

## Updates

August 26, 2024

District Court Rules SpaceX Likely To Succeed in Challenging NLRB Constitutionality



Judge Alan Albright of the U.S. District Court for the Western District of Texas issued an order on July 23, 2024, granting Space Exploration Technologies Corporation’s (SpaceX) motion for a preliminary injunction after finding that SpaceX “demonstrated a substantial likelihood of success on its claims that Congress has impermissibly protected both the [National Labor Relation Board (NLRB)] Members and the NLRB [Administrative Law Judges (ALJs)] from the President’s Article II power of removal.”

*Space Expl. Technolo-Gies Corp. v. Nat'l Labor Relations Bd.*, No. W-24-CV-00203-ADA, 2024 WL 3512082, at \*1 (W.D. Tex. July 23, 2024).

Specifically, SpaceX asked the court to issue a preliminary injunction to prevent the irreparable harm of being subject to an unconstitutional administrative proceeding before the NLRB. Under U.S. Court of Appeals for the Fifth Circuit precedent, a preliminary injunction is appropriate if a movant establishes: “(1) they are likely to succeed on the merits, (2) there is a substantial threat they will suffer an irreparable injury otherwise, (3) the potential injury outweighs any harm that will result to the other side, and (4) an injunction will not disserve the public interest.” *Id.* at \*2. The court found that SpaceX did just that.

The court first acknowledged that, although Congress “clearly intended to protect the NLRB from the volatility of the political machine and allow consistent adjudication of employee rights provided by the [National Labor Relations Act (NLRA)],” it “is not permitted to interfere with the President’s exercise of the executive power and his constitutionally appointed duty to take care that the laws be faithfully executed under Article II.” *Id.* (internal citations omitted). It then found that SpaceX demonstrated a substantial likelihood of success on its argument that the NLRB’s ALJs are unconstitutionally insulated from removal because the ALJs are only to “be removed when the [Merit Systems Protection Board (MSPB)] finds good cause,” and the MSPB members “may only be removed by the President for inefficiency, neglect of duty, or malfeasance in office.” *Id.* at \*3 (internal citations omitted). Similarly, the court found that SpaceX had demonstrated a substantial likelihood of success on its arguments that the NLRB members are unconstitutionally insulated from removal because the NLRA

explicitly limits the president’s power of removal to situations involving “neglect of duty or malfeasance in office, but for no other cause.” *Id.* (internal citations omitted).

The court then found that being subjected to the authority of the unaccountable NLRB members would cause irreparable harm to SpaceX and that the balance of the harms and public interest weigh in favor of issuing a preliminary injunction:

“The Court does not dispute that there is a strong public interest in providing employees a mechanism to vindicate their NLRA rights. Nor does this Court find that employers and labor unions should be free from scrutiny of their labor practices. That said, Congress exceeds its power when it attempts to neuter the President’s constitutional power to remove and control executive officers by conferring a web of removal protections upon NLRB ALJs and the NLRB Members. Nothing in the injunction granted here prevents Congress from using a constitutional means to achieve its goals.” *Id. at* \*7.

The court’s preliminary injunction halts the NLRB’s administrative proceeding against SpaceX in a single case, and the NLRB has appealed this decision up to the Fifth Circuit, which has not yet issued an opinion. If SpaceX is successful in its challenges to the NLRB’s constitutionality, we will likely see a complete transformation in the way cases involving labor rights are ultimately adjudicated. Accordingly, employers should speak to experienced counsel when proceeding in matters involving the NLRB, as this is still a developing area of the law.

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