

FDA POLICYMAKING IN THE TRUMP DEREGULATION ERA

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INTRODUCTION

The United States is in a period of administrative law reckoning, deeply impacting the structure and functioning of a vast number of existing federal governmental bodies. The Supreme Court is preparing to consider issues many legal scholars thought long resolved, such as the ability of Congress to delegate legislative and adjudicatory authority to administrative agencies,¹ the scope and original meaning of the separation of powers as it relates to agencies, limitations on the authority of the President to remove heads of independent agencies like the Federal Trade Commission and the Federal Reserve as tied to existing case precedent set forth in *Humphrey's Executor v. United States*,² and the legal effect of Presidential Executive Orders.³ In 2024, the Supreme Court overturned *Chevron v. National Resources Defense Council*, emphatically eliminating “Chevron deference” to agency’s interpretations of their enabling statutes on judicial review.⁴ Recent Presidential and agency actions have likewise upended the historical consistency and internal norms of our administrative state. Coupled with recent Supreme Court precedent and impending decisions, public health and environmental agencies are facing a blunt deregulatory agenda from the Trump Administration, one that may cause significant long-term damage to the stability and authority of administrative agencies tasked with protecting the public health and welfare.

To begin an exploration of this deregulatory phenomenon as it has played out for public health-facing agencies during 2025, this Article investigates the Food and Drug Administration’s recent activity in the policymaking realm under the second Trump Administration. The Article will discuss the implications of two significant deregulatory Trump Executive Orders and the policymaking responses by the Department of Health and Human Services (HHS) and Food and Drug Administration (FDA). The goal is to survey and initiate conversations as to what is happening on the ground and how the agency is achieving “policymaking” in this second Trump administration.

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¹ One of the three questions presented to the Supreme Court in *Securities and Exchange Commission v. Jarkesy* involved the nondelegation doctrine, though the Court decided the case based on Seventh Amendment grounds. *SEC v. Jarkesy*, 603 U.S. 109, 121 (2024).

² *Humphrey's Executor v. United States*, 295 U.S. 602, 625–26 (1935). The Court held that the President could not remove a Commissioner of the Federal Trade Commission absent good cause because the FTC was an independent agency insulated from Presidential “at will” removal by Congressional design. *Id.* The continued application of this case was contested by the justices through the majority and dissents in the recent Supreme Court case *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020). Chief Justice Roberts remarked that “the contours of the *Humphrey's Executor* exception depend upon the characteristics of the agency before the Court.” *Id.* at 215. He went on to proclaim that “[r]ightly or wrongly, the Court viewed the FTC (as it existed in 1935) as exercising ‘no part of the executive power.’” *Id.*

³ *See, e.g., Trump v. Barbara*, No. 25-365, 2026 WL 80012 (S. Ct. Jan. 12, 2026). Oral arguments are scheduled for April 1, 2026, reviewing Executive Order 14160 regarding birthright citizenship for children born to parents lacking permanent legal status.

⁴ *Chevron* held that when an agency’s enabling statute is silent or ambiguous to the precise issue at hand to be interpreted, the court should defer to a reasonable agency interpretation. *Chevron v. NRDC*, 467 U.S. 837, 842–43 (1984). In *Loper Bright Enterprises v. Raimondo*, Chief Justice Roberts held “*Chevron* is overruled” as a “fundamentally misguided” decision and asserted that judges are to interpret statutes as matters of law under APA §706. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 407–12 (2025).