

Humphrey's Executor Overturned

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On June 29, 2026, the Supreme Court issued a pair of decisions addressing the constitutionality of for-cause removal protections—*Trump v. Slaughter* and *Trump v. Cook*.¹ *Slaughter* held that the heads of agencies exercising executive power must be accountable to the president (*i.e.*, they cannot have removal protections), while *Cook* identified the Federal Reserve as an exception (perhaps even a unique exception) to that rule based on the long historical tradition of national-bank independence.

I. *Trump v. Slaughter*

Slaughter held that the president can fire without cause the heads of agencies that exercise executive power, overturning a 1935 case called *Humphrey's Executor*.² Chief Justice John Roberts, writing for a 6-3 majority, explained that the Framers deliberately vested all executive power in a single president.³ Removal protections frustrate this design by allowing officers other than the president to “exercise [the president’s] power against his wishes.”⁴

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¹ *Trump v. Slaughter*, No. 25-332, 2026 WL 1855612 (U.S. June 29, 2026); *Trump v. Cook*, No. 25A312, 2026 WL 1855613 (U.S. June 29, 2026).

² *Slaughter*, 2026 WL 1855612 at *5-6 (discussing *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935)); *see also id.* at *15 (“If anything more *is* left of *Humphrey's*, we overrule it.”).

³ *Id.* at *7.

⁴ *Id.* at *9.



The majority then explained that, because the FTC’s powers—which include the power to define substantive legal rules, investigate businesses, and bring cases on behalf of the United States—“lie[] at the very core of executive authority,” whether the FTC’s removal protections are unconstitutional was “not a close case.”⁵

The majority concluded by emphasizing that because the FTC’s expansive powers are clearly executive in nature, it had no occasion to define the contours of executive power.⁶ That said, as Justice Sonia Sotomayor noted in dissent, dozens of independent agencies carry out functions similar to the FTC and are potentially affected by the Court’s decision.⁷

Justice Neil Gorsuch’s concurrence asked whether Congress would have delegated such expansive powers to agencies such as the FTC had it known that those agencies would be subject to unfettered presidential control.⁸ He observed that “allowing Presidents to control not only executive functions, but also vast new reservoirs of legislative and judicial powers, risks inviting exactly what those who framed our Constitution feared.”⁹ He urged the Court to rein in that power under the “major questions” and similar doctrines.¹⁰

In dissent Justice Sotomayor noted that without removal protections many other structural features of “independent” agencies, like bipartisan-appointment requirements, lose their force.¹¹ Though agencies such as the FTC and SEC were designed to have multi-member, bipartisan, and independent leadership (theoretically allowing the agency’s experience and expertise to guide decisions),¹² many are currently operating with one or two commissioners, both from the same party. These concerns highlight a question

not raised in *Slaughter*: are removal protections severable from a particular agency’s authorizing statute, or is there an argument that such agencies were not legally constituted at all?

II. *Trump v. Cook*

In a 5-4 decision, *Cook* addressed removal protections for Governors of the Federal Reserve System.¹³ The case primarily concerned whether courts can review a president’s determination of cause (they can), what showing of cause is required (a substantial one), and what procedural steps are necessary before a Governor can be fired (the Governor is entitled to at least notice and an opportunity to respond).¹⁴

Though the government did not contest the constitutionality of the Federal Reserve’s removal protections,¹⁵ Justice Clarence Thomas wrote in dissent that the Federal Reserve’s removal protections are unconstitutional because the Federal Reserve exercises executive power.¹⁶ The majority disagreed, explaining that the Framers long recognized the importance of insulating a national bank from political influence, and the Federal Reserve is sufficiently similar to the First and Second National Banks to fit the same rationale.¹⁷ The Framers “knew from experience . . . the calamities that could arise from even the suspicion of political manipulation of monetary policy.”¹⁸

Though the *Cook* majority did not directly address *Slaughter*, the key for the majority seems to be historical pedigree. That the Framers understood the importance of an independent National Bank at the same time they were deciding to vest all executive power in a single president warrants treating the

⁵ *Id.* at *17.

⁶ *Id.* at *18.

⁷ *Id.* at *46 (Sotomayor, J., dissenting); *see also Seila L. LLC v. CFPB*, 591 U.S. 197, 276 (2020) (Kagan, J., dissenting in relevant part) (noting as many as 48 agencies with for-cause removal protections).

⁸ *Id.* at *22, *28.

⁹ *Id.* at *27 (Gorsuch, J., concurring).

¹⁰ *Id.* at *28-29.

¹¹ *Id.* at *46 (Sotomayor, J., dissenting).

¹² *See id.* at *46 (Sotomayor, J., dissenting).

¹³ *Cook*, 2026 WL 1855613 at *7.

¹⁴ *Id.*

¹⁵ *Id.* at *14.

¹⁶ *Id.* at *29 (Thomas, J., dissenting).

¹⁷ *Id.* at *14.

¹⁸ *Id.* (internal quotations omitted)

Federal Reserve—and perhaps only the Federal Reserve—differently than other agencies.

III. Implications

The decisions increase the opportunity for significant policy shifts during administration changes, as presidents can replace existing agency heads from the opposing party with agency heads who share the same priorities as the president. There may be further changes to agency structure as courts consider how the lack of removal protections interacts with other features such as bipartisan appointment requirements and fixed terms.

The decisions will also increase challenges to agency action in the short term, as litigants leverage the concerns raised by Justice Gorsuch and Justice Sotomayor. Litigants will argue that particular delegations of power are not severable from unconstitutional removal protections given that the removal protections were central to an independent agency’s design.

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