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Media Contact: Derek Dye | ddye@wlf.org | 202-588-0302

High Court to Hear Oral Argument Monday in Case Involving President's Power to Fill Federal Vacancies

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

“If the President is permitted to install his chosen appointees on an acting basis without obtaining the Senate’s advice and consent, it will resurrect the very problem that Congress sought to remedy when it enacted the Federal Vacancies Reform Act in the first place.”—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—On Monday, the U.S. Supreme Court will hear oral argument in *National Labor Relations Board v. SW General, Inc.* Washington Legal Foundation (WLF) filed an *amicus* brief in the case encouraging the Court to reject the government’s reading of a federal law designed to prevent presidents from evading the Senate’s constitutional advice-and-consent function. [WLF Senior Litigation Counsel Cory Andrews will attend the session and be available to discuss the case and likely outcomes tomorrow afternoon.](#)

WLF’s brief argues that the government’s self-serving interpretation of the Federal Vacancies Reform Act of 1998 (FVRA)—which the U.S. Court of Appeals for the DC Circuit rejected below—improperly expands the President’s power to install his permanent nominees as “acting” officers in high-level positions without first obtaining the advice and consent of the Senate. 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 that the government’s interpretation of the FVRA contravenes the plain text and purpose of the statute. Urging affirmance of that decision, WLF contends 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. WLF’s brief further argues that the Supreme Court should not to defer to the Executive Branch’s statutory interpretation, because the case implicates important separation-of-powers concerns.

In advance of oral argument, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “If the President is permitted to install his chosen appointees on an acting basis without obtaining the Senate’s advice and consent, it will resurrect the very problem that Congress sought to remedy when it enacted the Federal Vacancies Reform Act in the first place.”

WLF is a national, public-interest law firm and policy center that regularly advocates in support of the Constitution’s strict, liberty-promoting separation of powers among the three branches of government.

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