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NCLA Asks Supreme Court to Restore Presidential Control over “Independent” CPSC Commissioners

Consumers’ Research, et al. v. Consumer Product Safety Commission

Washington, DC (July 18, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) urging the Supreme Court to hear *Consumers’ Research v. Consumer Product Safety Commission*, taking this golden opportunity to overturn the 1935 *Humphrey’s Executor v. Federal Trade Commission* decision and revamp CPSC’s unconstitutional structure. Under current law, the President supposedly is only allowed to fire CPSC commissioners “for neglect of duty or malfeasance in office,” which insulates them from removal in violation of the “take Care” clause of Article II of the Constitution. To approve CPSC’s structure, the Fifth Circuit below invoked *Humphrey’s Executor*, which upheld the constitutionality of FTC Commissioners’ similar tenure protections on the flawed theory that the Federal Trade Commission does not exercise executive power.

Humphrey’s must be overruled or confined to its facts. CPSC incorrectly claims that its leadership structure is identical to that of FTC when *Humphrey’s Executor* was decided. However, *Humphrey’s* wrongly held that FTC exercised no executive power in 1935, so it should be overruled on that basis. The Constitution vests all executive power in the President, and the ability to remove subordinates for any reason is an essential part of executive power, if the President is to hold officials fully accountable. The divided Fifth Circuit panel in this case thought it was bound by *Humphrey’s*, but it admitted the decision’s reasoning “‘has not withstood the test of time.’”

And whether or not FTC exercised executive power in 1935, CPSC does so today. Hence, CPSC’s authority structure cannot survive scrutiny even if the Supreme Court refuses to revisit the holding in *Humphrey’s*. Mere application of the *Humphrey’s* holding to CPSC should suffice to condemn the latter agency’s current structure. CPSC admits to wielding executive power, and its authority falls entirely into that category, with the agency adjudicating administrative cases, recalling products, and initiating lawsuits. The President is fully entitled under the Constitution to remove Commissioners at will, who exercise such executive power.

NCLA released the following statements:

“The Constitution vests the executive power—all of it—in the President. It is long past time for the Court to correct its 1935 mistake, when it held that Congress could create a ‘fourth’ branch of government ‘independent’ of all political controls. The President, who is ultimately responsible to the people, must have the power to ensure that laws are ‘faithfully executed’ by his subordinates. To do so, he must have the power to fire subordinates who are not aligned with his policies. The Court should take this case.”

— **Greg Dolin, Senior Litigation Counsel, NCLA**

“CPSC’s actions are obnoxious to presidential oversight. Having independent agencies in the Executive Branch contradicts a proper understanding of the Constitution, and this case provides a good vehicle to fix that problem.”

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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