

What the Supreme Court's Slaughter Decision Means for the NLRB

Labor Relations Update on July 2, 2026

The Supreme Court's June 29, 2026 decision in *Trump v. Slaughter*, No. 25-332 (2026), overruling *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), has major implications for the National Labor Relations Board ("NLRB"). In a 6-3 decision, Chief Justice Roberts's majority opinion held that for-cause removal protections for Federal Trade Commission ("FTC") Commissioners violate the Constitution's separation of powers—reasoning that strongly suggests the National Labor Relations Act's ("NLRA") parallel removal provision will likewise be struck down.

The Decision

Slaughter arose after President Trump summarily removed two Democratic FTC Commissioners in March 2025 without asserting cause—instead stating that their continued service was inconsistent with his administration's priorities. The case presented the question of whether *Humphrey's Executor*, which had protected multi-member independent agency commissioners from at-will removal for 91 years, remained good law.

The Court rejected *Humphrey's Executor's* distinction between "purely executive" officers and those performing "quasi-legislative" or "quasi-judicial" functions. Chief Justice Roberts held that if an agency executes laws for the executive branch, the President must be able to remove its officers at will. The Court reasoned that while Congress may establish independent agencies to assist *its* functions, "it may not foist those agencies upon the President" to deprive him of Article II executive powers.

Implications for the NLRB

Slaughter strongly indicates the Court will find the NLRA's removal provision—permitting removal of Board Members only for “neglect of duty or malfeasance in office”—unconstitutional. Although the Supreme Court has not yet expressly addressed this issue, the decision appears to resolve the challenge filed by former NLRB Member Gwynne Wilcox after President Trump removed her in early 2025. As of the date of this article, former Member Wilcox has not yet filed a petition for writ of certiorari.

Former Member Wilcox may attempt to distinguish the NLRA's removal protections from those struck down in *Slaughter*. The Court expressly reserved questions regarding “non-Article III courts” and adjudicatory bodies, and Wilcox could argue the NLRB's primarily adjudicatory function—deciding unfair labor practice complaints and conducting representation elections—places it closer to these reserved categories than to the FTC's broad regulatory enforcement apparatus. Additionally, the Court carved out a potential exception for agencies following “the distinct historical tradition” of the First and Second Banks, suggesting the Federal Reserve's protections may survive—and the NLRB was created immediately after *Humphrey's Executor* with Congress expressly incorporating removal protections to ensure “complete independence.”

Nevertheless, these arguments face significant headwinds. The *Slaughter* majority broadly held that when an agency “‘executes’ a congressional mandate against private parties, it exercises executive power—no ifs, ands, or quasies about it,” and emphasized that all officers exercising presidential power must be removable to maintain the “chain of dependence” from “the lowest officers” to the President. The Solicitor General acknowledged at oral argument that the government's position logically “extends to inferior officers” and potentially career civil servants. Ultimately, the NLRB—like the FTC—exercises enforcement, investigative, and adjudicatory powers against private parties, making it highly likely that *Slaughter's* reasoning applies with full force to invalidate the NLRA's for-cause removal provision.

If *Slaughter* is applied to authorize the at-will removal of sitting NLRB Members, it will significantly accelerate the implementation of federal labor policy by each incoming administration. Rather than wait for Members' terms to expire, an incoming President may immediately remove Members of the opposing political party, nominate replacements, and alter the Board's composition within months of inauguration. Employers should thus expect faster and more dramatic changes to federal labor law at the start of each new administration.

The decision may also encourage the NLRB's General Counsel to be more cautious and deliberate. The General Counsel, who is appointed by the President, determines the Board's prosecutorial priorities, including bringing cases intended to alter existing Board precedent. Because unfair labor practice cases can take months or years to reach the Board, the possibility of rapid changes in Board composition means the General Counsel must consider what cases will remain on the docket for an incoming Board—particularly during election years.

Looking ahead, employers should monitor *Slaughter's* application to the NLRA's removal protections. If applied to former Member Wilcox's challenge, the decision would foreclose any possibility of delaying the seemingly-imminent three-Member Republican Board majority. More broadly, the era of gradual, staggered transitions in Board composition may be over—replaced by the potential for immediate, wholesale change with each new administration.

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