

Can Two FTC Commissioners of the Same Party Constitute a Quorum?

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March 20, 2025

Yesterday, President Trump [fired](#) the two Democratic members of the Federal Trade Commission, Commissioners Alvaro Bedoya and Rebecca Kelly Slaughter. President Trump's action leaves Chair Andrew Ferguson (R) and Commissioner Melissa Holyoak (R) as the only two members of the Commission, which has many wondering: can the FTC take formal action by a 2-0 vote cast by members of the same party? Can Trump refuse to appoint new Democratic members? What happens next for Commissioners Bedoya and Slaughter?

History of FTC Quorums

Congress [created](#) the FTC in 1914 as a five-member commission, with seven-year staggered terms for commissioners. Under that framework, no more than three commissioners could hail from the same political party. The statute did not expressly address how many commissioners constitute a quorum for FTC actions, but, as former FTC Chair Edith Ramirez [stated](#) in 2015, “[t]he FTC’s architects believed that decisions made by consensus through a collective body, rather than by a single agency head, would make for better policy.” Accordingly, for many years the FTC adhered to a rule mirroring what the Supreme Court [described](#) as “[t]he almost universally accepted common-law rule,” namely, that “a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body.”

But, in September 2005, the FTC acted—on its own—to lower its quorum threshold. It adopted a [new quorum rule](#) (16 CFR § 4.14) providing that “[a] majority of the members of the Commission *in office and not recused* from participating in a matter ... constitutes a quorum for the transaction of business in that matter.”

Can the FTC Take Formal Action By a 2-0 Vote?

According to Rule 4.14, a quorum is a “majority of members” who are “not recused from participating in a matter.” So, where there are only two commissioners, can a quorum exist where one commissioner votes in favor of an action and the other votes against? We think not, given that a majority [means](#) “*more* than half.” What about when both commissioners vote in favor of an action? Can a two commissioner vote *ever* constitute a quorum? Although the issue has not been litigated, there is relevant precedent. In 2017, the FTC, during the last weeks of the Obama administration, [authorized](#) the filing of a complaint by a vote of 2-0, with Chair Edith Ramirez (D) and Terrell McSweeney (D) voting in favor. (Commissioner Maureen Ohlhausen recused herself. (Professor Stephen Calkins and I [elaborated](#) on this issue in 2018.) In light of this relatively recent precedent, Democrats would need to distinguish that 2017 vote from any forthcoming 2-0 votes in the Ferguson-led FTC.

Can President Trump Refuse to Appoint More Democrats?

The FTC Act does not, by its terms, require a president to appoint commissioners—Section 1 merely [provides](#) that “[n]ot more than three of the commissioners shall be members of the same political party.” Thus, President Trump, could, in theory, appoint an additional Republican Commissioner (he [nominated](#) Mark Meador in January 2025) and leave the two Democratic spots vacant—an action that would certainly be challenged given that the Commission is contemplated as a five-member commission.

What Happens Now?

Commissioners Bedoya and Slaughter have [called](#) their termination illegal and plan to fight the Trump administration in court. There is precedent for this: in January 2025, President Trump fired Gwynne A. Wilcox, a Democratic member of the National Labor Relations Board. She sued to challenge her dismissal, and a judge reinstated her early this month. The administration has appealed that ruling. As discussed in more detail [here](#), this line of cases is likely to ultimately result in the Supreme Court’s reconsideration of a 1935 precedent, *Humphrey’s Executor*.

Thus, it is possible that the Democratic commissioners will refuse to step down from service pending litigation. If that happens, will the Commission recognize their votes? Highly unlikely. In any event, in that case, every FTC action would be subject to challenge—especially before Meador is confirmed—until a court rules on the termination.