

Trump Aims To End Limits On President's Power To Fire

By **Katie Buehler**

Law360 (February 14, 2025, 9:35 PM EST) -- President Donald Trump has his sights set on taking down a 90-year-old U.S. Supreme Court ruling that protects certain government officials from being fired, a U.S. Department of Justice letter confirms, and he plans to leverage his prior legal victories to deliver the precedent's death knell and expand presidential power.

In a letter sent to lawmakers Wednesday, acting U.S. Solicitor General Sarah M. Harris announced the administration's plan to challenge several statutes that prohibit the president from firing top officials from independent agencies without cause. The laws rely on the high court's 1935 decision in *Humphrey's Executor v. United States*, which the Trump administration claims unconstitutionally prevents the president from "adequately supervising principal officers" of the executive branch.

The New Deal-era case — which stemmed from President Franklin D. Roosevelt's attempt to fire a Hoover-appointed member of the Federal Trade Commission — has long been criticized by proponents of the unitary executive theory, which contends that executive branch employees should either be directly answerable to the voters or answerable to an official who likewise is answerable to the voters. Undoing the *Humphrey's Executor* precedent is also a top target of Project 2025, the Heritage Foundation's aggressive vision for a GOP presidential administration, which President Trump claimed not to know about during his campaign.

Recent Supreme Court rulings have slowly chipped away at the precedent, and suggested that a growing number of justices believe it was wrongly decided. But the Trump administration's new, open attack on the case means *Humphrey's Executor's* end is likely closer than it's ever been, attorneys told Law360.

"With the current court, now is about as good a time as any to mount a frontal assault on *Humphrey's Executor*," Peter Karanjia, chair of DLA Piper's administrative law appellate practice, said. "It's by no means guaranteed, but my general take is that the administration has a receptive audience, and it could certainly count on some votes unequivocally."

Daniel W. Wolff, head of Crowell & Moring LLP's administrative law practice, was more frank in his prediction.

"I think it will be overturned in the next four years," he said.

Others suggested that the current Supreme Court lineup is more inclined to significantly narrow the scope of *Humphrey's Executor* rather than do away with it completely.

Whatever decision the justices make, however, is likely to come much sooner than four years. There are already three pending lawsuits that invoke the precedent as a basis for challenging President Trump's firings of various officials, and two of them are moving on a fairly expedited basis.

One suit, which involves the removal of former National Labor Relations Board member Gwynne A. Wilcox, is already set for a summary judgment hearing in early March, and another case related to the firing of Hampton Dellinger from the U.S. Office of Special Counsel is currently being appealed to the Supreme Court after a judge issued an order that purported to "un-fire" him.

"The president's removal of Ms. Wilcox without even purporting to identify any neglect of duty or malfeasance, and without notice or hearing, defies ninety years of Supreme Court precedent that has ensured the independence of critical government agencies like the Federal Reserve," Wilcox argued in her Feb. 5 complaint.

Dellinger adds that President Trump's firing of him jeopardizes "virtually identical for-cause removal protections" for the heads of dozens of independent agencies, including the Federal Energy Regulatory Commission, the Federal Communications Commission and the Federal Trade Commission.

But unitary executive enthusiasts claim overturning *Humphrey's Executor* is necessary to ensure the federal government functions as the nation's founders intended it to, Chad Squitieri, an assistant professor and the director of Catholic University School of Law's separation of powers institute, said at a Federalist Society panel Friday.

"It's not as scary as it sounds," he said. "We trust the president with the nuclear codes; we can trust him with managing the Fed."

The Supreme Court unanimously held in *Humphrey's Executor* that while the president was free to fire any employee of the executive branch, they were prohibited from removing members of "quasi-legislative or quasi-judicial agencies" without cause. That removal protection was needed, the court held, to shield independent agencies like the FTC from undue political influence.

The decision is considered to have laid the foundation for today's system of federal government and the so-called fourth branch, or administrative state. But many right-leaning lawyers and academics argue *Humphrey's Executor* was wrong from the start because it lacks any basis in the text of the Constitution.

It's based on a "constitutionally mistaken idea of so-called independent agencies," Squitieri said Friday. "No where will you see 'quasi-legislative' or 'quasi-judicial' powers [in the Constitution]. Those powers are made up, and the equivalent of constitutional fairy tales."

Over the last couple of decades, the Supreme Court has also become more skeptical of the precedent, and it has issued several rulings narrowing *Humphrey's Executor's* reach. Two of those decisions were successfully argued by attorneys for the first Trump administration.

In 2010, the court ruled in *Free Enterprise Fund v. Public Company Accounting Oversight Board* that multiple levels of removal protections are unconstitutional. Then, in 2020, the court determined in *Seila Law v. Consumer Financial Protection Bureau* that *Humphrey's Executor's* removal protections only applied to independent agencies governed by multi-member commissions. The court confirmed that agencies run by independent directors weren't covered by the precedent in its 2021

decision in *Collins v. Yellen*, which applied *Seila Law* to the Federal Housing Finance Agency.

The court had a chance in *Seila Law* to overturn *Humphrey's Executor* completely, but a majority of the court voted against it. Justices Clarence Thomas and Neil Gorsuch dissented from that aspect of the ruling.

"The decision in *Humphrey's Executor* poses a direct threat to our constitutional structure and, as a result, the liberty of the American people," Justice Thomas wrote in a partial dissent. "In a future case, I would repudiate what is left of this erroneous precedent."

The court's shift to focus on history and tradition, coupled with its rulings from last term that significantly reined in the power of the administrative state suggest that, this time around, Justices Thomas and Gorsuch wouldn't be the odd ones out.

"The trends of the Supreme Court jurisprudence lead me to conclude that the court would either further narrow or overrule it," George Washington Law professor Aram Gavoor said.

Harris' letter Wednesday specifically targeted statutory protections for members of the FTC, NLRB and Consumer Product Safety Commission. The DOJ didn't respond to requests to clarify why those three agencies were singled out, and attorneys interviewed by Law360 declined to speculate.

However, the Fifth Circuit recently heard oral arguments in a case challenging the NLRB's removal protections, and has upheld the president's power to remove members of the CPSC. The Supreme Court passed on a chance to review the CPSC case in October.

The removal cases are *Wilcox v. Trump*, case number 1:25-cv-00334, and *Harris v. Bessent*, case number 1:25-cv-00412, in the U.S. District Court for the District of Columbia, and *Dellinger v. Bessent*, case number not yet available, in the Supreme Court of the United States.

--Editing by Leah Bennett.