline for Respondent to answer Applicants' stay application.

[1] Yesterday, for example, the FTC filed a complaint against a pet cremation company to prevent it from enforcing noncompete agreements against its employees. The action was approved by the three majority Commissioners. Commissioner Slaughter dissented, stating that, in her view, the filing "does nothing to address the structural problems in the underlying market," and urging broader action. *See FTC Takes Action to Protect Workers from Noncompete Agreements*, Fed. Trade Comm'n (Sep. 4, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-takes-action-protect-workers-noncompete-agreements. This is not "chaos." *See* Application at 25.

Respectfully Submitted,

/s/ Amit Agarwal

AARON CROWELL
GREGORY A. CLARICK
DAVID KIMBALL STANLEY
CLARICK GUERON REISBAUM LLP
41 Madison Avenue, 23rd Floor
New York, New York 10010

LAURENCE M. SCHWARTZTOL
DEMOCRACY AND RULE OF LAW CLINIC,
HARVARD LAW SCHOOL
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138

AMIT AGARWAL
Counsel of Record
BEAU TREMITIERE
PROTECT DEMOCRACY PROJECT
2020 Pennsylvania Avenue NW,
Suite 163
Washington, DC 20006
(202) 579-4582
amit.agarwal@protectdemocracy.org

BENJAMIN L. BERWICK
15 Main Street, Suite 312
Watertown, Massachusetts 02472

Counsel for Respondents