

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12-5068

September Term 2011

1:11-cv-01629-ABJ

Filed On: April 17, 2012

National Association of Manufacturers, et al.,

Appellants

v.

National Labor Relations Board, et al.,

Appellees

BEFORE: Tatel, Brown, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the emergency motion for injunction pending appeal and for expedited consideration, the opposition thereto, and the reply; appellants' Rule 28(j) letter and the response thereto; and appellants' second Rule 28(j) letter, it is

ORDERED that the emergency motion for injunction pending appeal be granted. Appellant has satisfied the requirements for an injunction pending court review. See Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2011); see also Chamber of Commerce v. NLRB, No. 2:11-cv-02516-DCN, Order (D.S.C. Apr. 13, 2012) (holding National Labor Relations Board lacks authority to promulgate the notice-posting rule).

We note that the Board postponed operation of the rule during the pendency of the district court proceedings in order to give the district court an opportunity to consider the legal merits before the rule took effect. That postponement is in some tension with the Board's current argument that the rule should take effect during the pendency of this court's proceedings before this court has an opportunity to similarly consider the legal merits. We note also that the district court's severability analysis left the posting requirement in place but invalidated the primary enforcement mechanisms for violations of the requirement. The Board has indicated that it may cross-appeal that aspect of the district court's decision. The uncertainty about enforcement counsels further in favor of temporarily preserving the status quo while this court resolves all of the issues on the merits. It is

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FURTHER ORDERED that this appeal be expedited. The following briefing schedule will apply:

Appellants' Brief	May 15, 2012
Appendix	May 15, 2012
Appellees' Brief	June 15, 2012
Reply Brief	June 29, 2012

The Clerk is directed to calendar this case for oral argument on an appropriate date in September 2012.

Parties are strongly encouraged to hand deliver the paper copies of their briefs to the Clerk's office on the date due. Filing by mail may delay the processing of the brief. Additionally, counsel are reminded that if filing by mail, they must use a class of mail that is at least as expeditious as first-class mail. See Fed. R. App. P. 25(a). All briefs and appendices must contain the date that the case is scheduled for oral argument at the top of the cover. See D.C. Cir. Rule 28(a)(8).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Timothy A. Ralls
Deputy Clerk