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## **In NCLA Amicus Win, Fifth Circuit Vacates Order for Elon Musk to Delete X Post About Labor**

*Tesla, Inc. v. National Labor Relations Board*

**Washington, DC (October 28, 2024)** – The *en banc* U.S. Court of Appeals for the Fifth Circuit has [vacated](#) a National Labor Relations Board (NLRB) order requiring Tesla CEO Elon Musk to delete a post he issued using his personal X (formerly Twitter) account, ruling that the order violated the First Amendment. NLRB based its order entirely on an earlier ruling that has since been overturned in [FDRLST Media v. NLRB](#), a First Amendment case led by the New Civil Liberties Alliance. NCLA filed an *amicus curiae* [brief](#) in *Tesla v. NLRB* urging the *en banc* Fifth Circuit to vacate the order. Citing the correct decision in *FDRLST Media v. NLRB*, the Fifth Circuit agreed with NCLA’s position, an important victory for free speech.

Musk had told Tesla employees that the United Auto Workers (UAW) union opposed stock options for production employees. When an activist asked Musk on Twitter about unionization at Tesla plants on May 20, 2018, Musk posted back: “Nothing stops Tesla team at our car plant from voting union. Could do so tmrw if they wanted. But why pay union dues & give up stock options for nothing?” He then clarified that it would be UAW and not Tesla that would require Tesla employees to give up their stock options.

NLRB, however, took Musk’s post out of context and misinterpreted it to be an unlawful threat of *Tesla* taking away its employees’ stock option if they unionized. It did not matter that not even one of Tesla’s tens of thousands of employees felt threatened by Musk’s post. Nor did it matter that Musk did not intend to convey a threat. All that mattered was NLRB’s subjective judgment that Musk’s post was threatening and thus fell outside of First Amendment protection. The *en banc* Fifth Circuit vacated the Board’s order requiring Musk to delete the post, recognizing that it was First Amendment-protected speech.

In its ruling, the *en banc* Fifth Circuit cited NCLA’s successful [FDRLST Media v. NLRB](#) case, in which NLRB ruled that FDLRST Media, LLC co-founder and publisher Ben Domenech unlawfully threatened employees by posting a [satirical statement on X](#) in 2020. NCLA represented FDRLST Media in that case, winning a major victory when the U.S. Court of Appeals for the Third Circuit ruled in May 2022 that Mr. Domenech’s post was (1) not threatening, and (2) protected by the First Amendment.

### **NCLA released the following statement:**

“One can hardly imagine a more blatant example of government censorship than an agency ordering someone to delete speech that the agency disfavors.”

— **Sheng Li, Litigation Counsel, NCLA**

**For more information visit the *amicus* 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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