



# SCOTUS Chief Justice Upholds Trump's Ouster of NLRB Member Wilcox – For Now: What Employers Need to Know About Next Steps

Insights

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Chief Justice John Roberts just ensured that President Trump's unprecedented termination of Democrat NLRB member Gwynne Wilcox will stand for now – and it appears the battle could be heading to a final conclusion in the coming weeks. After a federal appeals court ordered the administration to let Wilcox back on the Board earlier this week, Roberts reversed course yesterday and put that decision on ice while the appeal plays out. The National Labor Relations Board now remains in limbo without a quorum for the time being, but it is becoming increasingly clear that the full Supreme Court will soon have the final say on the president's power to terminate the leaders of independent agencies with statutory removal protections like the NLRB. What do employers need to know about the latest twist to this saga?

## Quick Timeline of Key Events

It's been a whirlwind few months at the NLRB:

- **January 27:** Trump summarily dismissed Democrat Board Member Wilcox and left the NLRB without a functioning quorum (read more about [the termination here](#), and read more about the [state of the NLRB here](#))
- **February 5:** Given the unprecedented nature of this termination, Wilcox filed a lawsuit to regain her job and protect Board members from terminations without cause.
- **March 6:** A D.C. federal court judge ruled in Wilcox's favor, finding her termination unlawful under the National Labor Relations Act and reinstating her to her position.
- **March 28:** A D.C. appeals court panel of three judges reversed this decision 2-1 and allowed the termination to stand pending a full appeal of the case.
- **April 7:** A full *en banc* panel reversed that decision by a 7-4 margin and ordered Wilcox back to work.
- **April 9:** Chief Justice Roberts reversed *that* decision and ruled that Wilcox's termination should stay in place pending a full resolution of the appeal.

## Why Did Chief Justice Roberts Issue This Ruling?

When emergency matters arise in federal appeals courts across the country, parties can run right to individual SCOTUS Justices assigned to those courts. Chief Justice Roberts is currently assigned to the D.C. Circuit Court of Appeals. So when the Trump administration wasn't happy with Monday's decision reinstating Wilcox, it filed a request directly with Chief Justice Roberts.

### **What Did the White House Ask For?**

Early yesterday, Trump officials asked SCOTUS for two things:

- They appealed the case and made the unusual request for SCOTUS to take up the case even though the full appeal on the merits hasn't yet been decided by the appeals court.
- They wanted Wilcox's termination to be enforced while the appeal plays out.

### **What Did Chief Justice Roberts Say?**

The Chief Justice's order was short and to the point. The one-page ruling said that Wilcox's reinstatement is "hereby stayed pending further order of the undersigned or of the Court." In other words, this order barring Wilcox from the NRLB will remain in place until either Roberts or the full court issues another decision.

### **What's Next?**

Chief Justice Roberts asked Wilcox whether she would agree to the White House's request to accelerate the timetable to push the case to the full SCOTUS. She has until April 15 to file her response, after which we'll be in a better position to understand the next steps. The two possible options appear to be:

- **Push to SCOTUS:** Wilcox could consent to pushing the full case to SCOTUS for a hearing and decision in short order, in which case we could expect to see a final decision on this matter in the next month or two. (Even if Wilcox opposes the request, the Court could still agree to hear it quickly.)
- **Back to D.C. for one more ruling:** Chief Justice Roberts could ask the D.C. appeals court to reexamine Wilcox's case on its merits (and not just issue a preliminary ruling responding to her request for a temporary injunction). Regardless of what would happen at the appeals court, the losing side would no doubt file an appeal to SCOTUS and we'd end up back there – but the process would be delayed by several weeks or months.

### **What Should Employers Do?**

We're all in the same boat now – awaiting a final ruling from SCOTUS, whenever that comes down. The good news is that, with the Board lacking a quorum, we have only seen limited adjudicatory activity and employers have not had to guess whether to follow rulings that might otherwise be held

illegitimate at some future point. For a full recap of what the Board can and can't do during this limbo period, [read our full Insight here](#).

Beyond that? Monitor developments and be prepared for the next twist in this turbulent saga. The best way to stay tuned is subscribe to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly in your inbox. You can also visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of the [Labor Relations Group](#) or [Government Relations Practice Group](#).

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