

# Reflections From High Court Oral Args Over Fed Gov. Removal

By **John Culhane and Richard Andreano** (February 11, 2026)

What are the circumstances under which the president can remove a governor of the Federal Reserve Board, and what procedures must the president follow to do so?

The U.S. Supreme Court will weigh in on a significant case, *Trump v. Cook*, regarding those issues and the extent to which the Federal Reserve Board is independent from the control of the president.

Important developments at other agencies led up to the *Cook* case and ultimately the Jan. 21 oral arguments before the Supreme Court.

Early in his second term, President Donald Trump fired members of various agencies, including some agencies whose members may be removed by the president only for cause. The agencies include the Federal Trade Commission,[1] Merit Systems Protection Board, National Labor Relations Board and National Credit Union Administration.[2]

The firings are being challenged in court, and in December the Supreme Court heard oral arguments in the case in which Rebecca Slaughter is challenging her removal as an FTC commissioner.

While in a 1935 decision in *Humphrey's Executor v. U.S.* the court upheld the constitutionality of the for-cause removal standard applicable to FTC commissioners, based on the oral arguments, which dealt in part with the changes to the FTC since 1935, it appears there is a potential for the court to overturn that ruling and deem the for-cause removal standard to be unconstitutional.

The case involving the FTC commissioner sparked concern about the for-cause removal standard applicable to Fed governors, and whether the Supreme Court would view the Fed to be different than the FTC should it deem the for-cause removal standard for FTC commissioners to be unconstitutional.

The concern centers on the need for the Fed to be independent of political pressure in determining monetary policies, particularly when setting interest rates. The concern became magnified when in August Trump fired *Cook* as a Fed governor for cause based on allegations of mortgage fraud.

*Cook* challenged her firing in court, which led to the Supreme Court holding oral arguments in January 2026 to address lower court rulings that let *Cook* remain with the Fed.

In September, U.S. District Judge Jia M. Cobb, with the U.S. District Court for the District of Columbia, issued a preliminary injunction blocking the attempt to remove *Cook*. While the Trump administration argued that *Cook* made false statements on mortgage applications for a home in Michigan and a condominium in Georgia, Judge Cobb held that the administration had not presented evidence of cause related to *Cook's* conduct or job performance as a Federal Reserve Board governor.



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Significantly Judge Cobb also held that the for-cause removal provision applicable to Fed governors only applies to their behavior while they are a board governor.

With regard to the allegations of mortgage fraud, lawyers for Cook have asserted that reports confirm that Cook properly declared her Michigan home as her principal residence, and that, as part of her mortgage application, she described the property in Georgia as a vacation home.

Judge Cobb also ruled that Cook should have been given notice of and an opportunity to answer the allegations against her before she was terminated. The Trump administration argued that a post by the president on Truth Social alleging the mortgage fraud provided Cook with the opportunity to respond.

She did not respond to the allegations, and the president subsequently sent her a letter stating he was removing her from the board. Cook then brought the lawsuit challenging her termination.

The Trump administration promptly filed an appeal<sup>[3]</sup> with the U.S. Court of Appeals for the District of Columbia Circuit. Six days after the ruling by Judge Cobb, a divided three-judge panel of the Court of Appeals upheld<sup>[4]</sup> Judge Cobb's preliminary injunction, finding that Cook's "due process claim is likely to succeed" and that because she "has a property interest in her position, she is entitled to 'some kind' of process before removal."

The Trump administration then filed an emergency application with the U.S. Supreme Court seeking a stay of the preliminary injunction.<sup>[5]</sup> The court allowed Cook to remain on the Fed's board pending the oral arguments before the court.<sup>[6]</sup>

At the court, Solicitor General D. John Sauer argued on behalf of the Trump administration, and former Solicitor General Paul D. Clement argued on behalf of Cook.

While the Trump administration admitted that the president can't remove a Federal Reserve Board governor for policy differences, the main thrust of its position is that: The president can remove a Fed governor for cause, even for acts before the person was a Fed governor, without any formal notice or hearing; the appropriate remedy to challenge the removal would be mandamus; and mandamus is not available to challenge the removal because it was a discretionary act of the president.

Thus, the basic position of the Trump administration is that there is no ability for a court to review if the removal was proper.

The justices expressed skepticism about such position, particularly Justice Elena Kagan, who stated, "When we're talking about the president's removal powers, you're essentially saying that the only remedy [which is mandamus] doesn't apply."

Some of the justices pressed Sauer on whether the president will suffer irreparable harm if Cook is allowed to remain on the board pending the final outcome of the litigation. When questioning Sauer, Justice Sonia Sotomayor stated:

Explain to me why the president's harm is greater than the public's, greater than the Federal Reserve, who deserves to have people acting that have been in office, and, number three, why we should disrupt, as we said in Wilcox, the disruptive effect of repeated removals and reinstatement of officers. Why shouldn't we wait until the end of this case,

where all the issues are clear and where we make a final decision as to whether she should have been removed or not?

Justice Ketanji Brown Jackson did not think the president would suffer irreparable harm, and Justice Amy Coney Barrett also appeared to be skeptical of whether he would suffer such harm.

One of the more interesting exchanges occurred during the questioning of Sauer by Justice Brett Kavanaugh regarding the reason for the for-cause removal provision, which the justice stated "is what protects the independence of the Federal Reserve."

After stating that the position argued by the government would establish "a very low bar" for the for-cause removal of a board governor, Justice Kavanaugh then engaged in the following questioning:

Justice Kavanaugh: Let's talk about the real-world downstream effects of this because, if this were set as a precedent, it seems to me, just thinking big picture, what goes around comes around. All of the current president's appointees would likely be removed for cause on January 20th, 2029, if there's a Democratic President or January 20th, 2033, and then we're really at at-will removal. So what are we doing here? ... [T]hat's why I started with what's the purpose of the independence in the for-cause removal. If we accept all these no procedure, no judicial review, no remedy, you know, that's what's going to happen, I think, and then — then where are we? So do you dispute that that is, you know, the — the real-world effect?

General Sauer: I cannot predict what future presidents may or may not do, but the argument strikes me as a policy argument —

Justice Kavanaugh: Well, history is a pretty good guide. Once these tools are unleashed, they are used by both sides and usually more the second time around. And I think that's what — that's what we have to make sure we're — again, that can't drive the decision necessarily. We have to be aware of what we're doing and the consequences of your position for the structure of the government.

Other justices also appear to be concerned about the ramifications of the case. Significantly, the case has proceeded rapidly through the courts, and as noted above, is before the Supreme Court on an emergency application.

As a result, the significant legal issues involved have not been thoroughly analyzed, nor have the facts of the case been determined. As a result, the justices appear to be skeptical about ruling on the substantive issues in view of the limited record and analysis.

The issues include:

- What is "cause" for purposes of the for-cause removal provision?
  - Does it mean the inefficiency, neglect of duty or malfeasance, or INM, standard in office, used in some statutes; INM plus ineligibility for office by virtue of serving as an officer, director or stockholder of a bank, banking institution or trust company, which is prohibited under Title 12 of the U.S. Code, Section 244; or something else?
  - Does it include gross negligence?

- Does the "for cause" removal provision only apply to the behavior of a board governor while they are on the board, or does it also apply to pretenure behavior?
- Does the "for cause" removal provision, which does not expressly provide for notice and a hearing, nonetheless require notice and a hearing?
- If so, what type of notice and hearing?
- Is a preliminary injunction an appropriate remedy to challenge a removal, or is mandamus the only option?

Predicting how the court will rule based on oral arguments is a cross between reading a cloudy crystal ball and reading tea leaves. Assuming the justices believe that a preliminary injunction is the appropriate remedy at this point in the case, it appears they are inclined to leave the injunction in place and remand the case to the district court for the development of the facts and analysis of the substantive issues.

If so, Cook will be eligible to remain on the board at least until there is a ruling on the substance of the case.

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[1] <https://www.consumerfinancemonitor.com/2025/12/10/trump-administration-asks-supreme-court-to-allow-president-to-fire-ftc-member-without-cause/>.

[2] <https://www.consumerfinancemonitor.com/2025/11/26/supreme-court-denies-ousted-democratic-ncua-board-members-request-for-expedited-consideration/>.

[3] <https://www.consumerfinancemonitor.com/2025/09/11/trump-to-appeal-judges-decision-blocking-him-from-firing-lisa-cook-from-federal-reserve-board/>.

[4] <https://www.consumerfinancemonitor.com/2025/09/16/split-appeals-court-panel-decides-trump-fired-cook-from-federal-reserve-board-illegally/>.

[5] <https://www.consumerfinancemonitor.com/2025/09/19/trump-asks-supreme-court-to-let-him-fire-lisa-d-cook-from-fed/>.

[6] <https://www.consumerfinancemonitor.com/2025/10/01/supreme-court-allows-lisa-d-cook-to-remain-as-member-of-the-fed-until-at-least-january/>.