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Keynote Remarks (as prepared for delivery) of
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Thanks so much for having me today; I am deeply grateful to AAI and GWU for organizing this important event, and while I am delighted to be here amongst such distinguished colleagues, I have to admit that I would be more delighted to be here today if it were under different circumstances.

My name is Rebecca Kelly Slaughter - more commonly known to most of you as Becca and, to my chagrin, historically known as the Slaughter in *Trump v. Slaughter*. This is my first public speech as a former commissioner of the Federal Trade Commission.

I think it's a good idea to preempt or prebut the questions I have been getting most frequently in the wake of this case, before we dive into the really important substance we are here to discuss.

How does it feel to have a precedent-setting Supreme Court decision bear my name? Pretty weird, and given how the case came out, mostly bad!

Do I regret bringing the case, given that my litigation led to the overturning of a pillar of administrative law? No I do not. Had I not challenged the removal effort, it would have been effectuated anyway, and the precedent would have been eviscerated, but in the absence of my litigation that would have happened with my assent, rather than over my objection. And without the litigation, decided by a multimember tribunal with removal protections, the public would not have the benefit of being able to examine, attempt to understand, and challenge the reasoning that underlies the different opinions in the case.

More importantly, I would rather stand on the right side of history than the winning side of a particular Supreme Court case. And I am profoundly confident that standing up for checks and balances, for the rule of law, for a government that is responsive to the people and not just the powerful, and against the flagrant disregard of Congressional statutes puts me squarely on the right side of history.

Am I ever going to get another job? Hopefully!

What will it be? That's a question for another day.

Today, we are here to discuss the future of the FTC (and by extension other boards and Commissions Congress designed to be independent). I am not going to rehash the unitary executive theory (or why I think it is wrong, dangerous, ahistorical, and inconsistent with constitutional principles of checks and balances). Those questions have been settled, for now, though I do not believe their resolution will stand the test of time.

Today we're here to discuss the practical effects of the Supreme Court decision that unfortunately bears my name, and overturned nearly a century of settled precedent and even longer of practice.

In light of the Supreme Court's holding that removal protections for Commissioners of what have been historically understood to be independent commissions are unconstitutional, we have to ask two important questions:

1. What functional benefits did those removal protections serve?
2. Are there other ways to achieve those benefits consistent with today's governing law?

This morning I'm going to try to answer the first question, and hopefully the rest of the day will tackle the second.

What are the practical effects of removal protections? I shared much of my perspective on this question in a piece I published in the Penn Reg Review last spring, and will borrow from that article here.

I had the privilege of serving at the FTC as a minority Commissioner in a 3-2 commission, the Acting Chair in a 2-2 Commission, a majority Commissioner in a 3-2, 3-1, and 3-0 Commission, and then again a minority Commissioner in a 2-2 Commission. By which I mean, there may be a permutation of Commission Construction I have not experienced (Maureen can tell us about life as Acting Chair in a 1-1 Commission) but I have pretty much covered the field. So my goal this morning is to share a little bit of my experience of the public value of bipartisan boards and commissions, so that we can unpack how much of that value can be preserved or reconstituted in a post-*Humphrey's* world.

Let's start with what removal protections have meant, historically, at least with respect to the FTC (though I think much of this logic can extend to the two dozen or so other similarly constituted boards and commissions). To be clear up front: I am talking about the benefits of removal protections as a shorthand for a commission constituted as Congress designed and inscribed in statute: with a bipartisan slate of members who, during their statutory terms, can only be removed for cause. Appointments requirements–no more than three members from a single party–enabled the bipartisan nature of the commission, but the removal protections have been what protected it, because the appointments requirements are relatively meaningless if, once appointed, members can be summarily removed.

Removal protections have guaranteed that Commissioners, once duly appointed and confirmed, have the freedom to operate consistent with their oaths of office, which are to the Constitution and the laws of the United States. In other words, Commissioners could do their jobs - consider matters, vote, and dissent or concur, without fear or favor.

To my mind, there are four important principles at stake:

1. Guarding against corruption in important economic decision-making;
2. Forcing the majority to engage with alternative approaches;
3. Incentivizing consensus which in turn promotes durability of Commission decisions;
4. Providing transparency and accountability when consensus cannot be reached.

Taking them in turn:

Corruption:
When I talk about protection against corruption, I mean protection against the fear of being removed for failure to do a favor for the President's friends and allies. Honestly, when I learned Admin law, I would never have expected protection against corruption to be an important value to have embedded in the legal structure of government agencies. Perhaps that is the naive perspective of an elder millennial born in the post-Nixon era; I grew up understanding both parties to be mostly governed by people who took public service and public trust seriously, even if I might vehemently disagree about how to execute such service and trust. But I don't think it's an accident that we are talking about the evisceration of anticorruption tools by an administration that is running roughshod over federal ethics rules and treating the government like its personal piggy bank.

How did removal protection work to prevent corruption in practice at the FTC?
The most important thing to understand is that removal protections do not only guard minority voices. They also allow members of the President's own party to put their oaths to the Constitution and the laws of the United States above any oath of political loyalty to the President. In other words, by firing Commissioner Bedoya and me, the President sent a message to all of the majority members of independent boards and Commissions that they need only to ask "how high" when he says "jump" or their jobs would be imperiled.

Consider the example of a Republican Chairman of the FTC who was willing to refuse President Trump's first-term demands to turn the agency into a tool of political retribution. It has been publicly reported that Chairman Simons faced calls from President Trump to use the agency's tools to police first-amendment-protected political speech; he declined to do so, understanding that such action would be outside the scope of the Commission's mandate - not to mention unconstitutional. He deserves enormous credit for that, but he was able to do so because in President Trump's first term, facing reelection, he was not (yet) willing to entirely ignore the law and fire Chairman Simons.

Fast forward to today, post the at-will removal of Commissioners: the FTC has sent warning letters with similar speech-punishing flavor to Apple and Google, and has entered into settlements with advertising companies, and brought speech-punishing litigation against Media Matters, which was tossed out of court for blatant first amendment violations. Even with all of that, it is only barely competing with the FCC, which every day appears to be finding new ways to abuse its powers to attempt to silence not only legitimate news reporting but also talk shows and even late night comedians.

But from a corruption perspective, the voices of the minority do matter as well. Consider two contrasting examples:

Facebook vs. Amazon
In 2019, the FTC settled an investigation into whether Facebook had violated not only the law but a previous FTC settlement in failing to protect the privacy of user data. The FTC majority and Facebook agreed that the company could pay a $5 billion financial penalty to resolve the case, without admitting wrongdoing.

My fellow minority Commissioner Rohit Chopra and I dissented from that decision because we did not believe that the settlement would be adequate to deter Facebook from violating the law. But I was not concerned that the Republican majority supported the settlement because of pressure from the first Trump Administration or because Facebook was a large donor to the President—at the time, it was not. And the public could have confidence that corruption was not at play in the decision because it could read the dissenting statements, in which we would have called out any corruption if we had seen it.

Contrast the FTC's 2019 Facebook settlement with its 2025 settlement with Amazon involving allegations that Amazon's prime subscription system illegally trapped customers who wanted to cancel. That 2025 settlement was inked on the eve of trial, after the FTC staff had won multiple pretrial motions. In the settlement, Amazon agreed to pay $2.5 billion, and the FTC allowed the company and its named executives to avoid admitting liability.

The settlement happened after Commissioner Bedoya and I were removed from the FTC and after Amazon donated $2 million to President Trump's inauguration, donated an unspecified amount to the President's White House ballroom project, and paid the first lady $40 million for the rights to a documentary about her life.

Was this settlement the best outcome for consumers, or was it a sweetheart deal driven by political pressure from the White House? I do not know. I was not allowed to do my job and analyze the non-public information that could have helped me formulate a clear view. And the public did not have the opportunity to hear from Commissioners who might have disagreed with the settlement about the basis for their disagreement (or lack thereof).

At a minimum, the appearance of impropriety is created by the President's unprecedented approach to seeking and accepting gifts from parties with business before the government. Without the voices of independent commissioners, the public cannot have confidence that the agency's leadership is taking actions in the public interest and not in the interest of billionaire donors.

To be clear, this is not and should not be a partisan issue; there are many conservatives who are equally horrified by the transformation of our esteemed government agencies into arms of the spoils system. And I would be equally horrified by a Democratic president who rewarded political donors with favorable merger reviews or by turning a blind eye towards predatory market practices.

And although it is not the point of this conference, I think it is incumbent on everyone who believes in the rule of law and in particular every member of the bar to not turn a blind eye or become indifferent to the corruption we are seeing. Just this weekend, Truth Social opened up a paid service for inside access to the President's posts, allowing market participants to pay for early access to information, in a way that financially benefits the President himself. And who can police that under a unitary executive controlled by that same President? Not the executive branch.

Ok, rant over. Or at least paused. Because even in administrations that were not engaged in naked corruption, removal protections served important benefits by forcing the Commission to engage with opposing views.

Engage Opposing Views

In practice, when Commissioners have the opportunity and obligation to engage the perspectives of those who might approach an issue differently from themselves, they can get a better understanding of how their proposed approach might land outside the building, including in a courtroom, and consider whether it should be tailored.

The nonpartisan career staff generally does a good job of surfacing for the Commission alternative theories, arguments, strategies and approaches—although the role of nonpartisan career staff is also under attack today. But in practical terms, even with career civil service protections, there can be an incentive for the staff to match the perspective of the Chair.
In practice, I found myself, whether in the majority or the minority or even as Chair, eager to hear what my fellow Commissioners thought of any particular staff recommendation. I was surprised sometimes to see where they agreed with something to which I thought they might object, and vice versa.

During the period when we had only Democratic Commissioners, because my colleagues Noah Phillips and Christine Wilson chose to leave the Commission on their own terms, I frequently wondered what they each would think of any given proposed resolution. I learned from their views every day, and I believe engaging with them made my own work—and therefore the work of the Commission—much stronger.

In addition to satisfying my intellectual curiosity, the effect of engaging opposing viewpoints is practical. The opportunity to get input from Commissioners of different perspectives often improved the chances of success for any matter that went to litigation, by allowing the majority to anticipate and navigate opposing arguments.

Incentive to Consensus

The value of engaging opposing views in real time not only strengthens decision making, it incentivizes consensus. After all, one cannot build consensus where one does not know that disagreement exists. And once Commissioners are aware of potential disagreement, they are given the opportunity to consider how to handle it: find common ground and forge bipartisan agreement that is more likely to outlast the current administration, or dig in.

In my experience, Chairs of both parties sought consensus where it was available because they cared enough about their work and the work of the Commission that they wanted it to endure past the political winds of the moment. Some key examples:

- After Commissioner Chopra made clear his views on the importance of, for example, individual corporate liability, Chairman Simons authorized staff to investigate and pursue individual liability in order to earn support from Commissioner Chopra and me.
- When I was Acting Chair and the Illumina-Grail merger hit a voting deadline, I worked hard to earn the support of both Commissioners Wilson and Phillips, knowing that a unanimous merger challenge would have a greater chance of success in court. When that same case eventually came around on Part 3 appeal to the Commission, Chair Khan also worked hard to earn Commissioner Wilson's support for the majority of the Commission opinion finding the merger illegal. Chair Khan wisely understood that Commissioner Wilson's written opinion would likely be influential to the Fifth Circuit, to which the case was appealed, and indeed the court ultimately adopted much of Commissioner Wilson's perspectives. Had Chair Khan not gained Commissioner Wilson's support for the majority of the Commission's opinion, the outcome might have been quite different.
- And finally, at the end of the Biden administration, when we were considering a new HSR form, the 3-2 Democratic majority could have pushed through a version that would have been much closer to my own personal policy preferences, as well as Chair Khan's and Commissioner Bedoya's. But as a majority, we chose to negotiate with our Republican colleagues and gain their support for a consensus new form. Admittedly, the fate of that form is in limbo given ongoing litigation, but I am confident that had we opted for the party-line version it would have been jettisoned on January 21st, rather than being given a fighting chance to survive.

For all of the market participants I hear clamoring for stability and predictability in government actions, a bipartisan commission that is incentivized to find consensus is a structure that serves those goals.

Transparency and Accountability
But consensus is not required on a bipartisan commission, and when it cannot be found, removal protections have allowed commissioners to dissent publicly and transparently, providing clarity and accountability to the public.

And this is not just my perspective; here's what Chairman Ferguson had to say about it the week before I got fired:

> "If you have an agency that is exceeding the law, abusing the companies that it purports to regulate, it's helpful for markets, for courts, for litigants, for government transparency to have people in the other party pointing this out and saying it in dissents. Like you know, I wrote four hundred plus pages of dissents during my time as a minority commissioner. I think that that adds value."

This is an area in competition law where I think the FTC has always had a leg up on its DOJ counterpart, even when my perspective was the one against which dissents were issued. If the DOJ settles a case—say, a massive antitrust case against a live events behemoth on the eve of trial, or a mega media merger, or a broadcasting rollup—the only way the public might know that there was an alternative path is if state AGs happen to have the resources and the investment in the same case ready to take it forward. We've seen three recent examples where state AGs were able to step in and pursue the case themselves; how many more instances have there been where states lacked the resources to fill that void? Absent the courage of public servants like Roger Alford, who was fired and pilloried for standing on principle, we would not know what the counterfactual could look like at DOJ.

At the FTC, public access to such information is, at least historically, built into the structure of the agency. But that is not what we are seeing out of the FTC today. I believe last week was the first time we saw Commissioner Meador and Chairman Ferguson split on a matter and issue brief public statements about their disagreements. I was glad to see that modicum of transparency, but it is difficult to hold that record up against Chairman Ferguson's self-described 400-plus pages of dissents.

Public concurrences and dissents have helped to roadmap for Congress, for states, for civil society and for the American public what alternative paths the Commission might have taken. Being required to defend one's perspective and decisions in public is very important for political accountability.

There have been powerful and prescient dissenting and concurring opinions from commissioners across the political spectrum. Some I have not yet mentioned that come to mind for me are:

- Dissenting statement of Commissioner Pamela Jones Harbour on the Google/DoubleClick merger, presciently anticipating the importance of understanding the nexus between privacy and competition in digital tech
- Dissenting statement of Noah Phillips in 1-800-Contacts, which was very influential in the later Second Circuit opinion overturning the Commission opinion;
- Statement of Chair Lina Khan and Commissioner Bedoya in the Pepsi matter explaining the importance of Robinson-Patman enforcement.

Whether or not one agrees with these statements, we should all deeply appreciate the value of having different perspectives aired for the public to draw its own conclusions.

This is true not only as to the substance of Commission decisions but as to the procedures around them. For example, take recusals. Commissioner Wilson very publicly disagreed with Chair Khan's decision not to recuse from the Meta/Within matter; she wrote a lengthy dissent, and Commissioner Bedoya and I wrote our explanation of support for the decision. Whatever you personally thought about it, you had the opportunity to consider the arguments and we had the obligation to defend those decisions in front of Congress and the public. I myself spent many hours being grilled in the Senate Commerce Committee about my decision to support Chair Khan in this matter in my reconfirmation hearing, and while I didn't exactly enjoy the experience I was glad to answer the Committee's questions; I believe Congress and the people deserve that transparency.

Fast forward to Chairman Ferguson's decision to *un*recuse himself from the Part 3 insulin litigation in Spring of 2025. Was that the right decision? What was the basis for it? Was it against the advice of ethics counsel? None of that is public information. Nor is Commissioner Meador's decision to recuse from the settlements of those cases. The public is entitled to transparency, and in the absence of bipartisan commissioners acting without fear or favor, they are not getting it.

Those are the values that have been legally guarded by removal protections. However I think it's also worth covering what has been norms-guarded at the FTC that has made the agency effective over the years.

Some norms that persisted at the FTC include:

1. Transition of governing majority with administration transition;
2. Treating all Commissioners equally in terms of access to staff and information.

Presidential Transitions
One criticism of removal protections has been that they would thwart the ability of the President's party to control the agencies at transition. That's technically true though practically unprecedented. In fact, I will confess that, when I was working in the Senate, I tried to convince a Democratic chair at an independent commission to stay on to hold a Democratic majority when President Trump took office the first time, and was told, in less polite terms, to pound sand, because that was not done. But the statute would have allowed it.

At least at the FTC, and at most other agencies, by norm (not rule), Chairs have stepped down when the Presidency transitioned parties unless there was an agreement for them to stay. And I think a turnover of control when the Presidency changes is a reasonable expectation.

That expectation is also imperiled by the overturning of Humphrey's; what will happen in January 2029 if there are no sitting Democrats at the FTC? At least historically, the laws that allow for acting appointments have not applied to independent agencies, and the result of the *Slaughter* case may be that an incoming President is forced to decide between an agency chaired by a political opponent or an agency entirely unstaffed and nonfunctional.

Equal Access
The other norm-based effect of *Humphrey's*, at the FTC, has been the equal treatment of Commissioners regardless of parties.

In my experience, what that meant was that the staff of the Commission treated all five Commissioners as their principals, equally giving them information, feedback, and access to documents whether they were in the majority or the minority. That is not a direct product of the removal protection statute; I know that minority Commissioners at, for example, the FCC, never felt they had equal access to information. And it is a norm that has not survived the (second) death of *Humphrey*: when I was briefly returned to the Commission in September, I was told that staff were no longer allowed to directly communicate with non-Chair commissioners, in a new rule that preceded my reinstatement.

But to the extent we are discussing practices that should be revived or preserved, this is a norm that is worth reinstating and codifying.

In sum, my personal view of the goals of a post-*Slaughter* FTC project should include:

1. Protections against corruption and undue political influence
2. Mechanisms to engage opposing viewpoints pre-decision
3. Incentives to find consensus
4. Opportunities for transparency and accountability
5. Changes in control that track changes in administration
6. Access to information and nonpartisan experts for all members of the Commission.

This is not, by any means, an exhaustive list; I barely touched on administrative adjudication which will be covered in Part 3, and I'm sure many others have things they would add or subtract from my list.

The Supreme Court has taken removal protections out of the Congressional toolbox in agency design, but it has not said that any of the values or practices I have discussed above are unconstitutional. So the project ahead of us is to figure out whether and how agencies can be tailored to achieve these or related goals, using a modified toolkit.

I'm excited we have the opportunity to hear from FTC experts over the course of the morning about their own—bipartisan—views on the work that lies ahead.