***Slaughter*, *Cook*, and carving up the administrative state: How the Supreme Court's recent decisions could change energy and environmental regulation**

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For nearly a century, *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), stood for the proposition that Congress could shield independent agencies from at-will presidential removal. Congress built the modern administrative state accordingly, creating a wide range of independent agencies by statutorily prohibiting the president from firing those agencies' leaders absent good cause.

Earlier this year, the Supreme Court changed all of that with two decisions, *Trump v. Slaughter*, 609 U.S. ___, 146 S. Ct. 2283 (2026), and *Trump v. Cook*, 609 U.S. ___, 146 S. Ct. 2234 (2026), which are likely to have significant effects on energy and environmental regulators.

The *Slaughter* of agency independence (plus *Cook*'s caveat)

The story starts with *Humphrey's Executor*, where the Court addressed President Franklin Roosevelt's removal of Federal Trade Commission (FTC) Commissioner William Humphrey. The FTC Act provided that commissioners could be removed only for "inefficiency, neglect of duty, or malfeasance in office." The Court held that restriction constitutional; the president lacked unlimited removal authority over FTC commissioners.

In *Trump v. Slaughter*, the Court overruled that decision, holding that the FTC's for-cause removal protection violates the separation of powers. The majority opinion, authored by the Chief Justice, found that the FTC "unquestionably exercises executive power" and that officers exercising such power must remain removable by the president, at will.

That same day, in *Trump v. Cook*, the Court declined to stay an injunction protecting the Federal Reserve Board's Governor Lisa Cook from removal. The majority opinion (again authored by the Chief Justice) held that the government failed to show a likelihood of success because the Federal Reserve, unlike the FTC, had distinctive historical status and statutory independence of a sort that safeguarded its leader from at-will removal.

How will removing removal protections affect environmental and energy agencies?

As the *Slaughter* dissent recognized, there are at least three independent energy and environmental agencies that could be affected by *Slaughter*—the Federal Energy Regulatory

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Commission (FERC), the Nuclear Regulatory Commission (NRC), and the Chemical Safety Board (CSB).

- FERC is an "independent agency that regulates the interstate transmission of natural gas, oil, and electricity," and "natural gas and hydropower projects."
- The NRC "formulates policies, develops regulations governing nuclear reactor and nuclear material safety, issues orders to licensees, and adjudicates legal matters."
- The CSB is "an independent nonregulatory federal agency . . . charged with investigating" accidental, but harmful chemical releases.

Slaughter does not expressly say it applies to those agencies. Litigants thus may have room to argue that any individual agency is more like the Federal Reserve (to which *Cook* applies) instead of like FTC (to which *Slaughter* applies). Until the judiciary resolves such disputes, however, even just the threat of termination will offer the president significant power over those agencies, in at least three ways.

Firings may cause administration-to-administration shifts in policy

Slaughter dramatically shifts power away from (previously independent) agencies to the president. With every administration change, new administrations can install leaders of their choice, who share and are prepared to implement their vision—even if that vision is an about-face from the prior administration.

If that sort of chaos sounds familiar to energy and environmental lawyers, it is because two of the most powerful agencies in those spaces—the Department of Energy (DOE) and the Environmental Protection Agency (EPA)—are *not* independent agencies and therefore were *not* protected by *Humphrey's Executor* even before *Slaughter* was decided. Administration-to-administration swings in policy in those agencies have become the rule rather than the exception. Since "Day One," for example, President Trump has been directing the DOE to reverse a variety of Biden-era policies. *See* U.S. Department of Energy, *The State of American Energy* (last visited Aug. 11, 2026). Trump's EPA is no different, repealing prior administrations' rules and findings like the greenhouse gas endangerment finding, amendments to the Mercury and Air Toxics Standards for power plants, and more.

Slaughter will likely *extend* that administration-to-administration chaos to other energy and environmental agencies like FERC and the NRC. Indeed, *even before* the Supreme Court decided *Slaughter*, Trump decided he wanted to change the direction the NRC was going, so he fired Commissioner Christopher Hansen. *See* Peter Behr, E&E News, *Trump firing of NRC commissioner jars agency's leadership* (June 17, 2025).

That does not necessarily mean presidents will fire the entirety of each commission. Both FERC and the NRC have statutory bipartisanship requirements, which means they can have at most three of five commissioners from any political party, so the key is who sits in the third seat—not

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the fourth and the fifth. The NRC, moreover, operates in an arena where democrats and republicans are frequently aligned. *See* Rebecca Leppert et al., Pew Research Center, *Support for expanding nuclear power is up in both parties since 2020* (Oct. 16, 2025). Indeed, the commissioner Trump fired had served on the NRC under *both* Trump and Biden in the past. Behr, *supra*. That obviously does not mean there will not be *any* administration-to-administration shifts, but it could make them somewhat less dramatic.

Influence: Even without firings

Even without firing anyone, the *threat* of termination gives the president significant control over sitting commissioners. That will include power not just over agency rulemakings, but also over *adjudications*, including the imposition of civil penalties and other sanctions. As some commentators have observed, such influence has the potential to threaten due process. *See* Eric Schnapper, Bloomberg Law, *Trump's New Power to Fire Board Members Threatens Due Process* (July 9, 2026).

Deregulation through eliminating an agency's quorum

Finally, the president's power to fire—and to decline to appoint new commissioners—is, like the power to tax, a "power to destroy." *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819). The CSB is a good example. It has only two seats filled, both by democrats, with three vacant seats. That leaves the agency *without a quorum* to operate. And there is no prospect of a quorum being restored—the Trump administration has adopted the view that the agency should be abolished, so Trump is unlikely to appoint new commissioners. *See* Safety + Health, *Congress approves bill that includes Chemical Safety Board funding* (Jan. 20, 2026); Jeff Johnson, Chemical & Engineering News, *White House moves to kill chemical safety board, despite industry support* (July 17, 2025). Under *Slaughter*, presidents could conceivably leave any agency in the same place by firing a majority of its commissioners.

Slaughter gives the president significant, new power to control and influence administrative policy—or even to dismantle agencies. And some still believe it did not go far enough. Justice Gorsuch, for example, sees placing independent agencies back under presidential control as an unsatisfying "start" to his deregulatory vision, because now *the president* "enjoys control" over the *legislative* and *judicial* powers exercised by those agencies. In Justice Gorsuch's view, "the only sure path is to finish the journey we start today and restore legislative and judicial powers to where they belong: in Congress and the courts."

Exactly how, whether, and when *Slaughter* will affect the operation of individual agencies and the administrative state is sure to be litigated in coming years. In the meantime, the president holds a significant threat over so-called "independent" agency heads—including those at FERC, the NRC, and CSB: One wrong move, and you're fired.

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