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Denied: Full D.C. Circuit Declines To Review Former NLRB Member Wilcox's Suit Challenging Her Termination

Labor Relations Update on **February 4, 2026**

On January 28, 2026, the D.C. Circuit declined former National Labor Relations Board ("NLRB" or "Board") member Gwynne Wilcox's request for *en banc* review of its prior decision upholding her termination, which we covered here.

Wilcox's suit challenges President Donald Trump's decision to fire her without cause, despite the for-cause protection contained in Section 3 of the National Labor Relations Act. The D.C. Circuit did not provide reasoning for its denial of the request for review.

The D.C. Circuit's refusal to rehear Wilcox's suit means that the court's decision from December 2025 stands.

Wilcox, who was fired in January 2025, asked that the D.C. Circuit hold her case in abeyance until the U.S. Supreme Court ruled in a case regarding President Trump's firing of a member of the Federal Trade Commission, which similarly has for-cause job protection for key agency officials. President Trump's decision to fire Wilcox without cause was unprecedented and challenged the Supreme Court's 1935 landmark decision in *Humphrey's Executor v. United States*, which limited the president's ability to remove top officers of administrative agencies.

The immediate effect of the D.C. Circuit's decision is that Wilcox will not return to the NLRB, which regained a quorum in December 2025, as we covered here. The NLRB therefore remains with two Republican-appointed members, and one Democratic-appointed member. In January 2026, the NLRB issued its first published decisions since regaining a quorum, empowering regional directors to process charges, conduct union elections, and take other administrative action should the Board lose a quorum again.

The potential long-term effects of the D.C. Circuit's decision depend greatly on how the Supreme Court rules on whether the Constitution permits Congress to codify for-cause job protections for key officials at federal agencies.

We will continue to track relevant court decisions and related developments at the Board.

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