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Breaking: NLRB Drops Opposition to SpaceX's Constitutionality Arguments

Labor Relations Update on **February 6, 2025**

On February 3, 2025, the National Labor Relations Board ("NLRB" or the "Board") filed a letter with the U.S. Court of Appeals for the Fifth Circuit on *Space Exploration Technologies Corp. v. NLRB*, Consolidated Case No. 24-50627, et al., indicating that it would not address constitutionality arguments raised in SpaceX's brief. As reported here, those arguments were as follows:

- The NLRB's structure is unconstitutional in that it limits the removal of NLRB Administrative Law Judges ("ALJs") and Board Members, and permits Board Members to exercise executive, legislative, and judicial power in the same administrative proceeding; and
- The Board's new expanded remedies violate employers' Seventh Amendment right to a trial-by-jury.

The Board's position follows President Trump's firing of Board Member Gwynne A. Wilcox, which set up a constitutional battle over the President's removal power under Section 3(a) of the NLRA. As discussed here, that move left the Board without a quorum, which the Board indicated prevents it from "review[ing] ALJ recommended findings and orders" in the underlying unfair labor practice proceeding at issue in the SpaceX case.

While neither constitutional argument raised by SpaceX is directly implicated by Member Wilcox's firing, the Board indicated in its letter that "[i]n light of these executive actions, Board counsel is not in a position to address the Board-member-removability arguments raised in the government's briefs." However, Board counsel will still argue that the injunctions—halting the merits of the SpaceX case until the constitutionality arguments are resolved—should be reversed. It remains to be seen whether interested parties will take up the defense against these constitutionality arguments in the Board's stead.

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