

Supreme Court poised to empower Trump to fire independent regulators without cause

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On Monday, the US Supreme Court heard oral arguments in a case that, if decided in Trump's favor, would vest within the White House the power to remove independent regulatory agency commissioners and members of boards created by Congress without cause.

The case heard Monday has far-reaching consequences for the management of the capitalist state. It directly concerned whether President Donald Trump can fire Rebecca Slaughter, a Democratic member of the Federal Trade Commission who does not support Trump's agenda and whom Trump fired earlier this year.

For 90 years, the courts have followed the unanimous 1935 ruling in *Humphrey's Executor v. United States* which held that the president can only fire heads or board members of independent agencies, such as a member of the Federal Trade Commission, for "inefficiency, neglect of duty, or malfeasance in office."

Trump's lawyers have never claimed that Slaughter was guilty of "inefficiency, neglect of duty, or malfeasance in office." They have instead advanced arguments based on the ultra-right "unitary executive theory" which claim that Article II of the Constitution vests within the presidency immense power to rule over all "executive" decisions, including the hiring or firing of the members and heads of independent agencies specifically created by Congress so as to not be under the same White House purview as departments of the executive branch.

The Court's ruling will affect dozens of agencies that regulate and mediate large sections of the US economy, including transportation, finance, nuclear energy and communications. Agencies potentially impacted by the overturning of *Humphrey's Executor* include the

National Labor Relations Board (NLRB), the Consumer Product Safety Commission (CPSC), Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), Federal Communications Commission (FCC), Federal Energy Regulatory Commission (FERC), and Nuclear Regulatory Commission (NRC).

These agencies serve a crucial role in the maintenance of the capitalist state. The first such agencies emerged in the midst of sharpening class conflict following the Civil War and the expansion of capitalism throughout the United States. During this period, as railroads crisscrossed the country and factories began springing up throughout the industrial Midwest, Congress began to create new mechanisms to regulate capitalism in the interests of the ruling class.

In 1887, 10 years after the Great Railroad Strike and one year after the Haymarket frame-up, Congress created the first so-called independent regulatory agency through the Interstate Commerce Act in 1887. Under conditions where rail barons like Jay Gould and Cornelius Vanderbilt wielded enormous monopoly power, the Interstate Commerce Commission (ICC) acted as a stabilizer between rival capitalist dynasties, not a neutral arbiter protecting the public or workers.

To this day, agencies such as the NLRB or the Consumer Financial Protection Bureau are touted by capitalist politicians and elements of the pseudo-left as mechanisms of reform, or independent and bipartisan neutral bodies capable of protecting the interests of workers. In reality, agencies such as the NLRB, often working with union bureaucracies, are used to suffocate strikes and workers' militancy and channel the class struggle into the dead end of legalistic processes that do not challenge the power of the capitalist state.

Today, under conditions of inequality not seen in a

century, in which a tiny handful of oligarchs dictate the policies in both parties, the nominal independence of some of these agencies is no longer to be tolerated. The dictatorship of the oligarchy is reflected in the structure of the state itself. Congress, the “people’s chamber”, is increasingly sidelined and ignored as more power is vested in the executive branch through a bought-and-paid-for Supreme Court.

While both parties have sought to empower the executive branch over all others in recent decades, the second Trump administration is of a qualitatively different character. With the help of the Supreme Court and its shadow docket, Trump has fired members of the NLRB, the Consumer Product Safety Commission and other independent agencies. In January, the Supreme Court is set to hear arguments over Trump’s efforts to fire Lisa Cook as a governor of the Federal Reserve.

During Monday’s hearing the liberal minority raised several objections to arguments advanced by Solicitor General John D. Sauer, who was arguing on behalf of Trump administration. Justice Elena Kagan warned that overturning the *Humphrey* precedent would create a “President with control over everything, including over much of the law-making that happens in this country.”

Justice Sonia Sotomayor bluntly stated, “Neither the King nor parliament nor prime ministers, England at the time unqualified removal power,” noting that the “Constitution doesn’t speak about this at all.”

She added, “You’re asking us to destroy the structure of government and to take away from Congress its ability to protect its idea that a—the government is better structured with some agencies that are independent.”

Sauer argued that “*Humphrey’s Executor* stands as an indefensible outlier” and was “a decaying husk with bold and particularly dangerous pretensions.”

In an openly fascistic argument, Sauer essential claimed that Trump as the elected president personified the will of the people and that it was the “Court’s duty to ensure that the executive branch,” by which he meant all officials in any government agency, are “overseen by a President accountable to the people.” Sauer claimed that Congress had the right to create agencies but after their creation it was in the purview of the executive to control them completely.

Questioned by Justice Clarence Thomas, Trump’s co-conspirator in the failed January 6 coup, if there were

any “permissible restriction” on the executive’s ability to remove officers of agencies, Sauer replied “no.”

Questioned again by Thomas, “How far do you go with that? Can it be arbitrary, completely arbitrary?” Sauer replied that removals would be “subject to the political process,” not “judicial review” or “statutes regulating that.”

Concerned that the direct interference of the president within the Federal Reserve will destabilize the dollar and world markets, the justices sought explanations Monday from Sauer as to why his arguments would not extend to the president’s right to remove members of the Federal Reserve who did not lower or raise interest rates at his direction.

Sauer did not offer a compelling rebuttal, “There are tough—there are maybe tough line-drawing question there we have.”

Last summer the Supreme Court, in the counter-revolutionary ruling *Trump v. United States*, granted Trump immunity from his failed January 6 coup, and from any new crimes he should commit in office. That the Supreme Court now appears poised to hand more power to the fascist executive only confirms that the working class must intervene in the situation independently of both political parties and the institutions of the bourgeois state. The question for workers is not saving the capitalist state, but abolishing it and the capitalist system.



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