

No. 25-332

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL.,
Petitioners,
v.

REBECCA KELLY SLAUGHTER, ET AL.
Respondents.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF OF AMICUS CURIAE ARIANA CORTES AND
LOGAN KARAM IN SUPPORT OF PETITIONERS**

AARON SOLEM
Counsel of Record
ALYSSA HAZELWOOD
C/O NATIONAL RIGHT TO
WORK LEGAL DEFENSE
FOUNDATION
8001 Braddock Rd., Ste. 600
Springfield, VA 22160
(703) 321-8510
abs@nrtw.org
akh@nrtw.org
Counsel for Amicus Curiae

October 17, 2025

QUESTION PRESENTED

Whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), should be overruled.

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
INTEREST OF THE AMICI CURIAE	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	4
A. The NLRB is not an expert agency	4
B. The NLRB is not balanced along partisan lines	9
C. The NLRB does not exercise “quasi-judicial” or “quasi-legislative” authority	11
CONCLUSION	16

TABLE OF AUTHORITIES

Page(s)**CASES**

<i>Amazon.com Services LLC,</i> 373 NLRB No. 136 (Nov. 13, 2024).....	7
<i>Babcock & Wilcox Co.,</i> 77 NLRB 577 (1948)	7
<i>Boeing Co.,</i> 365 NLRB 1494 (2017)	7
<i>Cemex Construction Materials Pacific, LLC,</i> 372 NLRB No. 130 (Aug. 25, 2023)	7
<i>Chamber of Commerce v. NLRB,</i> 723 F. Supp. 3d 498 (E.D. Tex. 2024)	7
<i>City of Arlington v. FCC,</i> 569 U.S. 290 (2013).....	13
<i>Collins v. Yellen,</i> 594 U.S. 220 (2021).....	11, 14
<i>Cortes v. NLRB,</i> 145 F.4th 57 (D.C. Cir. 2025)	1
<i>Emporium Capwell Co. v. W. Addition Cmty. Org.,</i> 420 U.S. 50 (1975).....	14
<i>FCC v. Consumers' Research,</i> 145 S. Ct. 2482 (2025).....	3
<i>Freytag v. Commissioner,</i> 501 U.S. 868 (1991).....	13
<i>H.K. Porter Co., v. NLRB,</i> 397 U.S. 99 (1970).....	5
<i>Hosp. Menonita de Guayama, Inc. v. NLRB,</i> 94 F.4th 1 (D.C. Cir. 2024)	7
<i>Humphrey's Executor v. United States,</i> 295 U.S. 602 (1935).....	1, 2, 4, 9, 12
<i>Leedom v. Kyne,</i> 358 U.S. 184 (1958).....	15

TABLE OF AUTHORITIES—Continued

Page(s)

<i>Lutheran Heritage Village-Livonia</i> , 343 NLRB 646 (2004)	7
<i>McLaren Macomb</i> , 372 NLRB No. 58 (Feb. 21, 2023).....	7
<i>NLRB v. Curtin Matheson Sci., Inc.</i> , 494 U.S. 775 (1990)	13
<i>Seila Law v. CFPB</i> , 591 U.S. 197 (2020).....	2, 3, 11, 13, 14, 15
<i>Steele v. Louisville & Nashville R.R. Co.</i> , 323 U.S. 192 (1944).....	14
<i>Stericycle, Inc.</i> , 372 NLRB No. 113 (Aug. 2, 2023)	7
<i>Thryv, Inc.</i> , 372 NLRB No. 22 (Dec. 13, 2022).....	7
<i>Valley Hosp. Med. Ctr., Inc. v. NLRB</i> , 100 F.4th 994 (9th Cir. 2024)	6
<i>Wilcox v. Trump</i> , 775 F. Supp. 3d 215 (D.D.C. 2025).....	4, 9
No. 25-5057, 2025 WL 980278 (D.C. Cir. 2025)....	13

STATUTES

29 U.S.C. § 153(a).....	2, 3
29 U.S.C. § 154(a).....	4
29 U.S.C. § 156	2, 14
29 U.S.C. § 158	5
29 U.S.C. § 158(d).....	5
29 U.S.C. § 159	2, 5
29 U.S.C. § 159(c)	5
29 U.S.C. § 160	2, 13
29 U.S.C. § 160(j).....	2, 14
Pub. L. 76-812, 54 Stat. 1037 (1940)	4

TABLE OF AUTHORITIES—Continued

Page(s)**REGULATIONS**

<i>Representation—Case Procedures,</i> 79 Fed. Reg. 74308 (Dec. 15, 2014)	6
<i>Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships,</i> 89 Fed. Reg. 62952 (Aug. 1, 2024).....	6
<i>Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships,</i> 85 Fed. Reg. 18366 (April 1, 2020)	6

Other Authorities

2 NLRB, Legislative History of the National Labor Relations Act 1935 (1949)	3
Amy Semet, <i>Political Decision-Making at the National Labor Relations Board: An Empirical Examination of the Board’s Unfair Labor Practice Decisions through the Clinton and Bush II Years,</i> 37 Berkeley J. Emp. & Lab. L. 223 (2016).....	6
Brief for Samuel F. Rathbun, Executor, <i>Humphrey’s Executor v. United States,</i> 295 U.S. 602 (1935) (No. 667), 1935 WL 32964 (Mar. 19, 1935)	12
<i>Powers & Duties of the FTC in the Conduct of Investigations,</i> 34 Op. Att’y Gen. 553 (1925)	12
Ronald Turner, <i>Ideological Voting on the National Labor Relations Board,</i> 8 U. Pa. J. Lab. & Emp. L. 707 (2006)	8

TABLE OF AUTHORITIES—Continued

	<u>Page(s)</u>
William B. Gould IV, <i>Politics and the Effect on the National Labor Relations Board's Adjudicative and Rulemaking Processes</i> , 64 Emory L.J. 1501 (2015)	8
Woodrow Wilson, <i>The Study of Administration</i> , 2 Pol. Sci. Q. 197 (1887)	2

INTEREST OF THE AMICI CURIAE¹

Ariana Cortes and Logan Karam are baristas at separate Starbucks locations around Buffalo, New York who have election appeals pending before the National Labor Relations Board. They filed a federal lawsuit challenging the National Labor Relations Act's restrictions on removing Board Members. While their case was pending on appeal, President Trump fired an NLRB Member, Gwynne Wilcox. The D.C. Circuit recently affirmed an order dismissing their case because there was no longer an Article III controversy because the NLRB, under the Trump administration, now agrees it is constitutional for the President to remove Board members. *Cortes v. NLRB*, 145 F.4th 57 (D.C. Cir. 2025). However, Ms. Wilcox is still contesting her removal in *Wilcox v. Trump*, Case No. 25-5057 (D.C Cir.).

Amici have an interest in this case because its outcome will likely control the result in *Wilcox v. Trump* and determine whether a court can reinstate Ms. Wilcox to the NLRB. Amici do not want an individual the President properly fired from the NLRB, due to her unsound rulings, to decide their pending NLRB cases.

SUMMARY OF ARGUMENT

The NLRB exemplifies how the Court got it wrong in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). The default rule under Article II, is the President can remove principal officers at will. In *Humphrey's Executor*, the Court crafted a narrow exception to

¹ No party's counsel authored any part of the brief and no one other than the National Right to Work Legal Defense Foundation funded its preparation or filing.

the default rule for “a multimember body of experts, balanced along partisan lines, that performed legislative and judicial functions and was said not to exercise any executive power.” *Seila Law v. CFPB*, 591 U.S. 197, 216 (2020). The Court fashioned this exception based on the belief that the FTC did not pursue political goals at the behest of elected officials. Instead, the FTC was supposedly “non-partisan” and meant to act with objectivity and “entire impartiality.” *Humphrey’s Executor*, 295 U.S. at 624. Divorced from politics, it could pursue “no policy except the policy of the law.” *Id.*

This technocratic vision was emblematic of the Progressive Era, which—among other things—sought the separation of politics from economic and government decisionmaking. Progressives envisioned neutral experts making important decisions based on objective, scientific principles. As Woodrow Wilson put it, bureaucrats would be experts in the “science of administration” that operated “outside the proper sphere of politics.” Woodrow Wilson, *The Study of Administration*, 2 *Pol. Sci. Q.* 197, 197, 210 (1887).

Two months after *Humphrey’s Executor*, Congress created the National Labor Relations Board. The Board consists of five presidentially appointed members, each serving a staggered five-year term. 29 U.S.C. § 153(a). It exercises adjudicative, regulatory, and prosecutorial authority. Its two most commonly exercised functions are: to adjudicate unfair labor practice disputes, 29 U.S.C. § 160; and to conduct union representation elections. 29 U.S.C. § 159. It can also issue regulations, 29 U.S.C. § 156, and seek injunctions in federal court, 29 U.S.C. § 160(j).

Congress intended the NLRB “to have a similar status to that of the Federal Trade Commission” and believed nearly identical removal protections for Board Members were “desirable in the light of” *Humphrey’s Executor*. H.R. Rep. 74-1371, at 4 (1935), *reprinted in* 2 NLRB, Legislative History of the National Labor Relations Act 1935, at 3255 (1949). Like the FTC, Congress limited the President’s removal of Board Members except for “neglect of duty or malfeasance in office.” 29 U.S.C. § 153(a).

Despite Congress’s intentions, the NLRB fails the *Humphrey’s Executor* test. While it is multimember, it is not a “body of experts, balanced along partisan lines, that perform[s] legislative and judicial functions.” *Seila Law*, 591 U.S. at 216. The NLRB is a policymaking body that enforces the NLRA based on its legal conclusions, not scientific or technical judgments. There is no partisan balance requirement in the NLRA, and even if there were, the NLRB is a remarkably partisan agency. Most importantly, the Board does not exercise quasi-legislative or quasi-judicial authority. It exercises executive power in everything it does.

The NLRB is a quintessential example of the “headless Fourth Branch” that undermines political accountability and violates Article II. *FCC v. Consumers’ Research*, 145 S. Ct. 2482, 2517 (2025) (Kavanaugh, J., concurring). In deciding this case, the Court should make clear that all executive branch agencies—including the NLRB—must be subject to the President’s control.

ARGUMENT

A. The NLRB is not an expert agency.

When upholding restrictions for removing FTC members, the *Humphrey's Executor* Court believed that FTC members exercised technical expertise. 295 U.S. at 624. The Court explained the “exacting and difficult character” of the FTC’s mission required “expertness in dealing with these special questions concerning industry.” *Id.*

Nor would partisans populate the FTC. Because their work would be “most exacting and difficult,” its members would possess “a proper knowledge of both the public requirements and the practical affairs of industry.” *Id.* It would be headed by “a body of experts” that were “informed by experience” and exercising “trained judgement.” *Id.*

Modeled in part on the FTC, Congress created the NLRB to enforce the NLRA. “Expert” Board Members would head the new agency and their independence from political control would create “stability, reliability, and moderation” in the law, while avoiding unexpected “whipsaw[s].” *Wilcox v. Trump*, 775 F. Supp. 3d 215, 218, 228, 239 n.23 (D.D.C. 2025).

But, in reality, the NLRB is not an expert agency. Its members are not scientific or technical experts. In 1940, Congress banned the NLRB from employing any person for “economic analysis.” See 29 U.S.C. § 154(a); Pub. L. 76-812, 54 Stat. 1030, 1037 (1940).

Nor is the NLRB charged with setting national industrial policy or devising optimal employment terms. Congress banned the NLRB from requiring employers or unions to agree to any specific terms or conditions

of employment in collective bargaining. *See* 29 U.S.C. § 158(d); *H.K. Porter Co., v. NLRB*, 397 U.S. 99, 105–06 (1970). By design, the NLRB has no authority whatsoever to require businesses to adopt any wage or benefit policy, much less dictate what businesses should produce or how they produce it.

Rather, the Board’s duties mainly involve deciding unfair labor practice allegations, conducting elections, and issuing regulations concerning those two matters. *See* 29 U.S.C. §§ 158, 159. In deciding unfair labor practice cases, the Board relies on an in-house adjudicatory process: its General Counsel brings cases before the Board members, and the Board members decide those cases based on their view of NLRA, interpretation of the facts, and predilections. In representation cases, Board members administer a statutory process for holding and certifying elections that concern union representation. 29 U.S.C. § 159(c). In neither instance are NLRB members or NLRB staff doing anything technical or scientific.

Unsurprisingly, Board Members are not appointed because they are experts in science, economics, or other technical matters. They are usually just labor lawyers. Most Board members appointed by Democratic Presidents are union lawyers who issue decisions favorable to union self-interests. Many Board members appointed by Republican Presidents are management lawyers who often issue decisions favorable to management interests. There is no basis for the notion that Board members are generally disinterested technocrats.

As for stability—you won’t find it at the NLRB. The NLRB is rightfully viewed as an agency that

“veers violently left and right, a windsock in political gusts.” *Valley Hosp. Med. Ctr., Inc. v. NLRB*, 100 F.4th 994, 1004 (9th Cir. 2024) (O’Scannlain, concurring). This fact has been demonstrated empirically. See Amy Semet, *Political Decision-Making at the National Labor Relations Board: An Empirical Examination of the Board’s Unfair Labor Practice Decisions through the Clinton and Bush II Years*, 37 Berkeley J. Emp. & Lab. L. 223, 226–27 (2016).

The fact the NLRB whipsaws on nearly every major issue that comes before it can also be demonstrated anecdotally. Consider the Board’s so-called “blocking charge” policy. For years, the Board adhered to a policy of refusing to conduct decertification elections while an unfair labor practice charge was pending against an employer. In 2014, the Board issued a rule codifying this policy. *Representation—Case Procedures*, 79 Fed. Reg. 74308 (Dec. 15, 2014). But in 2020, the Trump I Board largely eliminated it, finding the policy was too favorable to unions. *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships*, 85 Fed. Reg. 18366 (April 1, 2020). Then in 2024, the Biden Board reinstated the blocking charge policy, because it believed the policy of holding decertification elections was harming unions. *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships*, 89 Fed. Reg. 62952 (Aug. 1, 2024).

This is hardly the only area of extreme policy oscillation at the Board. The Board has flip-flopped its “joint employer” standard four times in ten years, see *Chamber of Commerce v. NLRB*, 723 F. Supp. 3d 498,

506–510 (E.D. Tex. 2024), and modified its rules governing employee handbooks three times in twenty years. Compare *Stericycle, Inc.*, 372 NLRB No. 113 (Aug. 2, 2023); *Boeing Co.*, 365 NLRB 1494 (2017); *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). And the Board has overhauled labor law in other ways during the prior administration. See *Thryv, Inc.*, 372 NLRB No. 22 (Dec. 13, 2022) (holding Board can award expansive monetary compensation indistinguishable from compensatory damages); *McLaren Macomb*, 372 NLRB No. 58 (Feb. 21, 2023) (non-disparagement and confidentiality provisions in settlement agreements violate the Act); *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (Aug. 25, 2023) (employer legally required to recognize a union or file for a representation election based solely on a union’s recognition demand); *Amazon.com Services LLC*, 373 NLRB No. 136 (Nov. 13, 2024) (overturning *Babcock & Wilcox Co.*, 77 NLRB 577 (1948), to hold mandatory meetings where an employer expresses its views on unionization violate the Act); see also *Hosp. Menonita de Guayama, Inc. v. NLRB*, 94 F.4th 1, 16 (D.C. Cir. 2024) (Katsas, concurring) (noting the Board’s five-decade “shifting positions” on the successor bar).

These fluctuations are not technocratic shifts based on new scientific or economic evidence. Rather, they are due to political shifts in the Board’s makeup. The Board doesn’t issue decisions by relying on neutral experts, impartial studies, scientific analysis, or cold statistics. Board Members decided cases based on their interpretation of the NLRA, informed by their political leanings. See Ronald Turner, *Ideological Voting on the National Labor Relations Board*, 8 U. Pa. J.

Lab. & Emp. L. 707, 711 (2006) (concluding that “ideology has been a persistent and, in many instances, a vote predictive factor when the Board decides certain legal issues”).

It should be no surprise that the Board operates this way: Presidents pick Board Members for their ideological bona fides. See William B. Gould IV, *Politics and the Effect on the National Labor Relations Board’s Adjudicative and Rulemaking Processes*, 64 Emory L.J. 1501, 1508–23 (2015). Consider Gwynne Wilcox, the fired NLRB Member seeking reinstatement. President Biden announced that he would be the “strongest labor president you’ve ever had”² and nominated Ms. Wilcox (a vocal union lawyer) to fulfill that promise because of her ideological views and experience representing labor unions, not because she possessed any technical, scientific or economic expertise.³

At the NLRB, removal restrictions for Board members are not protecting an impartial expert agency. The restrictions are protecting a political agency that exercises executive power free from full Presidential control and accountability.

² Andrew Solender, Biden Vows To Be ‘Strongest Labor President You’ve Ever Had’ At Union Event, *Forbes.com*, bit.ly/3Dy0sCl (Sept. 7, 2020).

³ Daniel Wiessner, Unions hail nomination of high-profile labor lawyer to NLRB, *Reuters*, bit.ly/3Wzb6i7 (May 27, 2021).

B. The NLRB is not balanced along partisan lines.

In *Humphrey's Executor*, the Court explained the Federal Trade Commission Act provides: “Not more than three of the commissioners shall be members of the same political party.” *Humphrey's Executor*, 295 U.S. at 619–20. The Court relied on this provision to justify upholding the 1935 FTC’s removal restrictions, finding “[t]he commission is to be non-partisan; and it must, from the very nature of its duties, act with entire impartiality.” *Id.* at 624.

Taken on its own merits, this characterization of the FTC as nonpartisan was wrong. It is an oxymoron to call a committee controlled by a majority party “nonpartisan.” No one would say a party holding a one-vote majority in the House of Representatives makes the House a nonpartisan institution.

The “nonpartisan” label makes even less sense when it comes to the NLRB. The NLRA does not statutorily require any partisan balance on the Board. A President can nominate, and the Senate can confirm, Board Members regardless of their party affiliation.

In *Wilcox v. Trump*, the District Court waived away this fact, claiming that the Board is “partisan-balanced based on longstanding norms” under which a President’s party occupies up to three Board seats and two seats are reserved for the minority party. 775 F. Supp. 3d at 221. But Presidents breached these “norms” early and often. President Truman appointed a fourth Democrat to the Board in 1950 and President Eisenhower appointed a fourth Republican to the Board in 1955 and 1956. And it is now commonplace for Presidents to not fill purported “minority party”

seats on the Board. Democrats possessed a 3-1 majority at the Board from December 2022 to December 2024. During President Trump’s first term, the Board was 3-1 Republican from August 2018 to December 2019, 3-0 Republican from December 2019 to August 2020, and 3-1 Republican from August 2020 to August 2021 (eight months into President Biden’s term). President Obama left a “Republican” seat vacant from August 2015, through the end of his term in January 2017.⁴

In any case, political norms are not statutory requirements. And nothing in the NLRA requires any partisan balance on the Board. There would be nothing stopping an outgoing President and Senate from filling all five Board seats with members from one party to hamstring an incoming President’s ability to control the agency. Because Board Members serve staggered five-year terms, an incoming President would be unable to assert his control over the agency until his third year in office.

This is no hypothetical—President Biden tried a similar gambit in late 2024. During the lame duck session in December 2024, the Senate tried to confirm two Biden NLRB nominees in an effort to deny President Trump control of the NLRB until August 2026.⁵

⁴ For a complete list: Members of the NLRB since 1935, <https://www.nlr.gov/about-nlr/who-we-are/the-board/members-of-thenlr-since-1935> (last visited Feb. 18, 2025).

⁵ See Schumer’s race to protect NLRB majority from Trump, Axios, [bit.ly/4h8YF68](https://www.axios.com/2024/12/09/schumer-nlr-majority-trump) (Dec. 9, 2024).

This situation was only averted when the Senate rejected one of the appointments by denying cloture on her nomination.⁶

Even without these machinations, holdover Board Members can still hamstring the policies of the current President. Ms. Wilcox’s case illustrates the point. If President Trump had not removed Ms. Wilcox from the Board in January 2025, the Board majority would have been comprised of Democrats Wilcox and David Prouty. The NLRB would be pursuing President Biden’s labor policies during President Trump’s term. The dead hand of someone who is no longer in office would remain on the tiller of executive policy.

This outcome is intolerable under Article II of the Constitution. The President must be able to remove Board members “who come from a competing political party who is dead set against [the President’s] agenda.” *Collins v. Yellen*, 594 U.S. 220, 256 (2021) (cleaned up).

C. The NLRB does not exercise “quasi-judicial” or “quasi-legislative” authority.

1. *Humphrey’s Executor* upheld the FTC’s removal protections on a mistaken belief the FTC exercised “no part of the executive power.” *Seila Law*, 591 U.S. at 215. Instead, the Court believed the FTC was mainly a “legislative and judicial” aid because it thought the

⁶ Roll Call Vote, Motion to Invoke Cloture: Lauren McGarity McFerran to be a Member of the National Labor Relations Board, United States Senate, bit.ly/48wT9bm (last visited Oct. 15, 2025).

FTC's primary functions were making reports to Congress and serving as a master in chancery for the judiciary. *Humphrey's Executor*, 295 U.S. at 628.

The Court likely made this mistake because it was one of the arguments advanced by William Humphrey's estate. Humphrey's Executor's brief to this Court argued that the FTC's work "as a direct agent of Congress is perhaps the most important single function performed by the Commission." Brief for Samuel F. Rathbun, Executor, at 44, *Humphrey's Executor v. United States*, 295 U.S. 602 (1935) (No. 667), 1935 WL 32964 (Mar. 19, 1935). His brief "estimated that approximately one-half of the total amount expended by the Commission" was spent on Congressional investigations "in aid of legislation." *Id.* at 45–46.

This limited view of the FTC's powers was common at the time. A 1925 Attorney General Opinion stated the main purpose of the FTC "was to enable Congress . . . to obtain full information concerning conditions in industry to aid it in its duty of enacting legislation," so that it was "likened to a Committee of Congress." *Powers & Duties of the FTC in the Conduct of Investigations*, 34 Op. Att'y Gen. 553, 557–58 (1925).

At its core, *Humphrey's Executor* rests on the assumption that the 1935 FTC was something other than a conventional administrative agency and merited a different position in the political order. There is no basis to expand that mistaken belief to an administrative agency that exercises executive power.

2. NLRB Members exercise substantial executive power through their adjudicative, policymaking, and prosecutorial authority. They are not a toothless advi-

sory board issuing reports to Congress, like FTC Commissioners in 1935. Rather, the NLRA affects much of the private sector economy and Board Members enforce the NLRA against private parties in many ways.

First, the Board has the authority to “prevent any person from engaging in any unfair labor practice . . . affecting commerce” which entails the authority to conduct adjudications, find facts and “issue final decisions awarding legal and equitable relief.” 29 U.S.C. § 160; *Seila Law*, 591 U.S. at 219. The NLRB’s power to remedy unfair labor practices also includes the power to order monetary relief against private parties “a quintessentially executive power not considered in *Humphrey’s Executor*.” *Seila Law*, 591 U.S. at 219.

Traditionally, the Board has announced most of its policy decisions through adjudications. *See NLRB v. Curtin Matheson Sci., Inc.*, 494 U.S. 775, 786 (1990) (“[T]he NLRB has the primary responsibility for developing and applying national labor policy.”). Some have argued the Board’s adjudicatory authority places it within the *Humphrey’s* exception. *Wilcox v. Trump*, Case No. 25-5057, 2025 WL 980278, slip op. at *80 (D.C. Cir. Mar. 28, 2025) (Millet, dissenting). But the Court has been clear that administrative adjudications “are exercises of—indeed, under our constitutional structure they must be exercises of—the executive Power.” *Seila Law*, 591 U.S. at 216 n.2 (cleaned up); *see City of Arlington v. FCC*, 569 U.S. 290, 304 n.4 (2013). This is because it is “the identity of the officer—not something intrinsic about the mode of decisionmaking or type of decision—that tells us whether [executive] power is being exercised.” *Freytag v. Commissioner*, 501 U.S. 868, 911 (1991) (Scalia, J., concurring).

Second, the NLRB “possesses the authority to promulgate binding rules fleshing out [a] federal statute[], including a broad prohibition on unfair [labor] practices in a major segment of the U.S. economy,” affecting nearly every private sector business and employee. *Seila Law*, 591 U.S. at 218; see 29 U.S.C. § 156. Because “interpreting a law enacted by Congress to implement the legislative mandate is the very essence of execution of the law,” an agency “empowered to issue a ‘regulation or order’ . . . clearly exercises executive power.” *Collins*, 594 U.S. at 254 (cleaned up).

Third, unlike the FTC in 1935, the Board possesses the power to seek injunctions in federal court. Section 10(j) of the NLRA gives Board Members the “power, upon issuance of [an administrative] complaint . . . charging that any person has engaged in or is engaging in an unfair labor practice, to petition [a] United States district court . . . for appropriate temporary relief or restraining order.” 29 U.S.C. § 160(j). The power to seek injunctive relief was not at issue in *Humphrey’s Executor* because the FTC did not possess such power until 1938.

Lastly, the Board has a unique power to conduct and certify union representation elections. The NLRB’s certification of a union grants it powers “comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents.” *Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192, 202 (1944); *Emporium Capwell Co. v. W. Addition Cmty. Org.*, 420 U.S. 50, 63 (1975) (recognizing national labor policy “extinguishes the individual employee’s power to order his own relations with his employer”). The Board’s power over representation pro-

ceedings is nearly plenary because its decisions in representation cases are not directly reviewable in federal court, except in narrow circumstances. *Leedom v. Kyne*, 358 U.S. 184, 190 (1958) (limiting review to “agency action taken in excess of delegated powers.”).

In short, the NLRB wields substantial executive power from top to bottom. Unlike the 1935 FTC in *Humphrey’s Executor*, the Board cannot be described as “a mere legislative or judicial aid” that “exercise[s] ‘no part of the executive power.’” *Seila Law*, 591 U.S. at 215, 218. Rather, the Board can “issue final regulations, oversee adjudications . . . and determine what penalties to impose on private parties”—all “without meaningful supervision.” *Id.* at 225. Because Article II grants the President all the executive power, *Humphrey’s Executor* cannot neuter the President’s ability to supervise those who exercise substantial parts of that power. *See id.* at 251 (Thomas, J., concurring in part).

CONCLUSION

The Court should make clear that the President's removal power applies to every agency that exercises executive power, including the NLRB.

AARON SOLEM

Counsel of Record

ALYSSA HAZELWOOD

C/O NATIONAL RIGHT TO
WORK LEGAL DEFENSE
FOUNDATION

8001 Braddock Rd., Ste. 600

Springfield, VA 22160

(703) 321-8510

abs@nrtw.org

akh@nrtw.org

Counsel for Amicus Curiae

October 17, 2025