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End of the Line: Supreme Court Declines to Hear Former NLRB Member Wilcox's Dismissal Challenge

Labor Relations Update on **October 28, 2026**

On October 19, 2026, the U.S. Supreme Court declined to review the D.C. Circuit's decision upholding President Trump's removal of former National Labor Relations Board ("NLRB" or "Board") Member Gwynne A. Wilcox. Although a denial of certiorari is not a ruling on the merits, it leaves in place the D.C. Circuit's holding that the National Labor Relations Act's ("NLRA" or "Act") removal protections for Board Members unconstitutionally restrict the President's authority.

As we reported here, President Trump removed Wilcox from the Board in January 2025, with more than three years left on her term. Wilcox sued, arguing that Section 3(a) of the NLRA, which permits removal of a Board Member only upon notice and hearing for neglect of duty or malfeasance in office, barred her firing. The administration countered that Section 3(a) unconstitutionally restricts the President's Article II power to remove executive officers.

The district court sided with Wilcox in March 2025, relying on *Humphrey's Executor*, the 1935 Supreme Court decision long cited to uphold for-cause removal protections for members of multimember agencies. But as we reported here, in December 2025 a divided D.C. Circuit panel reversed, distinguishing *Humphrey's Executor* and holding that because NLRB Members wield substantial executive power, the President may remove them at will. That result was consistent with the Fifth Circuit's view that the NLRB's removal protections are likely unconstitutional.

Then, in June 2026, the Supreme Court overruled *Humphrey's Executor* in *Trump v. Slaughter*, striking down the statutory removal protections for Federal Trade Commission Commissioners (as we reported here).

The denial of Wilcox's petition for certiorari ends her challenge. While the denial carries no precedential weight, it suggests the Court sees little reason to revisit removal protections for multimember agencies after *Slaughter*.

For employers, the practical takeaway is significant: because Presidents no longer need to wait for Board Members' terms to expire, the policy reversals and precedent shifts that typically follow a change in administration may arrive even faster. Employers should expect greater volatility in labor law, particularly around presidential transitions, and monitor Board developments closely.

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