

NLRB Removal Protections Ruling Clouds Outlook for Halting Cases

By Robert lafolla and George Weykamp 2026-08-13T05:13:01000-04:00

A district court split within the Fifth Circuit jeopardizes employers' once clear path to halting National Labor Relations Board proceedings by challenging agency officials' removal protections within the appellate court's jurisdiction.

District judges within the US Court of Appeals for the Fifth Circuit have divided on the proper remedy for job shields for NLRB members and agency judges that violate the Constitution. While one judge [permanently blocked](#) an unfair labor practice case in May, another [severed out the unconstitutional firing safeguards](#) rather than halting the underlying case.

The Fifth Circuit's 2025 ruling in [SpaceX v. NLRB](#) had [all-but guaranteed](#) companies could win preliminary injunctions against NLRB unfair labor practice proceedings if they could challenge removal protections in Texas, Louisiana, or Mississippi. That strategy has [mostly failed](#) outside of the Fifth Circuit.

But the prospect of NLRB cases proceeding even when courts rule against the board members' and in-house judges' safeguards changes the litigation calculus for employers.

"To the extent that employers were looking at this litigation as a possibility of sort of avoiding or delaying litigation on ULPs, this case sends a signal that that's not a strategy that is always going to play out," said [Meredith Kirshenbaum](#), an attorney at Goldberg Kohn. Arguing against the removal protections "might not be an effective tool anymore."

Differing Approaches

Companies' collateral constitutional attacks against the NLRB to halt proceedings have targeted different aspects of the agency. Claims focused on removal protections have been the most common, and have received the most attention from courts. Although the debate about appropriate remedies is percolating, legal scholars said courts have historically been reluctant to disable agencies due to

defective firing restrictions.

“In general, the approach to a removal provision that the court has found to violate the Constitution is to sever it,” said [Noah Rosenblum](#), a law professor at New York University. “That’s been true for a very long time.”

The US Supreme Court reiterated its preference for leaving the rest of the law intact in its June [ruling that axed job shields](#) for Federal Trade Commission members and [left those at other agencies vulnerable](#) to invalidation.

Judge Mark Pittman, a Trump appointee to the US District Court for the Northern District of Texas, deviated from the standard remedy for unconstitutional job shields when he ended an NLRB case against online social services platform Findhelp.

Pittman said that a permanent injunction was necessary. Findhelp’s harm — being subjected to an unconstitutional proceeding — wouldn’t be remedied by letting the case proceed “under a judicially altered framework” that’s inconsistent with Congress’ design, he said.

More recently, Judge Amos Mazzant, an Obama appointee to the US District Court for the Eastern District of Texas, followed the more traditional remedial path by severing out the removal protections in a case involving the subsidiary of hotel management company Aimbridge Hospitality.

It would be a huge win for employers if the Fifth Circuit resolves the lower court split against severance. But if the appeals court takes the standard approach, it would categorically eliminate within the circuit the chance of a preliminary or permanent injunction as a remedy for unconstitutional removal protections at the NLRB, said [Michael Morley](#), a law professor at Florida State University.

Rethinking Strategy

Regardless of how the Fifth Circuit ultimately decides to rule on the issue, the [Aimbridge Employee Service Corp. v. NLRB](#) decision is causing many employers to rethink their litigation strategies.

Companies that decide to pursue challenges in the Fifth Circuit now risk a district court judge severing the law but denying permanent relief, which could just delay a case’s outcome, labor

attorneys said.

“While employers seek injunctions, preliminary or permanent, potential back pay could build up and add up with interest until a court decides,” said [Mark Eskenazi](#), an attorney at Fox Rothschild LLP. If they ultimately lose the case, “that could potentially hurt the employer more down the road.”

Bringing a constitutional challenge also naturally alienates board members and agency staff, which can make it more difficult for an employer if the courts ultimately allow the underlying NLRB case to proceed, said [Mark S. Spring](#), an attorney with CDF Labor Law.

Constitutional arguments are “not going to get the board or the people who are prosecuting those cases against you very happy with you,” he said. “So A, you’re spending a lot of money, and B, you’re probably angering some people at the board by bringing it.”

With those risks, fewer employers will likely bring removal protection lawsuits as the chance of a permanent block diminishes in the wake of *Aimbridge*, labor attorneys said.

“You take the risk without really any great opportunity for benefit because you’re not going to get an injunction stopping the case,” Spring said. “Why swing for the fences, which is essentially what the unconstitutional argument is, if they take away the home run?”

The cases are [Aimbridge Employee Service Corp. v. NLRB](#), E.D. Tex., No. 25-cv-01014, 7/27/26 and [Aunt Bertha d/b/a Findhelp](#), N.D. Tex., No. 24-00798, 5/15/26 .

To contact the reporters on this story: Robert Iafolla in Washington at riafolla@bloombergindustry.com; George Weykamp in Washington at gweykamp@bloombergindustry.com

To contact the editors responsible for this story: Genevieve Douglas at gdouglas@bloomberglaw.com ; Rebekah Mintzer at rmintzer@bloombergindustry.com

Related Articles

[Judge Permanently Blocks NLRB Case in Constitutional Challenge](#)

[NLRB Removal Protections Violate Constitution, Texas Judge Says](#)

[Labor Law Gap Remains in Fifth Circuit Until High Court Rules](#)

[Supreme Court Expands President's Power to Fire Officials \(2\)](#)

[Expanded Presidential Firing Power Destabilizes Regulatory State](#)

[NLRB Avoids Court Order Freezing Case in Third Circuit Test](#)

[NLRB Fails Post-Chevron Test of its Authority in DC Circuit \(1\)](#)

[NLRB Bets on Full Sixth Circuit to Revive Critical Board Power](#)

[NLRB Denied Bid to Restore Policymaking Power in Sixth Circuit](#)

Related Documents

[Aimbridge docket](#)

[Findhelp docket](#)