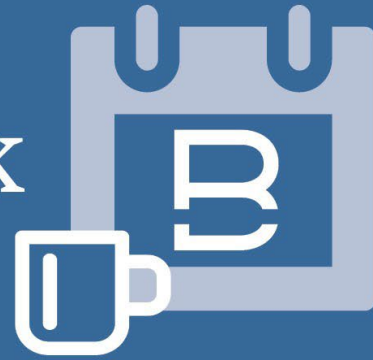


# The Work Week

Bassford Remele Employment Practice Group



February 24, 2025

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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## Federal Agency Independence and Executive Authority: Historical and Recent Developments and their Implications on Employment Law

[Marshall T. Hall](#)

The balance of power between the executive branch and independent federal agencies has been a longstanding legal and political issue. Here, we examine the historical context of the Supreme Court decision in *Humphrey's Executor v. United States*, the contemporary relevance of the issue via President Trump's February 18, 2025 Executive Order and the sweeping changes at the National Labor Relations Board ("NLRB"), with medium-to-long-term implications for employment law.

### Historical Context

In 1935, President Franklin D. Roosevelt implemented the New Deal, a widespread government effort to combat the Great Depression, which also significantly expanded the federal government's role in public affairs and increased the executive branch's power. In the process, agencies were created such as the Civilian Conservation Corps ("CCC"), Securities and Exchange Commission ("SEC"), and the Federal Trade Commission ("FTC"). While some agencies were favored by President Roosevelt and the general public, President Roosevelt publicly and privately feuded with the FTC, an agency that he had initially hoped would aggressively enforce antitrust laws according to his New Deal policies. Instead, he faced strong resistance from its Commissioner, William Humphrey, who was appointed by a previous administration and opposed many of the New Deal policies.

As a result, President Roosevelt dismissed Humphrey for policy disagreements, and not for "inefficiency, neglect of duty, or malfeasance," as required by the FTC Act (similarly required by other agencies' governing documents – e.g., the National Labor Relations Act). This dismissal sparked a legal challenge after Humphrey's death, with his estate seeking backpay, leading to the Supreme Court's decision in *Humphrey's Executor*. The Supreme Court ruled that the President could not remove FTC commissioners

for policy disagreements, thereby affirming the independence of certain federal agencies. This decision also limited presidential removal power, ensured that agencies could operate without undue influence from the executive branch, and helped maintain overall constitutional checks and balances.

### **Contemporary Relevance**

Presently, the Trump Administration has expressed a desire to overturn *Humphrey's Executor*, advocating for stronger executive control over independent agencies. Acting Solicitor General Sarah Harris recently indicated plans to urge the Supreme Court to revisit the decision. Overturning this case could reshape the federal bureaucracy by not only granting the President greater authority to remove agency heads, but could potentially lead to more explicitly politically driven decision-making that would ultimately affect employment and labor industries.

On February 3, 2025, President Trump appointed William B. Cowen as Acting General Counsel for the NLRB, following the firings of former General Counsel Jennifer Abruzzo, Deputy General Counsel Jessica Rutter, and NLRB Chair Gwynne Wilcox. On February 5, Ms. Wilcox filed a lawsuit in the U.S. District Court for the District of Columbia against President Trump and the new NLRB Chair Marvin Kaplan, alleging that she was fired in violation of Section 3(a) of the NLRA and the precedent set forth in *Humphrey's Executor*.

On February 14, 2025, Mr. Cowen issued General Counsel Memorandum ("GC 25-05"), which rescinded over 30 memoranda from the Biden administration, signaling a shift from aggressive enforcement to resource conservation. Moreover, due to the unexpected and unprecedented firing of Ms. Wilcox, the Cowen-led NLRB presently lacks a quorum to make final rulings until succeeding members are confirmed, thereby impacting the processing of new charges and elections. While Mr. Cowen's actions do not change existing NLRB precedent, they indicate a shift in the agency's agenda and priorities to align with those issued by the White House.

On February 18, 2025, President Trump issued the Executive Order, "Ensuring Accountability for All Agencies," enhancing presidential oversight of independent regulatory agencies. Key points include:

- **Executive Power:** The President holds all executive power and is responsible for executing laws, with all executive branch officials accountable to the President and the public.
- **Regulatory Review:** Significant regulatory actions must be submitted to the Office of Information and Regulatory Affairs ("OIRA") for review, with the Federal Reserve's monetary policy being exempt, but its financial supervision being included.
- **Performance Standards:** The Office of Management and Budget ("OMB") will establish performance standards for agency heads, report on efficiency, and if necessary, adjust budgets to align with presidential policies.
- **Consultation:** Independent agency heads must consult with the Executive Office, including OMB and White House committees, to align policies and priorities. All agencies must establish a liaison position for coordination with the committees.
- **Legal Authority:** The President and Attorney General will provide binding legal interpretations for the executive branch.

## Implications for Employment Law

The executive order's impact on employment law within federal agencies, including independent regulatory agencies, can be analyzed as follows:

- **Presidential Oversight:** Greater oversight could lead to changes in how employment policies are implemented, with stricter adherence to presidential priorities affecting job roles and responsibilities.
- **Performance Standards:** OMB's standards for agency heads could influence employee evaluations, expectations, and enforcement of employee rights.
- **Resource Allocation:** Emphasis on efficiency may lead to restructuring and cost-cutting measures, which ultimately impact job security and workload distribution.
- **Legal Application:** Requirements for consistent legal interpretations could affect how employment laws are applied, thereby potentially aligning policies more closely with executive branch and White House-focused goals.

Regardless, employers will need to tread carefully, as many prior decisions that occurred during the Biden administration have yet to be overturned, and NLRB regional offices' adherence to previously decided, yet current NLRB decisions, will continue to be followed for an indeterminate amount of time. Overall, increased control over independent agencies might affect their ability to implement employment policies tailored to their missions. Additionally, the above-mentioned Executive Order could lead to significant changes in employment law practices within federal agencies and beyond, especially given the drastic shift at the NLRB. We will continue to monitor and report on these changes as they develop.

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