

Removable At Will: D.C. Circuit Strips NLRB Members Of Job-Removal Protections

Labor Relations Update on **December 8, 2025**

On December 5, 2025, a divided D.C. Circuit panel held that for-cause job-removal protections for members of the National Labor Relations Board (“NLRB” or “Board”) and Merit Systems Protection Board are unconstitutional because they violate Article II.

The ruling has immediate consequences for the NLRB and sets up a direct confrontation with longstanding Supreme Court precedent, with the potential to reshape the structure and independence of multimember agencies like the Board.

Without a quorum, the NLRB cannot issue decisions on appeals from administrative law judge (“ALJ”) rulings in unfair labor practice cases, effectively stalling such cases indefinitely.

Background

Under Section 3 of the National Labor Relations Act (“NLRA” or “Act”), the Board consists of up to five members appointed by the President and confirmed by the Senate. Members serve five-year terms and “may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.”

In January 2025, President Trump [terminated](#) Board Member Gwynne A. Wilcox before the end of her term—reportedly the first such removal of an NLRB member mid-term. In May 2025, the Supreme Court [stayed](#) court orders reinstating Wilcox and remanded to the D.C. Circuit to decide the legality of her removal, setting the stage for this decision.

The D.C. Circuit’s Decision

The panel majority, relying on *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020) and presidential removal power cases beginning with *Myers v. United States*, 272 U.S. 52 (1926), concluded that Congress may not insulate “principal officers who wield substantial executive power” from at-will presidential removal.

The court characterized NLRB members as exercising significant executive authority, distinguishing them from the “merely quasi-legislative or quasi-judicial” officers described in *Humphrey’s Executor*, 295 U.S. 602 (1935)—a decision long understood to permit for-cause protections for commissioners of independent, bipartisan agencies.

In reaching that conclusion, the majority highlighted several features of the NLRA and Board practice:

- **Rulemaking power:** Under Section 6 of the Act, the Board may issue regulations “necessary to carry out” the NLRA, including on unfair labor practices and union election procedures (e.g., election rules specific to healthcare bargaining units).
- **Adjudicatory authority:** Consistent with Supreme Court precedent, the Board develops and applies national labor policy through case adjudication (e.g., Weingarten rights).
- **Remedial power:** The NLRB can order reinstatement and backpay under Section 10 of the Act, remedies the court viewed as more sweeping than those at issue in *Humphrey’s Executor*.

Taken together, the majority held that these Board authorities surpass the “circumscribed administrative powers” that *Humphrey’s Executor* deemed compatible with for-cause protections, triggering the *Myers/Seila Law* rule that permits at-will presidential removal and requiring the court to disregard the statutory removal restrictions for Board members.

The majority’s reasoning aligns with a Fifth Circuit [decision](#) finding that Board for-cause protections are likely unconstitutional. That stands in contrast with the Ninth Circuit, which read *Humphrey’s Executor* to remain [controlling](#) in this context and, in any event, found a lack of recognizable harm tied to Board protections—underscoring an emerging circuit split.

Takeaways

Here is what employers need to know:

- Short-term impact: Because the D.C. Circuit has plenary jurisdiction over the Board, the decision contributes to continued uncertainty over the NLRB’s ability to act without a quorum, stalling decisions on appeals from ALJ rulings in unfair labor practice cases. That said, the White House’s two pending Board nominees appear close to confirmation, which—if completed—would restore a quorum and allow the

NLRB to resume deciding ALJ appeals as soon as this month.

- Long-term implications: This dispute appears poised for Supreme Court review. If upheld, the ruling could have sweeping structural implications for the NLRB and similarly situated independent agencies. Most notably, eliminating for-cause protections for Board members is likely to accelerate policy oscillation with changes in presidential administrations, increasing regulatory uncertainty for employers, unions, and employees navigating the NLRA.

We will continue monitoring the fallout from this decision and any subsequent Supreme Court activity that may resolve the constitutionality of for-cause protections at the NLRB.

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Related Professionals

- **Joshua S. Fox**
Partner
- **Yonatan Grossman-Boder**
Special Labor Relations Counsel