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BLOGS

Federal Enforcement

Uncertainty Clouds the FTC as Commissioner Battle Continues

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On March 18, the Trump administration fired Democratic appointed FTC commissioners Rebecca Kelly Slaughter and Alvaro Bedoya, leaving the FTC with only two commissioners (Melissa Holyoak and Chairman Andrew Ferguson) while waiting for confirmation of Trump nominee Mark Meador.

Soon after, the ousted Democratic commissioners filed a lawsuit challenging their termination. Under the FTC Act, a commissioner can only be removed by the president for inefficiency, neglect of duty, or malfeasance in office. The Trump administration did not claim to have cause for firing the two commissioners, but instead stated that their continued service would be inconsistent with the administration's priorities.

Until Meador is confirmed, giving the FTC a republican majority regardless of whether Slaughter and Bedoya are reinstated, there are questions regarding day-to-day operations of the agency with only two commissioners. While there is recent precedent that a 2-0 vote by two commissioners of the same party is sufficient for a quorum, at least one party defending against an ongoing FTC action, Asbury Automotive Group, has already argued that the firings deprive the agency of the authority to take significant action. And just this week, the FTC suspended a pharmacy price-fixing case because Holyoak's and Ferguson's recusal in the case left the agency without a quorum of commissioners to move forward. Even when the agency has authority to act, however, there could be questions regarding any decision that takes place until the fate of the Democratic commissioners is resolved. If a court reinstates Slaughter and Bedoya, the agency may be required to review any votes that occurred in their absence. Even before the firing of Slaughter and Bedoya, there were questions regarding how the new makeup of commissioner's would impact the agency's enforcement priorities, but the uncertainty surrounding the status of commissioners will intensify attention to the agency in the near future.

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