

BREAKING: Senate Fails to Move Forward with NLRB Nominees

Labor Relations Update on **December 12, 2024**

On December 11, 2024, the U.S. Senate voted 49-50 against invoking cloture on President Biden's nomination of Lauren McFerran (Democrat appointee) for the National Labor Relations Board ("NLRB" or "Board"). As reported [here](#), President Biden also nominated Seyfarth Shaw partner, Joshua Ditelberg (Republican appointee), when he nominated McFerran in May 2024.

U.S. Senate Majority Leader Chuck Schumer (D-N.Y.) had made the motion to close the debate on the nomination and to move to a confirmation vote.

Senator Joe Manchin (I-W.V.) and Senator Kirsten Sinema (I-A.Z.) both voted against ending debate and moving to a vote on McFerran, and Senator Roger Marshall (R-K.S.) abstained from the vote. All other Senators voted along party lines. Senator Schumer can still seek to invoke cloture again before the Senate recesses at the end of 2024, which would then result in a confirmation vote.

If McFerran is not confirmed for another term before the lame-duck Senate recesses, then her term would expire on December 16, 2024, and we expect a number of NLRB decisions to continue to be issued as the end of her term nears. President-elect Trump would then have the opportunity to nominate two Republican Members to serve on the NLRB after his inauguration, which would revert the NLRB to a Republican majority for the foreseeable future.

If McFerran is ultimately confirmed, then it would ensure a 3-2 Democratic majority in the Board through August 2026, when Democratic-Member David Prouty's term expires. This could also create a potential constitutional fight if President-elect Trump decides to test his removal authority by removing one or more of the Democratic members (previously covered [here](#)).

We will continue to monitor Senate action as it pertains to the NLRB nominees.

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