



U.S. Department of Justice

Office of the Solicitor General

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*The Solicitor General*

*Washington, D.C. 20530*

February 24, 2025

The Honorable Mike Johnson  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

Re: Restrictions on the Removal of Members of the Federal Labor Relations  
Authority

Dear Mr. Speaker:

Pursuant to 28 U.S.C. 530D, I am writing to advise you that the Department of Justice has determined that the statutory for-cause removal provision applicable to members of the Federal Labor Relations Authority (Authority), 5 U.S.C. 7104(b), is unconstitutional. The Department will take that position this week in briefs it will file in defense of the President's decision to remove Susan Tsui Grundmann from her position as a member of that Authority. See *Grundmann v. Trump*, No. 25-cv-425 (D.D.C.).

The Authority is empowered to enforce the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 *et seq.*, against other components of the federal government. It consists of three members appointed by the President with the advice and consent of the Senate to five-year terms of office. 5 U.S.C. 7104(a)-(c). The statute limits the President to removing Authority members "only for inefficiency, neglect of duty, or malfeasance in office." 5 U.S.C. 7104(b).

On February 10, 2025, the President removed Ms. Grundmann from her position as a member of the Authority. Ms. Grundmann later that week sued the President and the Chairman of the Authority seeking reinstatement to her former position and other relief. She contends that her dismissal violated the statutory tenure protection afforded Authority members in 5 U.S.C. 7104(b). The Department will defend the removal on the ground that Authority members' tenure protection is unconstitutional.

In *Myers v. United States*, 272 U.S. 52 (1926), the Supreme Court recognized that Article II of the Constitution gives the President an "unrestricted" power of "removing executive officers who had been appointed by him with the advice and consent of the Senate." *Id.* at 176. In *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), the Supreme Court created an exception to that rule. The Court held that Congress may "forbid the[] removal except for cause" of members of the Federal Trade Commission (FTC). *Id.* at 629. In the Court's view, the FTC "exercise[d] no part of the executive power vested by the Constitution in the President." *Id.* at 628.

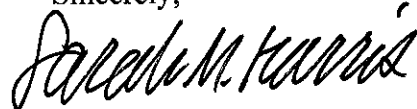
In recent years, the Supreme Court has clarified that the *Humphrey's Executor* “exception” to the “unrestricted removal power” that the President generally has over principal executive officers represents “‘the outermost constitutional limit[] of permissible congressional restrictions’” on the President’s removal authority. *Seila Law LLC v. Consumer Fin. Protection Bureau*, 591 U.S. 197, 215, 218 (2020) (citation omitted). In particular, the holding of *Humphrey's Executor* applies only to administrative bodies that do not exercise “substantial executive power.” *Id.* at 218.

The Department has determined that the members of the Authority exercise substantial executive power as Authority members and therefore may be removed by the President without restriction. The Authority, for example, resolves complaints regarding unfair labor practices and may take final action on such matters, subject to judicial review. 5 U.S.C. 7105(a)(2). The Authority also may order any federal agency or labor organization to comply with its decisions and enforce any such order. 5 U.S.C. 7118(a)(7); 5 C.F.R. 2423.41(e).

To the extent that *Humphrey's Executor* requires otherwise, the Department intends to urge the Supreme Court to overrule that decision, which prevents the President from adequately supervising principal officers in the Executive Branch who execute the laws on the President’s behalf, and which has already been severely eroded by recent Supreme Court decisions. See, e.g., *Seila Law*, 591 U.S. at 223-229; *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 492-494 (2010).

Please let me know if I can be of any further assistance in this matter.

Sincerely,

A handwritten signature in black ink, reading "Sarah M. Harris". The signature is written in a cursive, flowing style.

Sarah M. Harris  
Acting Solicitor General