Proskauer

# BREAKING: Full D.C. Circuit Restores Status Quo Ante, for a Second Time, at the NLRB

**Labor Relations Update** on **April 7, 2025**

As the firing carousel continues, on April 7, 2025, the full United States District Court of Appeals for the D.C. Circuit vacated the panel's stay and ordered the reinstatement of National Labor Relations Board ("NLRB" or "Board") Member Gwynne A. Wilcox. The Board has now regained a quorum for the *second* time and can resume ruling on pending appeals from ALJ decisions and address requests for review.

As reported here and here, this reinstatement follows (i) a D.C. federal judge's March 6, 2025, reinstatement of Member Wilcox, after President Trump's unprecedented firing; and (ii) a D.C. Circuit panel's March 28, 2025, stay of Member Wilcox's reinstatement, pending appeal.

The full D.C. Circuit split along *appointed*-party lines, with seven (7) Democrat-appointed judges making up the majority and four (4) Republican-appointed judges dissenting. The majority again relied upon *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), as well as *Wiener v. United States*, 357 U.S. 349 (1958), which the Court said "unanimously upheld removal restrictions for government officials on multimember adjudicatory boards." While the *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020), and *Collins v. Yellen*, 594 U.S. 220 (2021), decisions held removal certain restrictions to be unconstitutional as applied to two (2) specific agencies, the majority indicated that the Court was still required to follow "extant Supreme Court precedent unless and until that Court itself changes it or overturns it." As neither *Selia* nor *Collins* expressly overturned *Humphrey's Executor* or *Wiener*, the Court concluded that it was required to follow that extant precedent.

The Court further noted that it set a "highly expedited" schedule for resolution of the merits of the government's appeals, which seemed intended to mitigate any potential harm from Member Wilcox's reinstatement. That also might have advised the Court's decision to deny a 7-day stay of Member Wilcox's reinstatement for the government to seek relief from the Supreme Court. This issue nevertheless seems to be headed for the Supreme Court, which would be faced with the decision of whether to (i) prohibit Presidents from firing NLRB members; (ii) narrowly permit Presidents to fire *NLRB* Members; or (iii) overturn *Humphrey's Executor* and *Wiener* to allow Presidents to fire *any* agency head(s), at will.

We will continue to monitor the Wilcox appeal and its continued impact upon the NLRB.

View original.

**Related Professionals**

- **Michael J. Lebowich**
  Partner
- **Joshua S. Fox**
  Partner
- **Michael S. Kratochvil**
  Associate