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BLOG

President Trump Fires Remaining Democratic FTC Commissioners

MARCH 26, 2025

On March 18, President Donald Trump fired the Federal Trade Commission's two remaining Democratic commissioners, Alvaro Bedoya and Rebecca Kelly Slaughter, in an unprecedented move that will likely be litigated to the Supreme Court. The Democratic commissioners quickly pledged to challenge their removals. However, while the courts review the legality of the President's removals, parties subject to adverse action by the Commission may seek to use the legal uncertainty to challenge the legality of the Commission's actions.

BACKGROUND ON THE COMMISSION

The FTC is tasked, alongside the Department of Justice, with the dual missions of antitrust and consumer protections. The FTC is designed to be bipartisan, comprised of five commissioners, with a maximum of three from the same political party. Generally, commissioners serve staggered seven-year terms and may be removed by the President for cause, i.e., for inefficiency, neglect of duty, or malfeasance in office.

Although there is no legal requirement that a majority of the commissioners be members of the same party as the President, traditionally, commissioners resign if necessary to allow the President to appoint a commissioner that tips the majority of the Commission to the side of the President's party. Consistent with this tradition, the former Chairperson, Lina Khan, resigned on January 21, 2025, leaving the Commission split 2-2 on party lines until the Senate confirmed President Trumps's nominee, Mark Meador. Although a 2-2 split would not permit the Democratic commissioners to take affirmative action without the support of at least one Republican commissioner, it would permit the Democratic commissioners to block actions requiring a majority vote of the Commission, such as bringing new cases or promulgating or rescinding regulations. Instead of waiting for the Senate to confirm his nominee to gain a majority, President Trump instead fired the two remaining Democratic commissioners.

PRESIDENT TRUMP'S DECISION HAS THE POTENTIAL TO OVERTURN 90 YEARS OF PRECEDENT

Following their firings, both Bedoya and Slaughter released statements claiming the firings are illegal and vowed to seek reinstatement in court. Their lawsuits likely will require the Supreme Court to reckon with its seminal decision in *Humphrey's Executor v. United States,* 295 U.S. 602 (1935), that prevents Presidents from removing members of the Government's quasi-legislative and quasi-judicial agencies, like the FTC, except "for cause." In recent years, the Supreme Court has pulled back on Congress's power to restrict the President's ability to remove officers without cause, without overruling *Humphrey's Executor*. One such example is the Court's recent ruling in *Seila Law LLC v.*

Consumer Financial Protection Bureau, 591 U.S. 197 (2020) in which a 5-4 majority held that allowing for the removal of the Consumer Financial Protection Bureau's single director only "for cause" was an unconstitutional restraint on the President's executive power. President Trump's firing of the Democratic commissioners will likely provide a vehicle for the Supreme Court to resolve whether the 90-year-old *Humphrey's Executor* remains good law and whether a president may remove FTC commissioners without cause.

PRACTICAL CONSIDERATIONS

The firing of the two remaining Democratic commissioners now means that the new all-Republican Commission will be able to more quickly enact the agenda of Republican Chairman Andrew Ferguson. This may permit the Commission to quickly reverse FTC rules and start or stop cases that the new Republican majority opposes. Examples of vulnerable rules include the FTC's prohibition of non-competes that the Biden-administration FTC promulgated over the objection of Republican commissioners.

Any actions by the currently constituted Commission, however, will be subject to legal uncertainty. Parties objecting to FTC actions may challenge the FTC's actions as illegal on the grounds that the fired commissioners are not permitted to vote on the action. Conversely, if the fired commissioners are temporarily reinstated by a court, any actions depending on their votes could similarly be subject to challenge. This may create significant regulatory uncertainty for parties subject to repealed FTC rules or other actions.

Clients impacted by FTC actions should continue to stay tuned for updates and carefully evaluate the potential regulatory risks of FTC actions. Clients are also encouraged to reach out to attorneys at Winston & Strawn, LLP with any questions they may have with the changing antitrust landscape. Winston attorneys are experienced in counseling clients before the FTC.

Law Clerk Jasmine Bovia also contributed to this blog post.

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