

NLRB Leadership in Flux: Chair Gwynne Wilcox's Unprecedented Firing, a Quorum-Less Board, and Implications for Employers

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President Trump wasted no time shaking up the labor and employment law landscape. As anticipated, Trump discharged NLRB General Counsel, Jennifer Abruzzo, a Biden appointee serving a four-year term. Abruzzo's removal immediately disrupted the expansive pro-labor agenda under former President Biden, paving the way for a pro-management agenda under Trump (and mirroring the action of Biden, who fired then-NLRB General Counsel, Peter Robb, after Trump's first term). Trump also removed acting Democratic member and Chair of the NLRB, Gwynne Wilcox, who was serving a five-year term set to expire in August 2028. This move was completely unprecedented. Never before has a president terminated a Board member. Trump's removal of Wilcox is particularly controversial because it eliminated the Board's quorum, preventing it from issuing decisions. Wilcox's dismissal also coincides with the controversial same-day firings of EEOC commissioners Jocelyn Samuels and Charlotte Burrows, which left the [EEOC without a quorum](#) (Trump also appointed [Andrea Lucas as commissioner](#), and as expected, fired the EEOC General Counsel Karla Gilbride).

Wilcox swiftly filed a lawsuit against Trump in federal court challenging the President's power to remove officials of independent federal agencies. The lawsuit is sure to be closely watched, as it may cause the Supreme Court to review a 90-year-old precedent restricting the President's removal powers. In this post, we discuss Gwynne Wilcox's legal challenge, the impact of the lack of a quorum on the NLRB, and the implications for employers.

The Firing of Gwynne Wilcox and Pending Legal Challenge

On February 5, 2025, former NLRB member Gwynne Wilcox filed a [lawsuit](#) in the U.S. District Court for the District of Columbia against Trump and NLRB Chair Marvin Kaplan, challenging her dismissal as unlawful and seeking injunctive relief to return to her position. Wilcox alleges that Trump violated Section 3(a) of the National Labor Relations Act (NLRA), which allows the removal of Board members only in cases of "neglect of duty or malfeasance in office, but for no other cause" and only after notice and a hearing. (Unlike the General Counsel, who can be removed for any reason.) Wilcox's legal challenge relies upon *Humphrey's Executor v. United States* (1935), which held that the president's power to remove officers of quasi-legislative and judicial agencies could be limited by express statutory conditions (in *Humphrey's Executor*, the FTC Act only allowed a president to remove a commissioner for "inefficiency, neglect of duty, or malfeasance in office."). Wilcox asserts

that “Congress has relied on that precedent for ninety years in structuring independent agencies and abandoning it now could cast a cloud over a wide variety of agency decision-making.” Indeed, *Humphrey’s Executor* reinforced the principle of separation of powers and has protected the autonomy of independent federal agencies from executive overreach.

More recently, in *Seila Law LLC v. Consumer Financial Protection Bureau* (2020), the Supreme Court interpreted *Humphrey’s Executor* and held that the leadership structure of the CFPB (an agency led by a single director), which restricted the president’s ability to remove the director only for cause, violated the separations of powers doctrine. Wilcox’s lawsuit will likely present an opportunity for the Supreme Court to clarify the limits of executive removal powers. The White House has broadly defended Trump’s ability to remove executive branch officials as Trump sees fit.

Wilcox’s lawsuit may also influence possible legal challenges by former EEOC commissioners Samuels and Burrows. On February 10th, Wilcox filed an expedited motion for summary judgment, seeking immediate reinstatement to the Board, arguing that it is “unable to fulfill its critical role in adjudicating labor disputes, thereby disrupting protections essential to workers, employers, and the broader public.” The district court will hear argument on the motion on March 5th, if necessary. In the meantime, all congressional Democrats (and one Senate Republican) have urged Trump by [letter](#) to immediately reinstate Wilcox.

The Absence of a Quorum

Wilcox’s firing has left the Board with only two members: David Prouty (Democrat) and Marvin Kaplan (Republican), whom Trump appointed as Chair. Under the NLRA, as clarified in *New Process Steel, L.P. v. National Labor Relations Board* (2010), the Board must have a three-member quorum in order to issue decisions. With only two, the Board is unable to set legal precedent. While the NLRB has stated publicly that its field offices will “continue their normal operations of processing unfair labor practice cases and representation cases,” the Board is paralyzed until new members are appointed by the President and confirmed by the Senate. Whether Trump will appoint new Board members any time soon remains uncertain.

In the meantime, the NLRB has already begun rolling back Biden-era labor policies. On February 14th, Acting General Counsel William B. Cowen (a former Republican Board member), [rescinded a number of memos issued under Abruzzo](#). Among them were controversial guidance regarding severance agreements (the *McLaren Macomb* decision), non-compete agreements and the decision in *Cemex Construction Materials Pacific, LLC* (which modified the union election framework and makes it more challenging for employers to respond to a request for union recognition), among others. While General Counsel memos are not binding law—although they can contribute to decisions that modify or reverse existing Board precedent—they are used to instruct field offices of the General Counsel’s priorities. They also are informative as to the Board’s policy and enforcement agenda. While expected, the rescinding of these memos is an important lens into how federal labor law may change under the Trump administration, and employers should take note.

What Do These Changes Mean For Employers?

Until the quorum is restored, either by new appointments or Wilcox’s reinstatement, the Board cannot issue decisions, freezing its ability to set or reverse existing precedent. However, underlying cases will proceed as usual. Administrative law judges will still issue decisions on unfair labor practice cases, and Regional directors will process petitions for election. It also appears that the General Counsel of the Board (either William Cowen, or whomever Trump selects as his replacement) will likely implement and enforce management-friendly federal labor policy.