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In WLF Victory, High Court Affirms Congressional Limits on President's Power to Fill Federal Vacancies

(National Labor Relations Board v. SW General, Inc.)

“By upholding Congressional limits on the President’s ability to install appointees on an acting basis, the Court safeguarded the Constitution’s separation of powers and upheld the rule of law.”—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Earlier today, the US Supreme Court rejected the previous administration’s reading of a federal law designed to prevent presidents from evading the Senate’s constitutional advice-and-consent function. The decision marks a victory for Washington Legal Foundation, which filed an *amicus curiae* brief in the case arguing that the government’s self-serving interpretation of the Federal Vacancies Reform Act of 1998 (FVRA) improperly expanded the President’s power to install his permanent nominees as “acting” officers in high-level positions, in defiance of the FVRA. WLF’s brief was joined by the Allied Educational Foundation.

The case arises from a challenge to Lafe Solomon’s tenure as acting General Counsel of the National Labor Relations Board. Concluding that Solomon’s appointment was improper, the DC Circuit held below that the government’s interpretation of the FVRA contravenes the plain text and purpose of the statute. Urging affirmance of that decision, WLF had contended that allowing the permanent nominee to begin work immediately as an acting official would enable the President to advance his agenda without first submitting to important constitutional prerequisites.

In a 6-2 opinion, the Supreme Court agreed with WLF’s interpretation. Finding the statutory text “clear,” the Court held that “the FVRA’s prohibition preventing a person who has been nominated to fill a vacant office from performing the duties of that office in an acting capacity applies to anyone performing acting service under the FVRA.” Government lawyers had tried, unsuccessfully, to carve out certain exceptions to that blanket prohibition. Chief Justice Roberts authored the opinion of the Court, from which only Justices Sotomayor and Ginsburg dissented.

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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