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In NCLA Win, NLRB Drops Meritless Charge Against Ben Shapiro and The Daily Wire over Tweet

Joel Fleming v. The Daily Wire, LLC

The Committee to Preserve the Religious Right to Organize, Los Angeles v. The Daily Wire, LLC

Washington, DC (May 17, 2021) – In a victory for social media users everywhere, the National Labor Relations Board (NLRB) has [cleared](#) Ben Shapiro, Co-Founder and Editor Emeritus of The Daily Wire, of a meritless charge. A random Twitter user had claimed that Mr. Shapiro violated the National Labor Relations Act (NLRA) when he posted a satirical [tweet](#) about a current news event. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, successfully defended The Daily Wire, LLC during pre-complaint investigations conducted by NLRB, resulting in a dismissal of the charge. NCLA commends NLRB for refusing to validate claims of wrongdoing by random individuals who were not “aggrieved” by the alleged unfair labor practice.

In September 2020, NLRB initiated an investigation into The Daily Wire based on separate charges filed by attorney Joel Fleming and The Committee to Preserve the Religious Right to Organize. The charges claimed that Mr. Shapiro violated the NLRA when he posted a tweet saying, “I have a message for DW employees. If you ever attempt anything like this, you can consider your strike permanent.” The tweet referenced the outrageous news that Spotify employees bizarrely had tried to assert editorial control over Joe Rogan’s podcast. Within hours of Mr. Shapiro’s first tweet, he published a second tweet stating, “DW employees have the same NLRA protections as everyone else,” and attached NLRB’s employees-rights poster.

During the seven-month-long investigation conducted by NLRB, the agency made intrusive discovery requests that were irrelevant to the alleged NLRA violation, and it refused to answer simple, threshold questions about the Board’s subject-matter jurisdiction, personal jurisdiction, and lack of proper service. After NCLA contested the allegations, Mr. Fleming, who has no connection to The Daily Wire or to Mr. Shapiro, withdrew his charge. NLRB accepted the withdrawal and outright dismissed the complaint from the Committee to Preserve the Religious Right to Organize due to lack of merit.

One hopes the outcome of this case marks a shift away from NLRB’s standard aggressive enforcement policy against individuals expressing personal opinions on social media. But unfortunately, NLRB has targeted other prominent figures at the request of random people who disapprove of messages they see posted on social media. Individuals have the right to speak freely and satirically to express their personal views under the First Amendment of the U.S. Constitution, and the government should not allow itself to be co-opted by those who seek retribution against people they disagree with.

NCLA released the following statements:

“NCLA did great work defending us from government overreach. In this case, frivolous complaints by a random Twitter user and a leftist lawyer whose legal education focused on Critical Race Studies co-opted a government agency to chill free speech by plaguing The Daily Wire for months with burdensome and harassing demands without accountability to a judge or jury. We are grateful that NCLA stood up for us.”

— **Joshua Herr, The Daily Wire, General Counsel**

“The NLRB never should have made a federal case out of this tweet. This time, eventually, the Board backed down and decided not to pursue a charge. However, there is no good reason why the NLRB should be able to investigate charges like this in the first place. Unless an aggrieved party—an employee or someone else closely connected to a company—files a charge with NLRB, the Board should butt out of employer-employee relations.”

— **Mark Chenoweth, NCLA Executive Director and General Counsel**

“NLRB’s dismissal of these frivolous charges is welcome. But this incident showcases the sad reality that NLRB will look for ways to silence honest discussion and debate on social media platforms. Complying with unreasonable and unconstitutional investigatory demands can cost employers who did nothing wrong thousands of dollars. NLRB should, instead, make sure that a genuinely aggrieved party has filed a charge before launching a protracted investigation.”

— **Adi Dynar, Litigation Counsel, NCLA**

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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