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Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Will Appeal NLRB ALJ's Decision in FDRLST Satirical Tweet Case

Joel Fleming and FDRLST Media, LLC

Washington, DC (April 23, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights organization will appeal Wednesday's decision by a National Labor Relations Board (NLRB) Administrative Law Judge (ALJ) to a full Board in the case of *FDRLST Media LLC and Joel Fleming*. ALJ [Chu] [decided](#) that NCLA client FDRLST Media, LLC, which publishes the online magazine *The Federalist*, engaged in an unfair labor practice when co-founder and publisher Ben Domenech made a satirical [comment](#) about a current news event on Twitter.

The tweet in jest was posted on June 6th by Mr. Domenech, who jokingly wrote from his private Twitter account: "FYI @fdrlst first one of you tries to unionize I swear I'll send you back to the salt mine." Joel Fleming, a random Tweeter, filed a complaint with NLRB claiming the post constituted an "unfair" labor practice.

In this case, the ALJ proceeded in deciding the question of whether the Tweet comprised an unfair labor practice and failed to respond in any detail to FDRLST's forceful objections that NLRB lacked both subject-matter jurisdiction and personal jurisdiction to bring this case in New York.

Humor and satire are fully protected under the First Amendment and do not violate the National Labor Relations Act. NLRB has no authority to prosecute particular viewpoints and label them as violating the NLRA. A verbal joke can hardly be confused with a verbal threat. In fact, FDRLST employees attested to the fact in affidavits filed with the ALJ that they perceived the comment to be satirical in nature—a joke—and not a threat. But ALJ Chu did not get the joke.

The agency has erroneously interpreted the governing statute that only gives it jurisdiction when an "aggrieved" person (such as an employee) files a charge with the Board to mean *any* person. This mistake provides the opportunity for someone completely unrelated to *The Federalist* or its employees, like Joel Fleming, to activate the machinery of government and press unsubstantiated charges against others with whom they disagree politically.

Further, neither Ben Domenech nor *The Federalist* lives or works in the State of New York, yet NLRB dragged the defendant into that jurisdiction. NLRB has subjected Mr. Domenech and FDRLST to an onerous enforcement action that the agency lacks the subject-matter jurisdiction and personal jurisdiction to pursue lawfully.

NCLA released the following statement:

“An ALJ assigned to a case by the NLRB ruling in favor of the NLRB is the very definition of an administrative-adjudication system rigged against the non-government litigant. The process itself, as we have seen in this case, can be an oppressive punishment. Now, we wait for another wasteful round of litigation before the Board until we can obtain redress from a federal court.”

Adi Dynar, Litigation Counsel, NCLA

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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