

# Texas Decision Calls Into Question the Use of Administrative Law Judges

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On October 30, 2024, a Texas federal judge issued a preliminary injunction blocking the U.S. Department of Labor (“DOL”) from using its in-house administrative law judges to oversee administrative proceedings against a government contractor for alleged discriminatory hiring practices. This case is one of at least three lawsuits challenging the DOL’s ability to use administrative law judges to resolve claims. Depending on how the other two cases are resolved, there could be a future circuit split on the permissibility of using in-house judges to preside over administrative proceedings, which would then lead to a Supreme Court decision to resolve the split.

The plaintiffs in all three lawsuits argue that administrative law judges are unlawfully insulated from removal by the President and that the issues being brought to them should be tried by a federal judge and jury, not an in-house judge. Relying on Fifth Circuit precedent, the Texas federal judge agreed with ABM Industry Group, the plaintiff in the case, that the DOL’s judicial removal protections for its administrative law judges are unconstitutional but did not address ABM’s Seventh Amendment jury argument.

The other two cases, brought by Perdue Farms and Comcast, are pending in North Carolina and Virginia federal courts, respectively. Both courts sit in the Fourth Circuit and are not bound by the Fifth Circuit precedent relied upon by the Texas federal judge. If a circuit split arises, this issue would be ripe for review by the U.S. Supreme Court. Permitting administrative law judge proceedings in some circuits but not others is not feasible, so it is likely that the Supreme Court would step in.

This issue has far-reaching implications. A similar lawsuit was filed in a Texas federal court by Elon Musk’s SpaceX earlier this year challenging the constitutionality of administrative law judges and board members of the National Labor Relations Board (“NLRB”). Specifically, SpaceX argued that the NLRB’s administrative law judges and board members are unlawfully insulated from at-will removal by the President, and that NLRB proceedings violate its constitutional right to a jury trial. The federal judge granted a preliminary injunction blocking certain NLRB administrative proceedings against SpaceX, and the NLRB subsequently filed an appeal, which is currently pending in the Fifth Circuit.

We will continue to monitor and report on developments as they occur.

**For more information, please contact a member of Benesch’s [Labor & Employment Practice Group](#).**

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