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WLF Asks Fifth Circuit To Hold That NLRB's Administrative Law Judges Are Unconstitutional *(Amazon.com Services LLC v. NLRB)*

“Multiple levels of for-cause removal protection for ALJs deprive the President of the ability to ensure that inferior officers are properly carrying out their duties.”

—Cory Andrews, WLF General Counsel & Vice President for Litigation

WASHINGTON, DC—Yesterday Washington Legal Foundation (WLF) urged the U.S. Court of Appeals for the Fifth Circuit to end unlawful and unconstitutional enforcement actions by the National Labor Relations Board (NLRB). WLF joined the Coalition for a Democratic Workplace, Associated Builders and Contractors, the Mackinac Center for Public Policy, and the Institute for the American Worker on the brief, which was drafted by Alex T. MacDonald at Littler Mendelson PC.

The case arises from retailer Amazon.com’s suit against the NLRB, alleging that the agency “violates bedrock constitutional principles of separation of powers” by serving as both prosecutor and judge. Amazon contends that NLRB’s Administrative Law Judges (ALJs) are unconstitutionally protected from being fired by the President, and that the quasi-judicial structure of the agency undermines employers’ right to a jury trial under the Seventh Amendment. The Fifth Circuit stayed any further agency action pending the appeal.

In its amicus brief in support of Amazon, WLF urges the court to hold that NLRB’s ALJs enjoy unconstitutional removal protection. As the brief explains, NLRB’s ALJs are inferior officers who enjoy multiple levels of for-cause removal protection. The Supreme Court’s decisions in *Jarkesy* and *Free Enterprise Fund* make clear that this violates Article II because the President lacks the ability to ensure that the ALJs are fulfilling their duties.

Celebrating its 47th 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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