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**NLRB Ruling in FDRLST Twitter Joke Case Lacks Common Sense and Sense of Humor, Says NCLA**

*Joel Fleming v. FDRLST Media, LLC*

**Washington, DC (November 25, 2020)** – The New Civil Liberties Alliance will challenge a [ruling](#) by the National Labor Relations Board (NLRB) that upheld the decision of Administrative Law Judge Kenneth W. Chu in the case of *Joel Fleming v. FDRLST Media, LLC*. NLRB has concluded that it was an unfair labor practice for Ben Domenech, publisher and co-founder of FDRLST Media, to have posted a satirical tweet from his personal account.

NCLA, a nonpartisan, nonprofit civil rights group, maintains the panel’s decision is flawed and that NLRB has subjected FDRLST to an onerous enforcement action where the agency lacks both subject-matter jurisdiction and personal jurisdiction under the Constitution and under NLRB’s own established practice. For starters, the National Labor Relations Act does not empower random people like Mr. Fleming, who was not “aggrieved” by the tweet and has no relationship to Mr. Domenech or FDRLST Media’s employees, to weaponize the NLRB’s investigatory processes against others with whom he disagrees and impose great costs on them. Further, FDRLST is not based in New York, and the alleged “unfair labor practice” did not occur in and was not directed at anyone residing in New York. Yet NLRB dragged the defendant into that jurisdiction.

The panel has ignored the fact that three employees of *The Federalist* submitted affidavits, testifying that the personal [tweet](#) in question by Mr. Domenech (who is not a party in this case) was, in fact, a joke, and that the employees took it as such, therefore, the tweet did not threaten FDRLST’s employees.

Additionally, the panel has ordered FDRLST to “direct Domenech to delete the statement from his personal Twitter account, and to take appropriate steps to ensure Domenech complies with the directive.” But FDRLST—as a media publication—does not regulate the personal speech of its employees, including that of Mr. Domenech, and there is no mechanism that would allow the company to demand he remove the tweet from his personal account.

NCLA will now appeal NLRB’s ruling to a federal appeals court.

**NCLA released the following statements:**

“Today’s decision shows that NLRB lacks both common sense and a sense of humor. It disregarded sworn employee statements saying that they perceived the tweet as just a joke. Apparently, NLRB thinks that to protect employees, the government must ignore them. We look forward to vindicating FDRLST Media in the U.S. Court of Appeals.”

– **Adi Dynar, NCLA Litigation Counsel**

“Despite the optimism we had, given that the law is on our client’s side, it comes as no real surprise that the NLRB refused to limit its own unconstitutional overreach. NCLA looks forward to raising our arguments before a federal court.”

— **Jared McClain, NCLA Litigation Counsel**

For more information visit the case 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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