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LDAD Files Amicus Brief in Support of Independent Regulatory Commissions

Boston, MA. — Lawyers Defending American Democracy (LDAD) recently filed an amicus brief in *Trump v. Slaughter*, urging the U.S. Supreme Court not to treat all multimember independent regulatory commissions created by Congress as solely executive agencies that must be wholly controlled by the President.

The issue in *Slaughter* is whether Congress may limit the President's authority to remove Federal Trade Commission (FTC) commissioners to termination for cause. A larger question, however, is whether the Court will issue a broad opinion that treats all 80 or so multimember commissions as subject to direction by the President, and any efforts by Congress to limit such control as unconstitutional. Among these entities are the Federal Reserve Board of Governors, the Federal Deposit Insurance Corporation, the Consumer Product Safety Commission, and many others.

Our brief demonstrates that such a ruling would **ignore more than two centuries of American history**. [Drawing on archival materials](#) and a sweeping review of statutes from the 1780s onward, the brief shows that **Congress and the Founders regularly created multimember commissions with features designed to provide some independence from political influence**.

These commissions:

- Exercised **independent judgment**, often making final, binding decisions.
- Were designed to be **insulated from factional politics** and executive pressure.
- Included some of the nation's most senior officers—the **Vice President, Chief Justice, Secretary of State**, and others—functioning as trustees, not agents of the President.
- Used oaths, fixed terms, and fiduciary responsibilities to ensure **impartiality and independence**.

Examples described in the brief include the Revolutionary War Debt Commissions, the Sinking Fund Commission, Direct Tax Boards, and territorial land-title boards—each created to avoid corruption, favoritism, or political manipulation. Even when the President had authority to remove members at will, Congress established other measures that limited Presidential influence over their operation. These structures, the brief shows, are part of the **constitutional DNA** of the United States.

“Congress has always had the power to create independent bodies that can make impartial decisions free from presidential control,” said Mitt Regan, McDevitt Professor of Jurisprudence at Georgetown University Law Center, a principal author of the brief and a member of the board of Lawyers Defending American Democracy. “The Founders built these structures themselves. Calling them simply ‘executive agencies’ today contradicts the very history the Court claims to rely upon.”

LDAD argues that the Court's own originalist principles require upholding Congress's ability to structure multimember independent commissions with some degree of independence from Presidential influence. These limits are not modern innovations—they are **part of how the Founders balanced power** and prevented the President from dominating every corner of government. Appreciating this requires that the Court proceed much more carefully than it has thus far in its jurisprudence on these independent commissions.



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***Lawyers Defending American Democracy** was founded in 2019 and is a 501(c)(3) organization dedicated to the protection of the rule of law, the Constitution, and democracy. LDAD's work includes authoring Calls-to-Action, amicus briefs, and articles calling for adherence to the rule of law and encouraging the legal profession and the public to join in speaking out against threats to the norms, freedoms, and principles of our democratic institutions. LDAD's most recent initiative is [Meeting the Moment](#), a call to lawyers across the country to engage with their communities in response to the attacks on our democratic institutions. For further information about LDAD, see <https://ldad.org/>*