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NCLA Satirical Tweet Case Against NLRB Garners Strong Amicus Support over Free Speech Concerns

FDRLST Media, LLC v. National Labor Relations Board

Washington, DC (March 31, 2020) – Liberty-minded organizations, distinguished civil liberties activists, including former ACLU president Nadine Strossen, and prominent entertainers, Penn and Teller, are among the *amici curiae* who have filed briefs in support of the arguments presented by the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group in the satirical tweet case, *FDRLST Media v. NLRB*.

NCLA’s [appellate brief](#) asks the U.S. Court of Appeals for the Third Circuit to reverse the flawed [ruling](#) of the National Labor Relations Board (NLRB) from last November, which concluded that Mr. Domenech’s [satirical tweet](#) from his personal account constituted an unfair labor practice by his employer. FDRLST Media, publisher of the online magazine *The Federalist*, is fighting back because NLRB has neither subject-matter jurisdiction over this case nor personal jurisdiction over the company.

Eighteen *amici curiae* filed six *amicus* briefs in support of FDRLST Media and against NLRB’s deeply flawed power grab. [Cato Institute, Reason Foundation, Individual Rights Foundation, DKT Liberty Project, Nadine Strossen, P.J. O’Rourke, Clay Calvert, Robert Corn-Revere, Michael James Barton, and entertainers Penn & Teller](#) filed jointly; separate *amicus* briefs were presented by [TechFreedom, Southeastern Legal Foundation and two of six FDRLST employees \(Emily Jashinsky and Madeline Osburn\), the Institute for Free Speech, Pacific Legal Foundation, and the National Federation of Independent Business.](#)

Bridging the political divide, the *amici curiae* briefs contend that individuals have the right to speak freely and satirically to express their personal views under the First Amendment of the U.S. Constitution.

NCLA released the following statement:

“We are grateful that people from across the political spectrum, even those who would otherwise disagree on labor rights issues, have joined in support of FDRLST’s arguments and against NLRB’s. The Third Circuit should heed this clarion call.”

— **Adi Dynar, NCLA Litigation Counsel**

Excerpts from the six briefs *amici curiae* submitted in support of NCLA follow:

“[E]ven though Domenech’s tweet was a joke, this case is not. If you can be hauled into court and found in violation of federal law on the basis of satire, sarcasm, or hyperbole, everyone will self-censor their humor, to the detriment of freewheeling discourse. ... When the NLRB can’t take a joke, the right to freewheeling speech both online and offline is threatened. The NLRB’s order should not be enforced.”

— **Cato Institute, Reason Foundation, Individual Rights Foundation (IRF), DKT Liberty Project, Nadine Strossen, P.J. O’Rourke, Clay Calvert, Robert Corn-Revere, Michael James Barton, and Penn & Teller**

“That we disagree with much of *The Federalist’s* speech ... makes it all the more important that we defend the right to free speech in this case. There is no freedom for thought unless there is freedom for the thought that we hate. ... What matters is that the petitioner has been unconstitutionally punished, its freedom of speech wrongfully curtailed.”

— **TechFreedom**

“On appeal, the employees submitted an *amici curiae* brief to the National Labor Relations Board (NLRB) in support of their employer. The NLRB rejected their *amici* brief. The employees now come before this open and impartial Court seeking an opportunity to be heard. As members of the press, *Amici* have a strong interest in protecting First Amendment freedoms to discuss public affairs without fear of reprisal.”

— **FDRLST Media, LLC Employees Emily Jashinsky and Madeline Osburn and Southeastern Legal Foundation (SLF)**

“Limiting the definition of “aggrieved person” to those who are actually impacted by an alleged unfair labor practice still fulfills Congress’s intent in passing the NLRA of securing workers’ right to organize, while also avoiding infringement of First Amendment rights.”

— **Institute for Free Speech (IFS)**

“Should the NLRB seek *Chevron* deference for its regulation, this Court should not defer for four reasons. First, *Chevron* should not apply to the agency’s determination of when it has authority to institute proceedings against the regulated public. Second, at best Congress chose to remain silent, and an agency should not be entitled to expand its authority in the face of congressional silence. Third, the statute limits charging authority to “aggrieved” persons. Fourth, even if the statute is ambiguous, the regulation is not a reasonable interpretation.”

— **Pacific Legal Foundation (PLF)**

“By allowing someone with no specific injury or relationship to the charged party to file a charge, the Board weaponizes the NLRA against the business community. It flips the NLRA on its head, from being an administrative check on businesses, to being a tool ripe for abuse.”

— **National Federation of Independent Business (NFIB) Small Business Legal Center**

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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