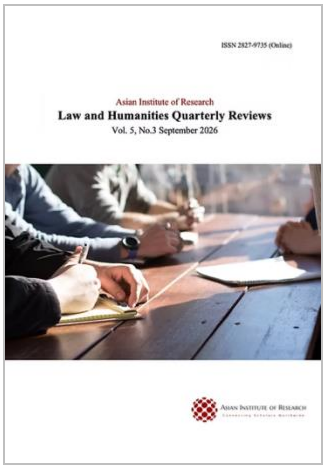

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From Myers to Slaughter – An Argument over Separation of Powers or a Disguised Frontal Assault on the Administrative State: A Financial and Legal Analysis

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Abstract
This article argues that the Supreme Court's century-long arc of decisions on presidential removal power — from *Myers v. United States* (1926) through *Trump v. Slaughter* (2026) — represents not merely an evolving constitutional debate over separation of powers, but a sustained, ideologically coherent assault on the administrative state in service of entrenched business interests. The paper begins with an examination of the major cases in which the Court has ruled on the theory of the unitary executive, tracing the doctrinal line from *Myers v. United States* (1926) and *Humphrey's Executor* (1935) through *Seila Law* (2020) and *Collins v. Yellen* (2021), and finally through *Trump v. Slaughter* and *Trump v. Cook* in June of 2026. It then situates this constitutional evolution within two broader contexts: first, the legislative history and business-community opposition to landmark financial regulation — *Sarbanes-Oxley* (2002) and *Dodd-Frank* (2010) — and second, the long-term intellectual and institutional infrastructure built in response to Lewis Powell's 1971 memorandum to the U.S. Chamber of Commerce. The authors further examine the Supreme Court's curtailment of agency authority through the rejection of *Chevron deference*, the possible revival of the non-delegation doctrine, and the emergence of the major questions doctrine. The article concludes that the cumulative effect of these developments — expanding presidential control, contracting agency authority, and shifting interpretive power to the courts — has produced a fundamental realignment of American governance in favor of corporate interests, with potentially lasting consequences for economic regulation and democratic accountability.

Keywords: Separation of Powers, Administrative State, Unitary Executive, Sarbanes-Oxley, Dodd-Frank, Chevron Deference, Powell Memorandum, Major Questions Doctrine

1. Introduction

What is the *real* significance of the United States Supreme Court's century-long evolution in cases concerning presidential removal power? On one reading, these decisions constitute a good-faith effort to interpret Article II of the Constitution and resolve genuine ambiguities about the scope of executive authority over independent agencies. On another — and the authors argue more accurate — reading, they represent a sustained, ideologically driven campaign to dismantle the administrative state as it has developed since the New Deal, with the practical consequence of concentrating power in the President and the courts while reducing regulatory accountability to Congress and the public.

That argument gains force when the constitutional cases are set alongside two related developments: the corporate opposition to *Sarbanes-Oxley* (2002) and *Dodd-Frank* (2010), the two most significant pieces of financial regulation enacted in the last twenty-five years; and the half-century of institutional infrastructure built in direct response to Lewis Powell's 1971 memorandum to the U.S. Chamber of Commerce. These threads — constitutional, legislative, and ideological — are not parallel. They are convergent.

The Supreme Court's decisions in cases relating to presidential power, the separation of powers doctrine, delegation of powers by Congress to administrative agencies, and the explication of the "major questions doctrine" have all contributed to a fundamental rebalancing of power in the United States toward the courts and the executive, and away from Congress and the administrative agencies that have developed subject-matter expertise since the New Deal. Recent decisions, including the rejection of *Chevron* deference in *Loper Bright Enterprises v. Raimondo* (2024) and the decisions in *Trump v. Slaughter* and *Trump v. Cook* in June of 2026, have moved this rebalancing to a new stage. This paper examines what that means and where it leads.

2. The Theory of the Unitary Executive

The theory of the unitary executive is an explication of presidential power in the United States (Barber & Fleming, 2009). The theory focuses on the extent and nature of control the President may exercise over the executive branch relating to so-called "independent agencies" (Hunter & Shannon, 2025; see Legal Guide Team, 2026). In addition, the context of this controversy includes a significant policy debate about the nature of regulation of the American economy — a context that may have even greater import for the future.
Bednar (2025) framed the issue as follows:

> “Presidential control is the power to direct administrative capacity toward the President's own policy objectives. Accordingly, presidential power vis-à-vis administrative policymaking has two necessary components: control and capacity. First, the President must have the ability to set the agency's policymaking agenda and direct the day-to-day activities of its leadership and career employees. Second, the agency needs a well-managed team of policymakers with expertise and experience in both the substantive policy area and the policymaking process.”

The unitary executive theory as espoused by the Trump administration is based on the view that all executive power belongs to the President. The theory is grounded in Article II of the U.S. Constitution, which states: "The executive Power shall be vested in a President of the United States." Adherents to the theory argue that this means the President alone holds all executive authority and that every executive official ultimately answers to the President.

As a clear adjunct to the theory, the President should have full control over executive agencies, the power to remove executive officials at-will, and the authority to direct how laws are enforced. This view stands in sharp contrast with the idea of "independent agencies," which are designed to operate with some insulation and independence from presidential control (Breger & Edles, 2000; Corrigan & Revesz, 2016).

2.1. The Nature of the Theory

The theory of the unitary executive has three main variations (Sunstein & Vermeule, 2000; Shane, 2025). First, a *weak* unitary executive, under which the President supervises the executive; however, Congress may create independent agencies where members are protected from at-will removal. Second, the *strong* unitary executive, under which the President exerts direct control over all executive offers and independent agencies are constitutionally questionable. Third, the *maximalist* unitary executive, which recognizes that the President has broad, sometimes exclusive, authority in areas such as national security and that Congress's ability to limit presidential power is very restricted (see Lessig, 2025).

The theory is most relevant in policy discussions relating to presidential control over the Department of Justice, removal of agency heads (such as the Consumer Financial Protection Bureau or the Federal Trade Commission, and the President's issuance of Executive Orders (Lowande, 2014) — which are written policy directives with much of the same effect as law, though not explicitly defined in the Constitution and which rest on historical practice, executive interpretation, and prior court decisions (Bomboy, 2025) as interpreted by the Chief Executive. The debate also implicates the meaning of presidential signing statements (Crouch, Rozell, & Sollenberger, 2013; Kelley, Marshall, & Watts, 2013) and the extent of presidential authority in national security and war powers matters (Kelley & Marshall, 2008).

Supporters of the unitary executive theory argue that the text of the Constitution gives the President full executive authority, ensures direct accountability, and prevents "bureaucratic drift" (Encyclo, 2026; Legal Clarity Team, 2026a) under which agencies deviate from their original mandates in ways that reflect the preferences of unelected officials rather than the elected President (Shepsle, 1992). Critics counter that the unitary executive theory risks excessive presidential power, that the Framers intended a system of checks and balances rather than centralized executive control, and that independent agencies protect against political interference while ensuring objective, fact or science-based decision-making (Brown, 2025; Barrow, 2025).

3. A Summary of the Major Cases Relating to the Unitary Executive Theory

The major cases may be summarized as follows:

- *Myers v. United States* (1926): The Court held that the President has exclusive authority to remove executive officers, striking down a law that required Senate approval for removal. *Myers* is the Court's earliest endorsement of a unitary executive theory (Hart, 1929).
- *Humphrey's Executor* (1935): The Court upheld Congress's ability to create independent agencies whose leaders could be protected from at-will removal, distinguishing between "purely executive" officers and officials with quasi-legislative or quasi-judicial functions. *Humphrey's Executor* set a foundational limit to the unitary executive theory.
- *Morrison v. Olson* (1988): The Court upheld the independent counsel statute, ruling that Congress could restrict the President's removal power if it did not "unduly interfere" with executive functions, rejecting the strong unitary executive theory. Justice Scalia's lone dissent in a 7-1 decision has become the constitutional underpinning of the modern unitary executive theory.
- *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010): The Court ruled that dual for-cause removal protections for Public Company Accounting and Oversight Board (PCAOB) members violated the separation of powers.
- *Seila Law v. Consumer Financial Protection Board* (CFPB) (2020): The Court struck down removal protections for the CFPB's single director, signaling a significant move toward validating the unitary executive theory.
- *Collins v. Yellen* (2021): The Court held that the structure of the Federal Housing Finance Agency violated the separation of powers doctrine, reinforcing its decision in *Seila Law*.
- *Trump v. Slaughter* (2026): The Court struck down the for-cause removal protections for FTC commissioners, effectively overruling *Humphrey's Executor* and completing the doctrinal arc begun in *Myers.*
- *Trump v. Cook* (2026): The Court created an exception for the Federal Reserve because of its “historical importance” in the U.S. economy.

These cases reflect the fact that the Supreme Court has been moving steadily toward recognizing the unitary executive as a constitutional postulate. The most recent decision in *Trump v. Slaughter* eliminates the last significant precedential protection for the traditional model of independent agency governance – with the exception of the Federal Reserve.

4. From Myers to Slaughter: A Detailed Analysis and Commentary

The series of important cases outlined above explicates the various approaches the United States Supreme Court has taken to issues surrounding the exercise of executive authority over "independent" agencies. While the common thread involves determining the nature and extent of presidential control, there is also a strong argument that the powers of the agencies themselves — especially in relation to challenges to *Dodd-Frank* and *Sarbanes-Oxley* — represent the real target of the exercise of presidential authority.

4.1. Myers v. United States (1926)

Myers v. United States is a landmark decision of the United States Supreme Court that affirmed the President's exclusive constitutional power to remove an executive officer and held that Congress cannot constitutionally require Senate consent for such removals (see Hart, 1929).

The case involved the removal of Frank S. Myers, a first-class U.S. postmaster, by President Woodrow Wilson in 1920 without seeking Senate approval. The *Act of July 12, 1876* had provided that postmasters could be removed "by and with the advice and consent of the Senate." Myers sued in the Court of Claims for back pay, but the court dismissed the case on the ground of laches – that is, that Myers had delayed in asserting his rights (see Sheppard & Epstein, 2024). The Supreme Court reversed the decision of the Court of Claims, finding no such impermissible delay had occurred.

In an opinion written by Chief Justice Taft, who had also served as President of the United States, the Court held that the President's authority to remove executive officers is part of "the Executive power" granted by Article II, §1, and is not subject to Senate consent (see White, 2020). The Court ruled that Section 6 of the 1876 law, which tied removal to Senate consent, was unconstitutional because it effectively gave Congress a role in an executive function. Further, the "Take Care Clause" (Art. II, §2) of the Constitution (Yoo, 2025) limits Congress from participating in the exercise of the President's removal power and thus the 1876 law violated the "separation of powers" doctrine. Finally, Myers' actions, including petitions to the President and the United States Senate, and continued protests over his firing, were timely and did not bar his claim based on an improper delay.

Myers reinforced the incidental nature of the removal power to the appointment power under Article II; the executive's duty to "take care that the laws be faithfully executed," which includes the ability to remove officers; and the strict construction of Article II provisions, preventing Congress from expanding its role into executive functions.

Myers was the first case involving the President's removal power to invalidate a statute on grounds that it was in violation of separation of powers. As such, *Myers* established the precedent that the President's removal power is unencumbered unless Congress can show a clear constitutional basis for limiting it. In historical terms, *Myers* cemented the President's constitutional removal power over executive appointees based separation of powers,

4.2. Humphrey's Executor v. United States (1935): Does it Square With Myers?

Humphrey's Executor established Congress's constitutional authority to limit the President's power to remove certain federal agency officials (Carson, 2025).

William E. Humphrey had been appointed to a seven-year term as an FTC Commissioner by President Calvin Coolidge in 1925 and was reappointed by President Herbert Hoover in 1931. President Roosevelt asked for his resignation over policy disagreements (American Presidency Project, 2026). Humphrey refused to resign, and President Roosevelt fired him in 1933. The FTC Act allowed removal only for "inefficiency, neglect of duty, or malfeasance in office." Humphrey died in 1934, and his executor sued for back pay.

In a unanimous decision, the Supreme Court held that Congress could constitutionally limit the President's removal power for commissioners of independent agencies performing quasi-legislative or quasi-judicial functions. The Court determined that FTC commissioners were not "purely executive" officers subject to at-will removal but were instead members of an independent body created to aid both the legislative and judicial branches in carrying out their constitutional responsibilities (see Donahue, 2025). This distinction remained central to understanding the structure of modern federal agencies until it was challenged in connection with the passage of *Sarbanes-Oxley* in 2002.

4.3. Morrison v. Olson (1988)

After the Watergate scandal, Congress sought to prevent future abuses of power by creating a special process for investigating high-level executive branch officials (Legal Clarity Team, 2025). In *Morrison v. Olson*, the Court was asked whether the *Independent Counsel Act* violated the separation of powers by limiting the President's ability to remove an independent counsel. Shestack (1998) noted “since its inception, the Act and its special prosecutors have had both detractors and defenders,” highlighting the disparate views on the Act’s constitutionality.

Levin and Bean (1987) commented that “The primary impetus for the independent counsel statute was the Watergate scandal that engulfed the Nixon presidency.” Congress had enacted the *Ethics in Government Act of 1978*, which allowed a special court, called the Special Division (a three-judge panel), created under the *Ethics in Government Act of 1978*, to appoint and oversee an independent counsel to investigate high-level executive officials (see Christy, 1998). “The statute was enacted into law on October 26, 1978, with a five year sunset provision. It was reauthorized on January 3, 1983, again with a five year sunset provision. The statute was again reauthorized on December 15, 1987” (Levin & Bean, 1987).

> “The purpose of the act was to increase public confidence in the level of integrity of federal government officials, to deter conflicts of interest from arising, and to stop unethical person from entering public service. Generally, the act made provisions for the authority and functions of the Office of Government Ethics, and set up administrative provisions, rules and regulations, and appropriations to enforce federal government ethics” (Jrank.org, 2026).

Senator Carl Levin, who chaired the Senate Subcommittee on Oversight of Government Management, stated: “The federal statute establishing a system for independent counsels, address one of the most delicate tasks facing government: the investigating of the government’s own top officials when they are suspected of criminal wrongdoing” (Levin & Bean, 1987).

The independent counsel could only be removed by the Attorney General for good cause, not at the President’s discretion.

The case arose when the House Judiciary Committee accused Assistant Attorney General Theodore Olson (who later became the Solicitor General and who argued sixty-five cases before the Supreme Court on behalf of the United States) of withholding documents and giving false testimony before the Committee. An independent counsel, Alexia Morrison, was appointed to investigate the charge. Olson challenged the law’s constitutionality (see Gilbert, 2018; Crovitz, 2024).

The Supreme Court by a vote of 7-1 upheld the *Independent Counsel Act* in a decision by Chief Justice Rehnquist. The Court held that the independent counsel was an "inferior officer" rather than a "principal officer," and that the good-cause removal restriction did not unduly interfere with the President's executive power. The Act did not "impermissibly undermine" the Executive Branch (Bybee & Samahon, 2006).

What became especially consequential, however, was Justice Scalia's lone dissenting opinion, in which he argued that all executive power is vested in the President and that prosecutorial power is inherently executive (see Nhan, 2016). Justice Scalia wrote in *Morrison*:

> "What I do assert — and what the Constitution seems plainly to prescribe — is that the President must have control over all exercises of the executive power. That requires that he have plenary power to remove principal officers such as the independent counsel, but it does not require that he have plenary power to remove inferior officers."

Justice Scalia's dissent has grown in influence after the independent counsel system was allowed to expire in 1999, leading to the appointment of a series of “Special Prosecutors” one of whom, Kenn Starr, investigated former

President Bill Clinton (see Greenberg, 2022) and who ironically would later represent Donald Trump in his first impeachment trial before the United States Senate.

Henderson (2026) points to the importance of Justice Scalia's dissenting opinion in the current controversy in *Trump v. Slaughter*, as he notes: "This Scalia dissent may save Trump in heated Supreme Court battle."

5. The Tide Begins to Turn: Free Enterprise Fund v. Public Company Accounting Oversight Board (2010)

Two cases merit special attention and cannot be fully understood without placing them in their legislative context: *Free Enterprise Fund v. Public Company Accounting Board* and *Seila Law v. Consumer Financial Protection Bureau.* The issue of separation of powers intersects directly with a fundamental policy debate about the role of the federal government in regulating the American capital market — a debate that produced both *Sarbanes-Oxley* (2002) and *Dodd-Frank* (2010).

In *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010), the Supreme Court ruled that the "dual for-cause" removal protections for members of the PCAOB violated the Constitution's separation of powers. The case arose from the passage of *Sarbanes-Oxley* in 2002, which established the PCAOB to oversee the accounting industry, following a wave of corporate scandals — most notably Enron, WorldCom, and Tyco (Segal, 2026).

Under the statute, the PCAOB was comprised of members appointed by the Securities and Exchange Commission (SEC) (Kenton, 2006a). However, the SEC could remove PCAOB members only for "good cause," and the President could remove SEC commissioners only for similar reasons, creating a "dual layer" of protection against removal. The Free Enterprise Fund, a nonprofit advocacy organization aligned with "free-market principles," challenged the PCAOB's structure as a violation of the Appointments Clause and the separation of powers doctrine. The Free Enterprise Fund, a nonprofit organization, was created in January 2005 by Stephen Moore and other prominent members of the Club for Growth, including Arthur B. Laffer, the author of the controversial "Laffer Curve," and Mallory Factor. Arthur Laffer is an American economist who propounded the idea that lowering tax rates would result in higher government revenues (Bender, 1984). "His theory on taxes influenced U.S. economic policy in the 1980s, which during the presidency of Ronald Reagan (1981–89) became known as Reaganomics" (Editors of the Encyclopaedia Brittanica, 2026). Factor is an American pharmaceutical executive, author, professor, and entrepreneur, best known as the founder and CEO of IntraBio Inc., a biopharmaceutical company based in Austin, Texas, which focused on developing novel therapies for rare and neurodegenerative diseases. Mallory Factor is also "the co-chairman and co-founder of the Monday Meeting, an influential meeting of economic conservatives, journalists and corporate leaders in New York City" (Gatestone Institute, 2026).

On June 28, 2010, the Supreme Court, in a 5-4 decision, ruled that the dual for-cause removal provisions were unconstitutional. Chief Justice Roberts, writing for the majority, emphasized that the Constitution vests executive power in the President, who must be able to hold executive officers accountable. The ruling clarified the limits of congressional authority in structuring federal agencies and reinforced the principle that the President must retain the power to remove executive officers.

5.1. The Legislative Context: Sarbanes-Oxley (2002)

To understand the significance of *Free Enterprise Fund*, it is necessary to review what *Sarbanes-Oxley* was designed to accomplish and why it provoked such concerted opposition from the financial community in the United States.

The flash-point for *Sarbanes-Oxley* was the wave of massive corporate accounting scandals in the early 2000s that shattered public trust in U.S. financial markets (see Hemphill, 2005).

Segal (2026) wrote: "The Act heightened the consequences for destroying, altering, or fabricating financial statements and for trying to defraud shareholders." The immediate catalysts were the collapses of Enron, WorldCom, Tyco, and other major firms, exposing deep failures in corporate governance, auditing, and financial reporting. A brief review is in order.

5.1.1. Enron

The ForensisGroup (2026) noted:

> “Enron Corporation’s collapse in 2001 became one of the most infamous corporate failures in U.S. history. Created in 1985 through the merger of Houston Natural Gas and InterNorth, Enron transformed from a utility business into a major trader of energy and other commodities, including electricity, broadband, and weather derivatives. Under CEO Jeffrey Skilling and CFO Andrew Fastow, the company used mark-to-market accounting and other complex financial methods to recognize projected future profits as current income, helping create the appearance of continued profitability even as important business ventures struggled.”

Enron’s collapse (Thomas, 2002) resulted from Enron hiding billions in debt through off–balance sheet entities. When the fraud was finally exposed, shares of Enron stock fell from over $90 to pennies, triggering Enron’s bankruptcy, wiping out investors and leading to the loss of employment for 25,000 Enron employees, as well as $2 billion in employee pension savings and $1.2 billion in employee retirement funds (Boolchandani, 2025).

5.1.2. WorldCom

As noted by George (2021):

> “In the late 1990’s and early 2000’s, the largest telecoms company was WorldCom, a long-distance and internet provider. WorldCom had grown throughout the 90’s through a series of poorly-managed acquisitions and mergers into a corporation of competing divisions, redundant services and products, and multiple billing systems—a chaotic environment perfect for fraud and corruption.”

WorldCom collapsed on July 21, 2002, when it filed for Chapter 11 bankruptcy protection — at the time, the largest corporate bankruptcy in U.S. history—involving more than $100 billion in assets, caused by massive accounting fraud involving the improper capitalization of operating expenses, and overstating earnings by over $11 billion. WorldCom also admitted to improperly accounting for more than $3.8 billion in illegitimate expenses.

5.1.3. Tyco International

Tyco, which was founded in 1960, never filed for bankruptcy during its early-2000s scandal. Instead, Tyco went through a massive “leadership, legal, and accounting crisis” (Center for Ethical Organizational Cultures, 2026), but remained operational and solvent throughout, today providing “cyber-resilient systems.”

The Tyco scandal centered on fraud, undisclosed executive compensation, improper accounting practices, and related-party transactions committed by senior executives — especially CEO L. Dennis Kozlowski (for whom the business building at Seton Hall University was once named) and CFO Mark Swartz. Kozlowski and Swartz were charged and later convicted for misappropriating more than $170 million and engaging in fraudulent stock sales (Cook & Shaw, 2005).

Perhaps more importantly, these scandals were the result of widespread accounting failures. Major accounting firms, most notably Arthur Andersen, were found to have compromised their independence by providing both consulting and auditing services, contributing to the creation of misleading financial statements (Dowell, 2022; Segal, 2026).

5.1.4. A Legislative Solution is Created

Sarbanes-Oxley (also known as *SOX*) was intended to restore corporate accountability and transparency in financial reporting of public companies. *SOX* created the PCAOB to regulate auditors and imposed criminal penalties for fraudulent financial activity (see Hemphill, 2005). Despite its roll in stabilizing markets, *SOX* was widely criticized by small-cap and emerging growth companies for imposing disproportionate compliance costs and expanded audit requirements, often costing companies millions of dollars per year and thousands of labor hours (see MIT Sloan Office of Communications, 2017).

These costs stem largely from Section 404 of the Act requiring internal control testing and expanded audit requirements (FriedFrank, 2004) requiring extensive documentation, testing, and oversight—all of which increases *operational friction* referring to the "*extra internal effort, time, coordination, and process complexity"* that companies must absorb in order to comply with *SOX's* strict reporting, documentation, and internal-control requirements, diverting resources from innovation and growth and negatively affected profitability.

Criticisms were pointed and swift. Critics argued that the cost of compliance has been especially disproportionate on smaller public companies which face a heavier relative burden because they lack the internal compliance infrastructure of large corporations, imposing costs these smaller firms can least afford. Critics also pointed to reduced "initial public offering" (IPO) activity (see Reddy, Le, & Paul, 2021), companies staying "private" longer, a decline in the number of publicly traded firms, and a decline in public-market participation referring to the involvement of individuals, institutions, or entities in buying and selling financial instruments such as stocks, bonds, or other securities within a public (open) market.

There was "some truth" to these criticisms. Statistics indicated that IPO rates fell sharply for startups after *SOX.* Startups first financed in 1994 had a 26% IPO rate, while those first financed in 2000 had only 2%, and that low level has persisted. The number of publicly listed U.S. companies dropped from over 8,000 in 1996 to about 4,000 today, a decline partly attributed to *SOX's* fixed compliance costs making public listing less attractive for smaller firms. Companies now stay private much longer. The median age of a venture-backed IPO rose from 4 years (1999) to 13.5 years by 2024 (see American Securities Association (ASA), 2025).

On the audit side, critics argued that *Sarbanes-Oxley* resulted in several clear "market distortions," including a shrinking pool of auditors, increased specialization among auditors, and reduced availability of "Big Four" accounting firms [Deloitte, PwC (PricewaterhouseCoopers), EY (Ernst & Young), and KPMG who audit most public companies worldwide (Kenton 2026b)] working with nonprofits.

Stated American Securities Association President, Chris Iacovella: "Perhaps no other law or regulatory action in history has done more to disincentivize IPOs and weaken competitiveness of the U.S. capital markets than Sarbanes-Oxley" (American Securities Association, 2025).

5.2. Seila Law LLC v. Consumer Financial Protection Bureau (2020): One Step Further

In *Seila Law LLC v. CFPB*, the Supreme Court struck down the "for-cause" removal provision for the CFPB's single director, ruling it violated the separation of powers, while leaving the agency itself intact, but significantly weakened and subject to continued attacks (see Chenoweth & DeGrandis, 2020).

The CFPB was created under the 2010 *Dodd-Frank Wall Street Reform and Consumer Protection Act* as an independent federal agency tasked with regulating consumer financial products. *Dodd-Frank* was designed to prevent another financial crisis by increasing financial stability, protecting consumers, and ending "too big to fail" massive government bailouts (Labonte, 2013).

As Barlas (2012) notes:

> "Too Big to Fail" institutions are large, interconnected banks or nonbank financial firms whose failure could destabilize the entire system. *Dodd-Frank* subjects these firms to enhanced prudential" standards (stress tests, capital/liquidity rules). In addition, the Financial Stability Oversight Council (FSOC), established under Dodd-Frank can designate nonbank firms as

> 'Systemically Important Financial Institutions' (SIFIs) who "pose a threat to the financial stability of the U.S.'"

Unlike most independent agencies, the CFPB was led by a single Director appointed by the President for a five year term, removable only for "inefficiency, neglect of duty, or malfeasance in office." This structure was designed to insulate the agency from political pressure. Critics argued the structure undermined the President's constitutional duty to ensure that laws are "faithfully executed."

In 2017, the CFPB issued a civil investigative demand to Seila Law LLC, a California debt-relief law firm. Seila Law rejected the demand, arguing that the CFPB's structure was unconstitutional. On June 29, 2020, the Supreme Court issued a 5-4 decision holding that the for-cause removal clause was unconstitutional, that it weakened executive control, and that the CFPB's structure had "no foothold in history or tradition." The Court left the CFPB intact but made its Director removable at-will by the President. *Seila Law* marked a major shift in the balance of power between the executive branch and independent regulatory agencies and set a precedent for future challenges to agencies with similar removal protections.

6. The Legislative Context: Dodd-Frank (2010) and Its Role in the Broader Debate

The constitutional significance of *Seila Law* — and of the broader debate over the CFPB — cannot be understood in isolation from *Dodd-Frank* itself. To understand why this legislation became a target of such sustained opposition, it is necessary to understand the crisis that produced it, viewed from the background of a series of crises that engulfed several of the "giants" of the American economy: Bear Stearns, Lehman Brothers and AIG.

The immediate catalyst for Dodd-Frank was the collapse of Bear Stearns in 2008 and the broader financial crisis that followed. Bear Stearns was founded in 1923 as an equity trading company. Bear Stearns was heavily invested in mortgage-backed securities and collateralized debt obligations tied to subprime loans. Operating with extremely high leverage — reportedly 35.6 to 1 — the firm could not secure the liquidity (financing) to meet its obligations when investor confidence collapsed (Duca, 2026; Chen, 2026; Egan, 2018). In March 2008, the Federal Reserve Bank of New York provided an emergency loan to prevent the firm's immediate collapse. Bear Stearns was ultimately sold to JPMorgan Chase at $10 per share, far below its pre-crisis value of $133.20 per share. In January of 2010, JPMorgan Chase ceased using the Bear Stearns name (de la Merced, 2008).

A second crisis enveloped AIG. American International Group (AIG) was self-described as a multinational insurance corporation that provides a wide range of services, including property and casualty insurance for individuals and businesses, life insurance and retirement products, and financial services across approximately seventy countries, with a focus on risk management solutions (Muse, 2025).

The near-collapse of AIG — which had insured trillions in mortgage-linked assets through credit default swaps but lacked the collateral to honor those guarantees — became the defining image of systemic risk in the crisis (Gethard, 2026). Total government support for AIG reached $182.3 billion through a Securities Borrowing Facility in order to help AIG "unwind" its failing securities-lending program. Ultimately, the government exited with a $22.7 billion profit, but the damage to the financial system was nearly irreparable (U.S. Department of the Treasury, 2012).

The collapse of Lehman Brothers, founded in 1850, on September 15, 2008, was the largest bankruptcy in U.S. history due to its heavy exposure to subprime mortgages and a lack of liquidity (Robinson, McDonald & Robinson, 2009).

Leifer (2014) noted "When the United States' housing market collapsed in 2008, it sent the country into its worst financial state since the Great Depression." The *Dodd-Frank Wall Street Reform and Consumer Protection Act*, better known as *Dodd-Frank,* was sponsored by Senator Chris Dodd of Connecticut and the late Representative Barney Frank of Massachusetts (Wolfson, Crawford, Cooper, & Donnay, 2010), whose stated purpose was "to restore responsibility and accountability in our financial system to give Americans confidence that there is a system in place that works for and protects them." Kim & Muldoon (2015) noted:

> "The AIG, Bear Stearns, and Lehman Brothers failures were at the heart of this financial crisis. Like causes of other financial crises, the flawed financial system and the market overreaction (the irrational behavior of investors) to the failures of a few large financial institutions combined to trigger the most severe financial crisis since the 1930s."

Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) to protect consumers from predatory lending and abusive financial practices (Arning, 2019); the Financial Stability Oversight Council (FSOC) to monitor systemic risks and identify critically important financial institutions (Kagan, 2025a); and the Orderly Liquidation Authority (OLA) to provide a framework for "winding down" failing large financial institutions without taxpayer bailouts (Deutsch & Daucher, 2001), the legal process used when a large, systematically important financial company is collapsing and normal bankruptcy proceedings would cause unacceptable economic damage to the larger economy. Under this process, the FDIC temporarily takes control, incumbent management is removed, and the firm is dismantled or liquidated in an orderly way. The FDIC acts as a "receiver" for failing banks and for nonbanks such as large broker-dealers, insurance companies, financial conglomerates, and other "systemically important firms" primarily engaged in financial activities such as:

- Asset management
- Financing
- Hedge funds operations
- Private equity management
- Payment and clearing

The Act also imposed the *Volcker Rule*, named for the Chair of the Federal Reserve, who served from 1979 to 1987, to limit banks from making speculative investments with depositor funds (Corporate Finance Institute, 2025; Chen, 2025); Ruddy & Boyle, 2014); required standardized derivatives to be traded on regulated exchanges and cleared through central clearinghouses (Mankad, Michailidis, & Kirilenko, 2019; created the Commodity Futures Trading Commission, 2026); strengthened Federal Reserve supervision of large banks; introduced "qualified mortgage" requirements and mortgage lending reforms; and provided important whistleblower protections in order to encourage reporting of securities and commodities law violations (Osborne, 2017). [See Appendix I for a description of derivatives and Appendix II for a description of qualified mortgages.]

Dodd-Frank had a major and immediate regulatory impact. Just as was the case concerning *Sarbanes-Oxley*, critics, however, argued that it imposed disproportionate compliance costs on smaller banks and community financial institutions, that its regulatory scope created uncertainty, and that it did not in fact reduce systemic risk as it was intended to do (Kim, 2015; Huang, 2018).

Critics also argued that the Act's regulatory scope overlapped numerous agencies, contained too many administrative rules, and that the Act's oversight mechanisms created uncertainty and slowed innovation. Perhaps most telling was the argument that *Dodd-Frank* further entrenched the dominance of the largest banks in the economy. Huang (2018) wrote: "I find no evidence to support the effectiveness of Dodd-Frank in reducing systemic risk in the U.S. financial system. Further improvements of the regulatory framework shaped by Dodd-Frank seem necessary, and banks' governance and risk culture also need more regulatory attention."

Criticisms were pointedly leveled against the Volcker Rule's restrictions on proprietary trading which reduced market liquidity and limited banks' ability to manage risk "dynamically" through continuously *identifying, evaluating, and adjusting* responses to risks as financial conditions change, involving "real-time awareness" and dynamic adaptation rather than relying on periodic or static assessments reflected in *Dodd-Frank's* bureaucratic and static approach.

The Act's requirements included "stress tests," a forward-looking, regulatory assessment that evaluates whether large U.S. banks have enough capital to keep lending during a severe economic downturn, which would demonstrate how a "hypothetical macroeconomic recession scenario would affect firm capital ratios" (Board of

Governors of the Federal Reserve Board, 2022; Ryznar, Sensenbrenner, & Jacobs, 2009). Under *Dodd-Frank*, "stress tests" are conducted annually by the Federal Reserve for major banking institutions—typically those with $100 billion+ in assets. These major banking institutions must also publish their own company-run stress test results.

Dodd-Frank also required so-called "living wills" or Resolution Plans which are detailed, legally required plans that explains how a large financial institution could be safely wound down in bankruptcy—*without a taxpayer bailout*—if it were to fail. Banks and financial institutions with $250 billion or more in total assets must submit "living wills" to both the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) who will review, critique, and may require changes to those proposed by the affected financial institutions (Board of Governors of the Federal Reserve Board, 2024).

Many of the criticisms of *Dodd-Frank* centered around the view that reporting mandates are too expensive to implement, thus reducing profitability and diverting resources from customer-facing activities (branch interactions, contact center support, disputed transaction and fraud handling, loan and mortgage servicing) and legitimate capital enhancements in the broader U.S. economy.

The "drum beat" of opposition and calls for "reform" began almost immediately after *Dodd-Frank* became law, including those offered by industry critics and the Trump administration.

6.1. Roll-Backs to Dodd-Frank: Mission Accomplished!

Several major provisions of *Dodd-Frank* have been rolled back—mainly as a result of the passage of 2018 *Economic Growth, Regulatory Relief, and Consumer Protection Act* (EGRRCPA) (see Tamny. 2026), enacted as part of President Trump's "pro-growth and deregulation agenda" (Crews, Jr., 2025)—which significantly eased requirements for many banks. The rollbacks focused on stress testing, "too big to fail" oversight, and Volcker Rule compliance, especially for regional and community banks.

Ther revisions raised threshold for "Systemically Important Financial Institutions" (SIFIs). Originally, banks were subject to the strictest oversight at $50 billion in assets. The 2018 law raised this to $250 billion, immediately removing many regional banks from enhanced oversight (prudential) standards. As a result, fewer banks had to comply with heightened capital and liquidity rules, Federal Reserve supervisory stress tests, and mandatory resolution planning through "living wills."

The asset threshold for mandatory company-run stress tests increased from $10 billion to $250 billion. As a result, many mid-sized banks no longer had to run annual stress tests or submit detailed capital plans or file annual resolution plans. Regulators also moved to a less frequent, tailored schedule for firms which remained subject to the rule. In addition, regulators adopted a conceptual "four-category framework" that applied rules based on a bank's size, complexity, resilience to the regulatory environment, and possible impact of distress on the U.S. financial system, further reducing burdens for smaller and mid-sized institutions.

Changes introduced to the Volcker Rule, which had restricted "proprietary trading," eased compliance for smaller banks and simplified requirements for others.

Importantly, Executive Orders signed by President Trump in 2026 during his second administration signaled further attempts to loosen mortgage-related rules—including Ability-to-Repay (ATR), Qualified Mortgage (QM), and TRID requirements which were designed to simplify mortgage disclosures and protect borrowers by ensuring transparency in loan terms, associated fees, and other costs (Atkinson, 2026)—particularly for community banks. These orders did not directly amend *Dodd-Frank* but directed regulators to consider the President's proposed changes. In February 2026, the Fed voted to maintain the current requirements until 2027 when "new requirements will be calculated based on stress test models that take public feedback into consideration" (Board of Governors of the Federal Reserve Board, 2026).

7. Collins v. Yellen (2021): Another Step Toward the Demise of Humphrey's Executor

In 2008, following the collapse of the housing bubble, Congress created the Federal Housing Finance Agency (FHFA) to regulate Fannie Mae (created 1938) and Freddie Mac (created in 1970) — the two government-sponsored enterprises that backed most U.S. mortgages. [Even though they are technically shareholder-owned corporations, they are still under 18 years of federal conservatorship as of 2026, even though President Trump planned an IPO in late 2025—although that effort has stalled (Farberov, 2025); Rohr, 2026.]
Arthur (2009) found:

> "The early 2000s saw a substantial shift in home mortgage lending practices. Rather than financing mortgages through deposits received from customers, banks increasingly financed mortgages through bond markets. This made it much easier to fund additional lending and resulted in a dramatic increase in non-government-backed mortgages, many of which were "subprime" loans to borrowers with poor credentials and "jumbo" loans that exceeded the limits on government-backed mortgages."

The FHFA was led by a single Director, removable by the President only "for cause."
Under agreements with the Treasury, Fannie Mae and Freddie Mac received capital in exchange for senior preferred shares and guaranteed dividends. A "Third Amendment" later replaced fixed-rate dividends with a variable formula requiring the companies to transfer nearly all net worth to the Treasury each quarter. Shareholders sued, arguing that the amendment exceeded the FHFA's statutory authority and that the "for-cause" removal rule violated separation of powers.

The Supreme Court issued a two-part decision. The statutory claim relating to the transfer of assets to the Treasury was dismissed as a valid exercise of the legislative function. As to the constitutional challenge, the Court found the for-cause removal rule unconstitutional, citing its decision in *Seila Law*. The restriction undermined presidential control over the agency's head and reduced executive accountability.

Collins reinforced the doctrinal trajectory running from *Seila Law* back to *Free Enterprise Fund*: The Court was systematically narrowing the constitutional space for the leadership of independent agency insulated from presidential removal.

8. Coming Full Circle: Trump v. Slaughter (2026)

On December 8, 2025, the United States Supreme Court heard oral arguments in *Trump v. Slaughter*, a case that asked the Court to directly revisit the constitutionality of statutory removal protections for FTC Commissioners previously upheld in *Humphrey's Executor* (1935).

8.1. Lower Court History

In March 2025, President Trump fired two FTC Commissioners, Rebecca Slaughter and Alvaro Bedoya, both affiliated with the Democratic Party (Mansfield, 2025; Weissert & Rugaber, 2025). On March 27, Slaughter and Bedoya sued, alleging their removals were unlawful. On July 17, the U.S. District Court for the District of Columbia held that the removal of Slaughter was unlawful, reinstated her to her position, and enjoined the government from interfering with her duties, emphasizing that the for-cause removal protections under *Humphrey's Executor* remained valid and binding. The Trump administration sought a stay, which the District Court denied. On September 2, the U.S. Court of Appeals for the District of Columbia Circuit denied the Department of Justice's request to block Slaughter's return to work, noting that the government was unlikely to succeed on the merits given that *Humphrey's Executor* remained as controlling precedent.

8.2. The Supreme Court Weighs In

The Trump administration requested a stay of the reinstatement order. On September 8, Chief Justice Roberts granted a temporary administrative stay and referred the matter to the full Court. On September 22, the Supreme

Court granted the stay, issued a *writ of certiorari before judgment*, and set oral arguments for December. The three liberal justices — Kagan, Sotomayor, and Jackson — dissented from the issuance of the stay.

Observers at oral argument noted that the Court's conservative majority appeared to favor Trump's position and seemed poised to overrule or further weaken *Humphrey's Executor*. Chief Justice Roberts observed that the precedent had become "just a dried husk of whatever people used to think it was," noting that it addressed an agency with very little, if any, executive power (Kruzel & Chung, 2025). The liberal justices warned that overruling or weakening *Humphrey's Executor* could "give the President far more power than even kings or the Parliament of Great Britain at the time of the U.S. founding." Justice Jackson said: "So having a President come in and fire all the scientists, and the doctors, and the economists and the PhDs, and replacing them with loyalists and people who don't know anything is actually not in the best interest of the citizens of the United States."

8.3. The Supreme Court's Decision: Embracing the Theory of the Unitary Executive

The Supreme Court issued its much anticipated decision in *Trump v. Slaughter* on Monday, June 29, 2026, which many court observers considered as *the* test case defining the range and limits of presidential authority under the theory of the unitary executive for multi-member commissions or agencies. The opinion rested on Article II of the Constitution which vests *all* executive power in the President and relies on the same logic the Court had employed in *Seila Law* (2020) and *Collins v. Yellen* (2021), but now the ruling will be extended to multi-member commissions or agencies as well.

The Supreme Court concluded that *Humphrey's Executor* had become "unworkable," created confusion, and lacked historical grounding and upheld President Trump's removal of FTC Commissioner Rebecca Slaughter, even though no statutory grounds for a "for-cause" removal such as "inefficiency, neglect of duty, or malfeasance" were cited by President Trump for his action.

In an opinion written by Chief Justice Roberts, which was joined by Associate Justices Alito, Thomas, Kavanaugh, Gorsuch and Coney Barrett, the Court concluded that limits on firing officials who exercise executive power violate the Constitution's separation of powers and are therefore unconstitutional. The Roberts opinion contained a clear nod to the dissenting opinion of Justice Scalia in the 1988 case of *Morrison v. Olson.*

The majority concluded that because commissioners of independent agency enforce laws enacted by Congress, "including some created by Congress to serve as government watchdogs" (Cullen, 2026), they are executive officers, and the President must be able to remove them freely to ensure accountability to the President. The Chief Justice wrote that:

> "the President must have the assistance of officers he can trust. Although it is up to the Senate to decide whether to confirm those with whom the President would prefer to work, neither Congress nor the courts may saddle him with those with whom he cannot work. Subordinates who exercise the President's power are subject to removal by him. Then, and only then, can they remain accountable to the President, and the President to the people."

The Chief Justice made it clear that any remaining force of the *Humphrey's Executor* is now overruled.
The decision amounts to a major expansion of presidential control over more than two dozen independent agencies—such as the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, the National Labor Relations Board and many others—whose leadership may now be subject to at-will presidential removal. The majority rejected the idea that a multi-member body is "less executive" than a single director. If an agency exercises executive power, its leaders must be removable at-will by the President. [See Appendix III for a listing of agencies which the Congress had designated as "independent regulatory agencies" whose leadership would be protected from "at will" firing.]

In a dissenting opinion read from the bench, Justice Sotomayor, joined by Justices Kagan and Jackson, emphasized that independent agencies were designed by Congress to serve the *public interest*, not those of the President. Justice

Sotomayor stressed that Congress intentionally designed agencies like the FTC to be accountable to the public, governed by expertise, not presidential loyalty or partisan politics (Parry, 2026).

Justice Sotomayor warned that the Court's embrace of the unitary executive theory "reshapes our government" and grants the President "far greater power than ever before," discarding a "democratic regime" built over ninety years, and in fact rewrites the Constitution's separation of powers, giving the President "unbridled authority" that neither the Constitution nor Congress intended.

The dissent further warned that the majority's ruling "distorts the structure of government" that the Congress had built in order to ensure independent, non-political regulation, and dangerously concentrates power in the presidency, potentially making Donald Trump the most powerful Chief Executive in our nation's history (see Stern, 2026).

In a clear rebuke to the majority, Justice Sotomayor argued the majority "upends its precedent, misconstrues our history, and sheds any pretense of judicial modesty." Justice Sotomayor argued the ruling creates a President who can purge regulators in independent agencies across the federal government (Parry, 2026).
Conversely, conservative attorney John Yoo applauded the Court's decision and commented (James, 2026):

> "This decision is the, perhaps, the most important decision about the operation of the government since 1935… "No longer will there be an FTC, FCC," Yoo continued. "All those agencies were designed by Congress to be outside the president's control, and the court says clearly that is not consistent with the vesting by the Founders of the executive power only in the president and none of these other [branches]."

Interestingly, however, the Court said that the ruling applies to most independent agencies *with the exception of the Federal Reserve*.

8.4. And Then Came Trump v. Cook

In a separate opinion, also authored by the Chief Justice, the Supreme Court blocked President Trump from firing Federal Reserve Governor Lisa Cook, ruling 5–4 that Cook must remain in her position while litigation continues. The majority held that Federal Reserve Board members can only be removed "for cause" and that President Trump failed to provide the required due process (Blumenthal & Petersen, 2026) involving notice of any alleged misconduct and the opportunity for Cook to respond— making the President's attempted removal invalid—at least for now (see Howe, 2026).

The Court drew a "firm line" around the Federal Reserve, emphasizing its "long-standing tradition" of independence and Congress's explicit protections against politically motivated firings. As a result, the independence of the Federal Reserve was reaffirmed, with a limited "for cause" exception. The Court underscored that monetary policy must remain insulated from political pressure.
Stated the Chief Justice:

> "To accept any one of these arguments would in effect transform the Federal Reserve's for-cause protection into at-will employment—an interpretive leap out of step with the statute Congress enacted and our Nation's tradition of central banking protected from political interference.

Commissioner Cook will remain in office, continuing to serve her fourteen-year term while lower courts determine whether President Trump has legitimate cause for her removal.

The dissenters in *Cook* included Justices Thomas, Alito (joined by Neil Gorsuch), and Amy Coney Barrett. They argued that the Court's ruling improperly restricted presidential removal power, broke with constitutional tradition, and created an impermissible barrier to executive authority.

Justice Thomas wrote the principal dissent, calling the majority's ruling "incorrect." Thomas argued that the Court had erred in upholding an injunction blocking a president from removing an executive officer the first time in U.S. history, framing the decision as a historic and improper constraint on presidential removal power by insulating a Fed governor from presidential removal with no basis in the constitution.

The dissent raised a broader concern that the Court was inconsistent in *limiting* executive authority in relation to the Fed, at the same time as the Court was *expanding* presidential removal power over other agencies. Justice Barrett, in a separate dissent indicated her disagreement with the majority's interpretation of the Federal Reserve Act's "for cause" removal protections, focusing on separation of powers concerns.

The views of three dissenters were in sharp contrast to the majority's emphasis on central bank independence and the need to prevent political interference in monetary policy, reflecting the dissenter's adherence to the *strong executive theory* described by Sunstein and Vermeule (2020).

9. Making Sense of the Confluence: The Powell Memorandum Provides A Context and Foundation

The doctrinal developments chronicled above did not occur in an ideological vacuum. A confidential memorandum written in 1971 by future Supreme Court Justice Lewis Powell proved providential for opponents of financial regulation and the administrative state, much as Justice Scalia's solitary dissent in *Morrison v. Olson* would serve as the constitutional roadmap for the unitary executive.

Justice Lewis Powell's 1971 memorandum, *"Attack on American Free Enterprise System,"* (Powell, 1971), written for the U.S. Chamber of Commerce, is now credited with catalyzing a political, legal, and institutional movement that reshaped the environment in which administrative law developed—especially by strengthening corporate influence, expanding business-aligned legal advocacy, and contributing to the rise of deregulatory jurisprudence and legal scholarship (Giglio, 2020). The Powell Memo "electrified the Right, prompting a new breed of wealthy ultraconservatives to weaponize their philanthropic giving in order to fight a multifront war of influence over American political thought" (Giglio, 2020, quoting investigative journalist Jane Mayer).

Powell's memorandum warned that American business faced a "broad attack" from universities, media, and regulators. He identified the consumer activist Ralph Nader, author of *Unsafe at Any Speed*, as the chief antagonist. Powell urged American corporations to build long-term political, legal, and intellectual infrastructures to defend the free enterprise system. The Powell Memorandum is credited with creating the *intellectual blueprint* for the rise of the American conservative movement and the formation of a network of influential right-wing think tanks and lobbying organizations, such as the Business Roundtable, the Heritage Foundation, the Cato Institute, the Manhattan Institute for Policy Research, the Monday Meeting, the American Legislative Exchange Council (ALEC), and the Pacific Legal Foundation to challenge the "left" in American politics and the administrative state. Powell argued that "The most disquieting voices joining the chorus of criticism [of the free enterprise system] came from perfectly respectable elements of society: from the college campus, the pulpit, the media, the intellectual and literary journals, the arts and sciences, and from politicians." To counteract these "disquieting voices," Powell advocated "constant surveillance" of textbook and television content, as well as a purge of left-wing elements from influential positions in the media and in the academy. Powell also urged that business mount a direct challenge to government regulations that he believed strangled innovation and threatened free enterprise by instead encouraging "deregulatory politics," corporate legal activism, and judicial skepticism toward the administrative state (see Heer, 2024).

Although the memo was written before Powell joined the Supreme Court in January of 1972, its core thesis helped spur a mobilization of American business in the 1970s–1990s and the creation of the Federalist Society as a student organization in 1982 which propounded legal arguments in favor of the unitary executive (Monyak, 2024), reigning in of the administrate state, and for vigorous judicial review of regulations proposed by "out of control" federal agencies.

Over the next fifty years, "The Federalist Society… built a pipeline between law schools and top judgeships and influenced the selection of the past three Supreme Court justices" (Haq, 2024). At the same time, businesses mounted legal challenges to regulatory actions on several fronts, including: *Relentless, Inc. v. Department of Commerce* (2024), challenging the National Marine Fisheries Service; *SEC v. Jarkesy* (2024), holding that SEC use of in-house administrative law judges to impose civil penalties violates the Seventh Amendment right to a jury trial; *Axon Enterprise v. FTC* (2023), allowing litigants to challenge the constitutionality of agency enforcement proceedings in federal court without waiting for the agency process to conclude; and *Corner Post v. Board of Governors* (2024), holding that the statute of limitations for challenging agency rules begins when a plaintiff is first injured, not when the rule is issued. Each of these decisions was celebrated as a major win for expanding judicial oversight of agencies.

Powell himself, once a member of the Court, authored the controversial decision in *First National Bank of Boston v. Bellotti* (1978), which established the First Amendment rights of corporations to engage in political speech, particularly in relation to state ballot initiatives, strengthening business influence in the political arena (see Katz, 2009).

10. The Role of the United States Supreme Court

The Supreme Court has played a central role in the wider debate regarding the administrative state, rolling back the powers of agencies, and simultaneously enhancing the power of the President and the courts over administrative agencies once held to be independent. Three issues merit special attention.

10.1. Ending "Chevron Deference"

The Court dealt a significant blow to the authority of administrative agencies in overruling of *Chevron deference*, a legal doctrine from the 1984 Supreme Court case of *Chevron U.S.A., Inc. v. Natural Resources Defense Council*. Under *Chevron*, when Congress writes a law that is unclear or ambiguous, courts would generally defer to the agency's interpretation, on the premise that agencies possess technical expertise judges lack, and that Congress often intends agencies to "fill in gaps" in broad statutory language.

Courts followed a two-step analysis: (1) if the statute is clear and unambiguous, the congressional answer to deciding a question or controversy will control; (2) if the statute is ambiguous or unclear and the agency's interpretation of the statute is "reasonable," courts will defer to the agency even if they might disagree with the agency's course of action or interpretation. For more than forty years, *Chevron* was a cornerstone of administrative law, influencing thousands of cases (Blumenthal, Charnas, Sandy, & Waxman, 2024).

In June 2024, the Supreme Court overruled *Chevron* in *Loper Bright Enterprises v. Raimondo*. The majority, written by Chief Justice Roberts, held that courts must exercise an *independent judgment* in interpreting a statute and cannot automatically defer to an agency interpretation simply because a law is ambiguous. Statutory ambiguity no longer triggers automatic deference by the court – judges will now decide what the law means. The majority found that *Chevron* had improperly shifted interpretive power from the judiciary to administrative agencies (Lewis, 2025).

10.2. The Possible Revival of the Non-Delegation Doctrine

The 1930s doctrine of non-delegation — limiting Congress's ability to delegate broad regulatory power to agencies — featured prominently in the anti-New Deal Supreme Court's decisions in *Panama Refining Co. v. Ryan* (1935) and *Schechter Poultry Corp. v. United States* (1935). In *Gundy v. United States* (2019), the Roberts Court upheld a delegation of authority under the *Sex Offender Registration and Notification Act*; however, Justices Gorsuch, Thomas, and Alito (and possibly Kavanaugh) signaled interest in revisiting the delegation question in future cases, suggesting that the non-delegation doctrine may yet be revived as a further check on agency power.

10.3. The Major Questions Doctrine

The Supreme Court has enunciated what has become known as the "major questions doctrine" (MQD), requiring clear congressional authorization before an agency can regulate issues of "major national importance" (Hunter & Shannon, 2026). If an agency intends to issue a rule on a question of "vast economic or political significance," it must point to clear, specific statutory language. General or vague statutory language is not sufficient. In the absence of such specific authority, the judiciary — particularly the Supreme Court — will decide what constitutes a "major question" based on factors such as economic impact, political and social significance, and the "novelty" of the issue.

The Court has invoked the MQD in several important cases:

- *FDA v. Brown & Williamson* (2000): The FDA could not regulate tobacco as a "drug" without clear congressional authorization.
- *West Virginia v. EPA* (2022): The EPA could not require a nationwide shift in electricity generation without explicit congressional approval.
- COVID-era cases (2021-2022): Courts struck down the federal eviction moratorium and the OSHA vaccine-or-test mandate on grounds that Congress had not clearly authorized those sweeping actions.
- *Learning Resources, Inc. v. Trump* (2026): The Supreme Court held that *International Emergency Economic Powers Act* (IEEPA) does not authorize the President to unilaterally set tariffs, vacating many of the tariffs implemented during the second Trump administration on grounds similar to the major questions doctrine, but this time applied to the presidency (see Farber, 2026).

As Farber (2026) has noted, the scope of the doctrine is "even more confused now than before" the tariff decision in *Learning Resources*, raising significant questions about the doctrine's future boundaries and applications."

11. Concluding Observations and Commentary

The Supreme Court's century-long arc of decisions from *Myers* to *Slaughter* is not, in the end, simply a chronology about the President's removal power. It is a story about who governs the American economy and on whose behalf. The individual decisions, viewed in isolation, can be characterized as good-faith interpretations of Article II. Viewed together — and in light of the Powell Memorandum, the sustained assault on *Sarbanes-Oxley* and *Dodd-Frank*, the overruling of *Chevron*, and the emergence of the major questions doctrine — they constitute a coherency: the systematic dismantling of the administrative state that had been constructed in response to the market failures of the twentieth century that trace back to the New Deal and which continued into the twenty-first century.

The doctrinal line drawn by Justice Scalia's lone dissent in *Morrison v. Olson* (1988) — then dismissed by the Court's 7-1 majority — became, within a generation, the constitutional majority position (see Gass, 2026). *Free Enterprise Fund*, *Seila Law*, *Collins*, and now *Trump v. Slaughter* have progressively eliminated the constitutional space for formerly independent agencies insulated from presidential control. At the same time, the overruling of *Chevron* has transferred interpretive authority from agencies to courts. And the major questions doctrine has erected a new structural barrier to ambitious agency regulation that did not exist even twenty years ago.

These developments have not occurred in a vacuum. The Powell Memorandum identified in 1971 that the real battle over free enterprise would be won or lost in the courts, in the law schools, and in the think tanks. The subsequent five decades saw the execution of that program with considerable success: the Federalist Society, the Heritage Foundation, the Cato Institute, and their counterparts provided the intellectual infrastructure; the courts provided the forum; and the unitary executive theory — dressed in constitutional language — provided the vehicle. What began as a dissent became doctrine.

There is a profound irony in the result. The argument for the unitary executive has consistently been made in the language of accountability: the President is the only nationally elected official, and therefore executive power must be concentrated in the presidency to ensure democratic responsibility. But the practical effect of *Trump v. Slaughter* is precisely the opposite. By placing the heads of the FTC, the NLRB, the FEC, and comparable agencies at the President's pleasure, the decision subjects expert regulatory bodies to the policy preferences of whichever administration holds office. Agencies designed to be insulated from political interference — precisely so that they could apply expertise consistently across administrations — are now available as instruments of political control. The winners are not the public; they are the regulated interests who have long sought to neutralize regulatory agencies that represent constraints on their freedom of action.

The overruling of *Chevron* compounds this dynamic. Agencies now lack the interpretive authority they need to act decisively in technically complex areas — financial regulation, environmental protection, public health — and courts have been invited to second-guess decisions that require precisely the kind of expertise judges do not possess. The major questions doctrine adds a further constraint, requiring agencies to identify specific congressional authorization for significant regulatory initiatives in a Congress that has historically legislated broadly, delegating to agencies the task of working out the details. The combination is, as Beerman (2018) has observed, the equivalent of an "assault on the administrative state" conducted on several fronts simultaneously (Beerman, 2018).

The lessons learned from Enron, WorldCom, Bear Stearns, AIG, and Lehman Brothers and the near-collapse of the global financial system in 2008 have not disappeared, but they have faded. *Sarbanes-Oxley* and *Dodd-Frank* were enacted in direct response to those failures. Their regulatory burden was real, and legitimate criticisms exist about their scope and costs, particularly for smaller institutions. But the sustained effort to undermine them — through litigation, legislation, and executive action — has been driven less by measured cost-benefit analysis than by the ideological project that Lewis Powell articulated more than fifty years ago.

The cumulative effect of these developments — expanding presidential control over independent agencies, contracting agency interpretive authority, raising structural barriers to ambitious regulation, and subjecting agency decisions to heightened judicial scrutiny, coupled with *Trump v. United States* (2024) in which the Court determined that presidential immunity from criminal prosecution presumptively extends to all of a president's "official acts" – with absolute immunity for official acts within an exclusive presidential authority that Congress cannot regulate (Hunter, Shannon, & Lozada, 2024; Popli, 2024; Shaw, 2026) — represents a fundamental realignment of American governance. Congress is progressively displaced; administrative agencies are progressively constrained (see Hamberger, 2014); and power is redistributed to the President and, most directly, to the courts.

Beerman (2018) noted that this produces "judges rather than legislators determining the appropriate structure of government and the scope of federal power." Whether that serves the public interest — or whose public interest it serves — is a question whose consequences are now being written into the structure of the federal government itself, and which the next generation of students, scholars, and citizens will inherit.

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Appendix I – Derivatives

Major types of derivatives include futures (a contract to buy or sell something at a set price on a future date); options — a right (but not obligation) to buy or sell something at a set price; swaps — two parties exchange cash flows (e.g., fixed vs. floating interest rates); and forwards — similar to futures, but privately negotiated rather than traded on an exchange.

Derivatives contributed to the 2008 financial crisis by amplifying risk, hiding leverage, and creating a fragile web of interconnected exposures—especially through credit default swaps (CDSs) and mortgage-linked products like collateralized debt obligations or CDOs (see Tardi, 2025).

A CDO or a collateralized debt obligation is a financial product that "bundles together various types of debt instruments — such as corporate loans, bonds, credit card receivables, or mortgages — into a single pool, then slices that pool into tranches with different risk and return profiles" The value of a CDO comes from the cash flows generated by the underlying loans (Tardi, 2025).

Derivatives enabled an unsustainable credit boom especially in relation to "credit default swaps" (CDSs), which made it easier for financial institutions to expand their lending and take on more credit risk than they otherwise could, fueling the subprime mortgage bubble.

CDSs were originally meant to insure against default, but they were increasingly used to speculate on subprime mortgage performance, magnifying exposure across the system.

Derivatives linked banks, insurers, hedge funds, and other "special-purpose vehicles" that can create opaque, off-balance-sheet exposures. When the value of mortgage assets began to fall and mortgage defaults occurred, losses spread rapidly through this network. This interconnectedness meant that the failure of one major counterparty (such as AIG) threatened the entire system.

Mortgage-linked derivatives—especially CDOs and synthetic CDOs, which "unlike traditional CDOs which are backed by physical assets like mortgages or loans, synthetic CDOs derive their value and payment streams from premiums paid for CDS "insurance" on the possibility of default of a set of reference securities" (Manning, 2026)—allowed investors to make unlimited "bets" on the same underlying mortgages. CDO issuance exploded from $20B in 2004 to over $180B in 2007. Subprime and non-prime mortgages grew from 5% to 36% of CDO assets. When mortgage defaults rose, losses mounted through all of these highly leveraged structures (Kagan, 2025b).

Appendix II – Qualified Mortgages

Mortgage and lending reforms introduced "qualified mortgages and banned "yield-spread premiums." [A yield spread premium (YSP) is a payment from a lender to a mortgage broker for originating a loan at an interest rate higher than the lender's standard or "par" rate and requires lenders to verify borrowers' ability to repay loans (Kenton, 2026c.)]

The Consumer Financial Protection Bureau (2025) defined a qualified mortgage as a home loan that meets federal standards designed to ensure borrowers can afford their mortgage payments and avoid risky loan features that can predictably lead to default by a mortgagee.

A qualified mortgage (QM) is a type of home loan that follows specific federal guidelines to protect borrowers from loans they may not be able to repay. It is incumbent on lenders to verify a borrower's ability to repay by reviewing the applicant's income, assets, employment, credit history, and monthly expenses. This is known as the "Ability-to-Repay" (ATR) rule.

Key Features of a qualified mortgage include:

- Stable loan structure: QM loans avoid risky features such as interest-only payments, negative amortization, and balloon payments in most cases;
- Term limits: The loan term generally cannot exceed 30 years, reducing long-term repayment risk;
- Debt-to-income ratio: Borrowers' total monthly debts, including the mortgage, typically cannot exceed 43% of gross monthly income, ensuring the affordability of the mortgage; and
- Pricing limits: Points and fees charged for initiating the load are capped, and the annual percentage rate (APR) cannot exceed a set threshold above the market's average prime offer rate (APOR), keeping the loan "reasonably priced."

Appendix III – Independent Regulatory Agencies

These are the agencies Congress formally designates as *independent regulatory agencies* — meaning they have rulemaking authority and whose leaders typically enjoyed removal protections before the Supreme Court's decision in *United States v. Slaughter.* According to the Legal Clarity Team (2026b): "What sets them apart from ordinary executive departments is a combination of structural features designed to insulate expert decision-making from short-term political pressure: multi-member leadership, bipartisan balance requirements, fixed terms, and legal limits on the president's power to fire agency heads."

- Federal Reserve Board — Oversees monetary policy.
- Securities and Exchange Commission (SEC) — Regulates securities markets.
- Federal Trade Commission (FTC) — Antitrust & consumer protection.
- Federal Communications Commission (FCC) — Communications & broadcasting.
- National Labor Relations Board (NLRB) — Labor-management disputes.
- Commodity Futures Trading Commission (CFTC)
- Consumer Product Safety Commission (CPSC)
- Federal Deposit Insurance Corporation (FDIC)
- Federal Energy Regulatory Commission (FERC)
- Federal Housing Finance Agency (FHFA)
- Federal Maritime Commission (FMC)
- Nuclear Regulatory Commission (NRC)
- Consumer Financial Protection Bureau (CFPB)
- Federal Election Commission (FEC)
- National Transportation Safety Board (NTSB)
- Federal Mine Safety and Health Review Commission
- Occupational Safety and Health Review Commission
- Postal Regulatory Commission

(Paperwork Reduction Act. Title 44, Section 3502(5) of the U.S. Code (1995)).

According to the Legal Clarity Team (2026b), the following agencies are generally considered as the most important:

- Securities and Exchange Commission (SEC): Five commissioners serving five-year terms, no more than three from the same party. Oversees securities markets and enforces investor-protection laws.
- Federal Trade Commission (FTC): Five commissioners serving seven-year terms, no more than three from the same party. Enforces antitrust and consumer-protection rules.
- Federal Communications Commission (FCC): Five commissioners serving five-year terms with a three-member same-party cap. Regulates broadcasting, telecommunications, and spectrum allocation.
- National Labor Relations Board (NLRB): Five members serving five-year terms, with one seat expiring each year. Adjudicates disputes between private-sector employers and employees over union organizing and unfair labor practices.
- Board of Governors of the Federal Reserve System: Seven governors serving staggered fourteen-year terms. Directs monetary policy and supervises the banking system.