

Will *SEC v. Jarkesy* Reshape How the NLRB Operates? Fifth Circuit Bars NLRB From Prosecuting Unfair Labor Practices: Implications for Employers

Labor & Employment Law Update

By Laura Leahy on October 14, 2025

On August 19, 2025, the Fifth Circuit Court of Appeals upheld injunctions barring the National Labor Relations Board (NLRB) from prosecuting unfair labor practices (ULP)/charges against three employers, including Space X. This decision stems from the constitutional challenges to the way the NLRB is structured and raises broader questions about the current structure of the NLRB.

The recent appellate decision can be traced back to June 2024, when the U.S. Supreme Court issued its landmark decision in *SEC v. Jarkesy*. The Court held that the SEC's use of in-house administrative law judges (ALJs) was unconstitutional because removal protections insulated them from presidential oversight and shielded them from removal. That ruling immediately opened the door to constitutional challenges against other federal agencies structured in a similar way – including the NLRB.

Space X Files First Challenge

Weeks later, in July 2024, Space X filed suit in the Southern District of Texas, arguing that ULP cases should not proceed before NLRB ALJs whose dual removal protections violate Article II of the Constitution. Space X contended that being forced through those proceedings was itself an irreparable harm.

The NLRB attempted to transfer the case to California, where the underlying labor charges were pending, but the Texas district court rejected that move.

Other Employers File Challenges

Following Space X's lead, Energy Transfer LP and Findhelp brought nearly identical challenges in Texas federal courts and all three companies secured preliminary injunctions halting the NLRB from moving forward on their

respective (already issued) ULP complaints.

Impact of the Fifth Circuit Decision on the NLRB

For now, the NLRB is barred from prosecuting ULP complaints against just the three named challengers while their constitutional claims are litigated, but the Fifth Circuit's reasoning seems to signal a significant vulnerability for the agency's structure. Three critical takeaways to keep in mind in the aftermath of this decision are:

1. The Texas District Court injunctions are *not* universal and only apply to Space X, Energy Transfer, and Findhelp.
2. The NLRB can continue to issue and litigate ULP complaints against other employers.
3. District courts do have jurisdiction to issue these injunctions, even though the Norris-LaGuardia Act typically limits judicial intervention in labor disputes, because these cases involve structural constitutional claims and not ordinary labor disputes (involving wages, terms and conditions of employment, etc.).

How Employers Can Respond

It is prudent for employers to review severance agreements, non-disparagement, confidentiality and arbitration clauses that might implicate NLRA rights. Additionally, they ought to consider whether any existing policies might stand up under challenge—for example, do they force employees into processes (like arbitration, etc.) that could be disfavored or attacked in recent cases? Depending on the outcome of these pending matters, there could be severability questions if only some parts of the statutes are declared unconstitutional, for example, would the rest of the NLRA/NLRB operation remain? Employers should be prepared for both “status quo” and “reformed structure” possibilities.

Employers should continue monitoring the caselaw for rulings in the Fifth Circuit, the U.S. Supreme Court, and other relevant jurisdictions. They may also wish to review any ongoing or arguments anticipated ULP charges to evaluate whether similar constitutional arguments exist and if they should be asserted. The Amundsen Davis labor and employment team will continue to monitor as the implications contemplate not just the NLRB, but more broadly, the administrative state.

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