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NCLA Asks the Supreme Court to Affirm President’s Absolute Power to Fire Executive Branch Officials

Scott Bessent, Secretary of the Treasury, et al. v. Hampton Dellinger

Washington, DC (February 18, 2025) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *Bessent v. Dellinger*, urging the U.S. Supreme Court to vacate a district court’s temporary restraining order (TRO) requiring President Donald Trump to reinstate the fired former head of the U.S. Office of Special Counsel, Hampton Dellinger. The President has absolute constitutional authority to remove Executive Branch officials at will. The Supreme Court should stop the district court’s interference with the President’s removal power, which ensures federal officials’ full accountability to the elected Chief Executive.

The Constitution vests all executive power in the President. The Founders understood that “executive power” included the ability to execute the law, as well as the nation’s action, strength, or force. That understanding confirms that a President’s authority to remove subordinates must be absolute. As the Supreme Court recently held in *Seila Law v. Consumer Financial Protection Bureau*, the President maintains authority to both “supervise and remove the agents who wield executive power in his stead.” That removal authority must be absolute for the President to be able to uphold his constitutional duty to “take Care that the Laws are faithfully executed.”

Although the Constitution expressly limits the President’s power to appoint Executive Branch officials by requiring congressional approval of principal officers, it leaves his removal authority unqualified. That difference in treatment means that the President’s power to remove principal officers like Dellinger remains unrestricted.

The President can delegate executive authority to subordinates, which is often practically necessary to run the government. The threat of removal is the only certain way he can control his delegates, ensuring that *their* actions or inactions remain consistent with the President’s policies and priorities. A federal district court judge lacks the power to enter an administrative stay or TRO to stop the President from firing his subordinate—let alone to force that person’s reinstatement. That is why prior lawsuits from fired federal officials have sought back pay, not reinstatement. The district judge overreached massively here in usurping executive power. Surprisingly, two-thirds of the reviewing panel at the U.S. Court of Appeals for the D.C. Circuit refused to bring that judge to heel.

NCLA released the following statements:

“The lower court’s order directing President Trump to reinstate an officer to the executive branch represents an affront to our constitutional separation of powers—and to the voters who selected Donald Trump to control the Executive Branch of government for the next four years.”

— **Margot Cleveland, Of Counsel, NCLA**

“The Constitution provides for a separation of powers between different branches of Government, with each branch having exclusive power within its sphere. The responsibility for staffing the Executive Branch belongs to the President alone, because he alone is accountable to the American people for the actions of that branch of

Government. The Supreme Court should end the improper interference with the President’s constitutional authority and responsibility.”

— **Greg Dolin, Senior Litigation Counsel, NCLA**

“Acting Solicitor General Sarah Harris filed a wonderful brief explaining why constitutional text and Supreme Court precedent affirm the President’s absolute removal power. NCLA’s *amicus* brief underscores that the executive power the Constitution vested in the President included the removal power. Since that document did not limit his removal power—unlike the related power to appoint—the removal power remains absolute today.”

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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