

Off the Rails? Union Asks Supreme Court to Rein in Fifth Circuit

Labor Relations Update on November 11, 2025

We have been tracking the wave of constitutional challenges to the National Labor Relations Board's ("NLRB" or "Board") structure and the divergent injunction standards emerging across circuits. (See [here](#), [here](#), [here](#) and [here](#).)

In the latest development, on October 31, 2025, the Office and Professional Employees International Union ("OPEIU") [asked](#) the U.S. Supreme Court to review a Fifth Circuit ruling that lets employers effectively shut down NLRB proceedings based solely on the mere existence of potentially unconstitutional job-removal protections for Board members and administrative law judges.

The Fifth Circuit's approach breaks sharply from multiple other circuits (Second, Third, Fourth, Sixth, Tenth, and D.C.), which have either held or strongly implied—consistent with Supreme Court precedent, according to the OPEIU—that a petitioner must show actual harm before courts will halt agency actions. The Fifth Circuit's stance invites immediate injunctions in response to routine NLRB cases, which destabilizes the Board's ability to function across Texas, Louisiana, and Mississippi—even as the D.C. Circuit separately evaluates the constitutionality of those same protections.

The petition squarely asks the Supreme Court to resolve the deepening split and restore a coherent injunctive-relief standard: whether a plaintiff must show compensable harm flowing directly from the removal protections or whether the process itself (i.e., appearing before an allegedly unconstitutionally insulated Board member or ALJ) reflects sufficient harm for an injunction. Until then, the Fifth Circuit's framework effectively transforms structural Article II objections into a stop button for NLRB enforcement. For employers, unions, and employees alike, that means greater uncertainty, forum-driven results, and mounting friction between the Fifth Circuit and the other courts that oversee final NLRB decisions.

We will continue to monitor the Supreme Court's response to this petition and whether it ultimately resolves the ongoing circuit split regarding the Board's job-removal protections and the standard for injunctive relief to stop agency actions.

[View original.](#)

Related Professionals

- **Joshua S. Fox**
Partner
- **Taylor J. Arluck**
Associate