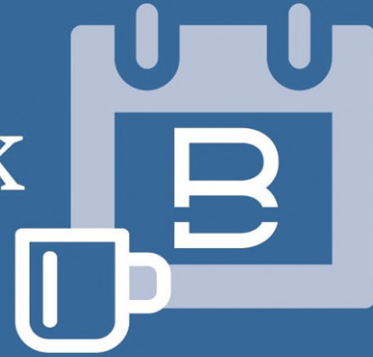


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Update on “An Analysis of Federal Agency Independence and Executive Authority: Historical and Recent Developments and their Implications on Employment Law”

[Marshall T. Hall](#)

The ongoing legal analysis of federal agency independence and executive authority continues to evolve, particularly in light of the recent ruling by the U.S. Court of Appeals for the District of Columbia on March 28th in *Wilcox v. Trump*. This article builds upon the foundation laid in [the previous article](#), published on February 24, 2025, in which we discussed the implications of President Trump’s Executive Order issued on February 18, 2025, the impending legal challenge to the longstanding precedent set forth in *Humphrey’s Executor*, sweeping changes at the National Labor Relations Board (“NLRB”), and the projected effects on employment law.

The D.C. Circuit Court Decision in *Wilcox v. Trump*

In January, President Trump removed NLRB Member and Chair Gwynne Wilcox, stating that he had a lack of confidence in her leadership and asserted that statutory limitations on removal power were unconstitutional. Ms. Wilcox was appointed to the NLRB in 2021, confirmed by the Senate in 2023, and was expected to serve through 2028. This decision left the NLRB without a quorum, as the National Labor Relations Act (“NLRA”) requires at least three members. The *Wilcox v. Trump* case underscores the Trump Administration’s challenge to the statutory protections historically insulating agency officials from at-will removal by the President.

On March 28, 2025, the U.S. Court of Appeals for the District of Columbia stayed the district court’s ruling, suggesting that restrictions on the President’s removal power might be unconstitutional. However, the panel’s decision was not final and only paused the district court’s ruling from being enforced pending further review. The D.C. Circuit Court panel cited *Seila Law v. CFPB* for support of its decision, arguing that agencies wielding substantial executive power cannot have removal restrictions.

On April 1st, Ms. Wilcox petitioned the same D.C. Circuit Court for an *en banc* hearing (all judges are present and hear the case) to reconsider the matter. Although all of the judges heard the matter and decided, only three judges were present at the hearing. In a 7 to 4 decision, the D.C. Circuit Court vacated its prior ruling, and ruled that President Trump's motions for a stay pending appeal be denied. The Court's ruling emphasized and relied heavily upon the established Supreme Court precedents in *Humphrey's Executor v. United States* and *Wiener v. United States*, as well as citing to *Seila Law v. CFPB* and *Collins v. Yellen*. As previously mentioned, *Humphrey's Executor* stands for the proposition that the President cannot remove agency heads for policy disagreements, thereby affirming the independence of certain federal agencies and limiting presidential removal power. This decision ensured that agencies could operate without undue influence from the executive branch, and it helped maintain overall constitutional checks and balances. In *Wiener v. United States*, the Supreme Court's decision reaffirmed the principles established in *Humphrey's Executor*, holding that for-cause removal protections were constitutional for members of the War Claims Commission—an adjudicatory body. The Supreme Court in *Weiner* emphasized the need for independence in adjudicatory functions to ensure impartiality and fairness.

In *Seila Law v. CFPB*, which was also relied upon by Trump for his argument, the Supreme Court invalidated the removal protections for the single director of the Consumer Financial Protection Bureau ("CFPB"), distinguishing it from multimember agencies like the FTC. The *Seila Law* Court reiterated that *Humphrey's Executor* remains good law for multimember bodies that do not wield substantial executive power. This holding was emphasized by *Collins v. Yellen*, wherein the Court further clarified the scope of executive removal power, emphasizing that the President's removal authority is limited when it comes to multimember agencies that do not exercise substantial executive power. The *Collins* decision reinforced the principles set forth in *Seila Law* and *Humphrey's Executor*.

In reliance upon the above-mentioned cases, the D.C. Circuit Court's ruling emphasized the precedent set by *Humphrey's Executor*, that constitutional protections exist for members of independent agencies. The ruling also reiterated that members of certain independent agencies could not be removed by the President *without cause*. Additionally, the Court referenced Trump's interpretation of *Seila Law v. CFPB*, in which he argues that the NLRB is disqualified from the multimember exception because the NLRB is unbalanced on partisan lines, issues regulations, and pursues enforcement actions in federal court—an exercise of executive powers. Because the full D.C. Circuit Court reviewed this matter, this case will most certainly head to the Supreme Court and the principal argument made by Trump as cited above will likely feature as a central issue in the forthcoming review of the case.

Implications for Agency Independence and Employment Law

The D.C. Circuit Court's decision represents a pivotal moment in the debate over federal agency independence and executive authority. As the case progresses, it will have significant implications for the governance of federal agencies and the balance of power between branches of government. The decision also underscores the judicial branch's role in maintaining the independence of federal agencies from executive overreach. By blocking the removals, the D.C. Circuit Court preserved the statutory protections in place which ensure that agencies like the NLRB and MSPB can operate without undue political influence. However, the NLRB is still left without a quorum, so it remains unable to exercise authority to do things such as order parties to provide remedies, enforce payments for damages, or recognize newly formed or contested unions. Moreover, this decision highlights the ongoing tension between executive authority

and agency independence, a theme which has persisted since the New Deal era. The implications of these developments for employment law are profound. The increased executive oversight mandated by the recent executive order could lead to significant changes in how employment policies are implemented within federal agencies. Greater presidential control may result in stricter adherence to executive priorities, potentially affecting job roles, responsibilities, and the enforcement of employee rights. We will continue to monitor and report on these changes as they develop.

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