No. 25M35

In the Supreme Court of the United States

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION,

Movant,

v.

SPACE EXPLORATION TECHNOLOGIES CORPORATION, ENERGY TRANSFER, L.P., LA GRANGE ACQUISITION, L.P., AUNT BERTHA, *doing business as* FINDHELP, NATIONAL LABOR RELATIONS BOARD, WILLIAM B. COWEN, *in his official capacity as Acting General Counsel of the National Labor Relations Board*, DAVID M. PROUTY, *in his official capacity as Member of the National Labor Relations Board*, JOHN DOE, *in their official capacity as Administrative Law Judge of the National Labor Relations Board*,

Respondents.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE TO FILE PETITION FOR WRIT OF CERTIORARI

MATTHEW GINSBURG
MANEESH SHARMA
(*Counsel of Record*)
ANDREW LYUBARSKY
DARIN M. DALMAT
AFL-CIO
815 Black Lives Matter Plaza, N.W.
Washington, DC 20006
(202) 637-5336
msharma@aflcio.org

JANE LAUER BARKER
Pitta LLP
120 Broadway, 28th Floor
New York, NY 10271
(212) 652-3828

Counsel for Movant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

Regulations

REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE TO FILE PETITION FOR WRIT OF CERTIORARI

The Office and Professional Employees International Union ("OPEIU") respectfully submits this reply in further support of its motion to intervene. The federal government, as well as two out of the three employers in the consolidated appeals below—including Aunt Bertha d/b/a Findhelp ("Findhelp"), the employer against whom OPEIU filed unfair labor practice charges—have not opposed OPEIU's motion. Only one respondent, Space Exploration Technologies Corp. ("SpaceX"), an employer in an unrelated case that was consolidated with the Findhelp matter, opposes, contending that this Court lacks jurisdiction over the motion and—in an argument raised for the first time—that the motion should be denied because OPEIU has failed to demonstrate a cognizable legal interest in the National Labor Relations Board ("NLRB") proceedings.

SpaceX's contentions are without merit. As its own opposition demonstrates, this Court has granted precisely the relief that OPEIU seeks, and has the power to do so. And, contrary to SpaceX's assertions, a charging party's protectable interest in an NLRB proceeding does not arise only after that proceeding concludes in its favor and the charging party is defending a final NLRB order. Instead, as every court to have considered the question has said, a charging party has a compelling interest in having its statutory rights vindication in the sole forum in which it and its members can do so under the National Labor Relations Act ("NLRA").

1. SpaceX's first argument boils down to the notion that OPEIU cannot invoke this Court's jurisdiction to review a court of appeals decision because it is not a

"party" entitled to file a petition for writ of certiorari. *See* 28 U.S.C. § 1254(1) (the Court may review cases in the courts of appeal by "writ of certiorari granted upon the petition of any *party* to any civil or criminal case, before or after rendition of judgment or decree") (emphasis added).

This argument is unavailing. OPEIU recognizes that it presently lacks the party status to petition for a writ of certiorari with respect to the Fifth Circuit's judgment. That is why, rather than simply filing a petition, it has filed a motion requesting this Court's leave to intervene—that is, to *become* a party to the case—in order to file a petition. Indeed, the intervention mechanism governs when non-parties can become parties to litigation—and this Court has emphasized that they can do so at any stage, including post-judgment. *See Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 280 (2022); *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 395 (1977). If this Court grants OPEIU's motion, it would become a "party to [a] civil or criminal case . . . after rendition of judgment," 28 U.S.C. § 1254(1), and thus face no barriers to filing its proposed petition.

SpaceX appears to contend that this Court lacks the equitable power to order intervention, unless an existing party has first initiated a proceeding by filing a petition for writ of certiorari. SpaceX cites no holding from this Court supporting—or even suggesting—this cramped vision of the Court's equitable authority. And that vision is inconsistent with this Court's past practice.

Take this Court's allowance of petitions for writ of certiorari on a denial of intervention. SpaceX concedes that OPEIU can "petition for a writ of certiorari on

the intervention question." SpaceX Opp. 8. But under SpaceX's interpretation of § 1254(1), this Court would lack jurisdiction over such a petition, as OPEIU would be a non-party petitioning. By SpaceX's own admission, then, its interpretation of § 1254(1) cannot govern. Indeed, this Court has specifically held SpaceX's interpretation doesn't govern in the context of the NLRA. Because "Congress [] made a careful adjustment of the individual and administrative interests throughout the course of litigation" under the NLRA, "Congress intended intervention rights [in federal court] to obtain" to parties who filed charges with the NLRB, which is why "§ 1254(1) permits [this Court] to review [] orders denying [those parties] intervention." *Automobile Workers v. Scofield*, 382 U.S. 205, 209, 217 (1965).

Next consider this Court's prior grants of motions to intervene in order to file petitions for writ of certiorari. While SpaceX seeks to distinguish cases like *Banks v. Chi. Grain Trimmers Ass'n*, 389 U.S. 813 (1967), and *Pyramid Lake Pauite Tribe of Indians v. Truckee-Carson Irrigation District*, 464 U.S. 863 (1983) on their facts (and by relying on secondary sources), it cannot contest that in those cases and others, this Court did precisely what SpaceX says it cannot do—granted leave to intervene to a non-party to file a petition for writ of certiorari.

Accordingly, this Court has not understood its equitable powers to be constrained by § 1254(1) in the manner SpaceX contends. Indeed, in the context of the NLRA, this Court has specifically held that, because Congress intended

intervention rights to obtain to charging parties, the Court has jurisdiction to resolve questions of intervention.

In addition to being wrong as to § 1254(1)'s application, SpaceX's attempts to distinguish cases in which this Court has granted leave to intervene in order to file a petition for writ of certiorari are meritless. In regards to *Banks*, SpaceX quotes the *Supreme Court Practice and Procedures* treatise—and the treatise's quotations of the Solicitor General's response to the motion to intervene there—to suggest that intervention was granted because the party seeking intervention was the "real party in interest" below. SpaceX Opp. 8-9. But this Court did not provide its reasoning for granting intervention; SpaceX simply puts words in this Court's mouth.[1]

And even on SpaceX's reading of *Banks*, that case bears a strong resemblance to this one. There, like here, a petitioner sought to protect her interests when an agency ceased to adequately represent her by declining to petition for a writ of certiorari. While it is true that the administrative scheme under the Longshoremen's and Harbor Workers' Compensation Act (at issue in *Banks*) is purely "one of private right, that is, of the liability of one individual to another," *Crowell v. Benson*, 285 U.S. 22, 51 (1932), the NLRA also recognizes that there are "individual . . . interests throughout the course of litigation" under the NLRA. *Scofield*, 382 U.S. at 209. Rather than "dichotomize 'public' as opposed to 'private' interests," the "two interblend in the intricate statutory scheme." *Id.* at 220. As

[1] Tellingly, the Solicitor General does not make any real-party-in-interest argument here.

such, similar to how the administrative scheme in *Banks* treated the petitioner there as the real party in interest, Congress in the NLRA "intended intervention rights [in federal court] to obtain" to charging parties. *Id.* at 217. While the Government's interest in *Banks* may have been weaker, *Scofield* teaches that a strong public interest does not diminish a charging party's "private interests" in an NLRB proceeding, 382 U.S. at 220—the two coexist side-by-side. That the NLRB "acts in a public capacity to give effect to the declared public policy of the [NLRA]," *Nat'l Licorice Co. v. NLRB*, 309 U.S. 350, 362 (1940), does not render OPEIU's interests here less compelling than that of the petitioner in *Banks*.

As with *Banks*, SpaceX cherry picks language from the Solicitor General's briefing in response to the petitioner's motion to intervene in *Pyramid Lake Paiute Tribe*, *supra*, to suggest that intervention was granted because the petitioning tribe "was in privity" with the federal government. SpaceX Opp. 19. But this Court did not say that was the reason for its grant. And the Solicitor General did not argue that a non-party must be in privity with a party to properly move to intervene in this Court; in the quoted language, he simply agreed that the tribe met the Rule 24(a) factors for intervention as of right because the tribe had a legal interest that could be impaired by the proceedings. *See Pyramid Lake, supra*, No. 82-1723, 1983 WL 961899, at *13 (August 10, 1983). Because OPEIU similarly meets the Rule 24(a) requirements, *Pyramid Lake Pauite Tribe* supports granting its motion.[2]

[2] As with SpaceX's real-party-in-interest argument, the Solicitor General tellingly does not make SpaceX's privity argument here.

SpaceX also seeks to wave away two other cases—*Hunter v. Ohio ex rel. Miller*, 396 U.S. 879 (1969) and *Commonwealth Land Title Ins. Co. v. Corman Constr., Inc.*, 508 U.S. 958 (1993)—arising out of state supreme court judgments, because in such cases this Court's jurisdiction is governed by 28 U.S.C. § 1257, which "unlike Section 1254(1) does not expressly restrict invocation of this Court's jurisdiction to a 'party.'" SpaceX Opp. 8. But § 1257 does not govern *who* may petition for a writ of certiorari—it simply clarifies that review of state judgments that raise federal questions are by certiorari rather than by automatic appeal. *Compare* 28 U.S.C. § 1257 (allowing for review by certiorari and enumerating types of federal questions appropriate for certiorari jurisdiction) *with* 62 Stat. 929 (1948) (predecessor version of § 1257 requiring non-discretionary review by appeal on some federal questions). SpaceX cites no case that suggests that this Court has ever applied a different standard to determining "party" status with respect to state supreme court judgments or any policy reasons for doing so. Moreover, another statutory provision clarifies that "review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations . . . as if the judgment or decree reviewed had been rendered in a court of appeals." 28 U.S.C. § 2104.

Thus, on at least four occasions, this Court has ordered the relief that OPEIU seeks here. And, more recently, it has strongly implied such relief to be available if the intervention criteria are met. *See Texas v. Cook Cnty.,* 141 S. Ct. 2562 (Mem.) (2021) (denying motion for leave to intervene "without prejudice to [movants]

raising this and other arguments . . . in a renewed application in this Court"). Though such relief has, admittedly, been granted sparingly, Section 1254(1) does not jurisdictionally bar it.[3]

2. SpaceX's next argues that OPEIU—despite filing the charge that led to the administrative complaint at issue, *see* 29 C.F.R. § 102.9, presenting evidence during the NLRB's investigation of the charge, and having full "party" status during the NLRB's proceedings, 29 C.F.R. § 102.1(h), such that it can, *inter alia*, request and serve subpoenas, 29 C.F.R. § 102.31, examine and cross-examine witnesses, 29 C.F.R. § 102.38, introduce evidence, *id*., submit briefs with its own arguments and requests for relief, 29 C.F.R. § 102.42, and appeal adverse decisions and defend favorable ones at the multimember Board, 29 C.F.R. § 102.46—has no legal interest in a Board proceeding until the proceeding concludes in a final order of the Board. SpaceX Opp 12. This argument runs contrary to the holdings of every court to have entertained a union intervention motion in the context of similar constitutional challenges, and badly misinterprets this Court's precedents.

As Judge Readler of the Sixth Circuit held in granting a charging party's motion to intervene in an analogous challenge to the NLRB's authority, unions have

[3] Finally, SpaceX suggests that OPEIU seeks to "evade" this Court's precedent allowing it to challenge the denial below of its motion to intervene via a certiorari petition. SpaceX Opp. 10. Not so. As explained in its motion, OPEIU intends to avail itself of this alternate pathway in short order. OPEIU's goal is, however, to bring the important issue of *Collins* harm that threatens to disrupt agency proceedings within the Fifth Circuit to this Court as expeditiously as possible. Litigating the propriety of the order denying intervention—which, if successful, would likely require a remand to the court of appeals with instructions to grant intervention—would only result in the filing of yet another certiorari petition. OPEIU respectfully submits that principles of judicial economy and the efficient use of judicial and party resources counsels that this Court grant OPEIU's motion to intervene—rather than rely on the certiorari pathway—if it believes OPEIU is entitled to intervene.

"indisputable interests in [such a case] because it directly implicates their statutory rights under the National Labor Relations Act," such that a judgment against the NLRB would "render [their] rights under the NLRA largely unenforceable." *YAPP USA Auto. Sys., Inc. v. NLRB*, No. 24-1754, Dkt. No. 33, p. 2 (6th Cir. Nov. 21, 2024). The Third Circuit has agreed, holding, without the need for extensive analysis, that a similarly-situated union had "clearly established the first three factors" for intervention, including a protectable legal interest. *Spring Creek Rehab. & Nursing Ctr., LLC v. NLRB*, No. 24-3043, Dkt. No. 20, p. 2 (3rd Cir. Jan. 20, 2025). And, even in this case, the Fifth Circuit acknowledged in an order denying intervention that OPEIU had an "interest in the outcome of the litigation[,]" App. 65a, and implicitly affirmed that assertion when it later found that the "NLRB's interests no longer fully align with OPEIU's[,]" App. 49a.[4]

This unanimity is unsurprising. It would be jarring indeed if, as SpaceX appears to intimate, a charging party's interest in securing remedies for labor law

[4] A number of district courts have also granted union charging parties intervention in analogous cases. *See, e.g., Hannam Chain USA Chain, Inc. v. NLRB*, No. 1:25-cv-2896 (TJK), ECF No. 18, pp. 3-4 (D.D.C. Sept. 27, 2025) (union "has a clear interest . . . given that the proceeding before the NLRB will determine whether the election through which it seeks to represent Plaintiff's employees will be rerun"); *Sacramento Behavioral Healthcare Hosp. v. NLRB*, No. 2:25-cv-02475 (TLN), ECF No. 22 (E.D. Cal. Sept. 23, 2025); *Hoffmann Bros. Heating and Air Conditioning, Inc. v. NLRB*, No. 4:25-cv-01356 (SRC), ECF No. 28, p. 16 (E.D. Mo. Sept. 22, 2025) (denying temporary restraining order and granting motion to intervene because charging party "satisfies the requirements of Federal Rule of Civil Procedure 24(a) and (b)"); *Waffle House, Inc. v. NLRB*, No. 3:24-cv-6751 (MGL), 2025 WL 602744 (D.S.C. Feb. 10, 2025) (denying preliminary injunction and granting motion to intervene); *Ares Collective Grp. LLC v. NLRB*, No. 4:24-cv-517 (SHR), ECF No. 18 (D. Ariz. Jan. 16, 2025); *Amazon.com Servs., LLC v. NLRB*, No. 2:24-cv-9564 (SPG), ECF No. 34 (C.D. Cal. Dec. 2, 2024); *Ascension Seton v. NLRB*, No. 1:24-cv-1176 (ADA), ECF No. 41 (W.D. Tex. Nov. 12, 2024) (reconsidering prior denial and granting intervention); *Loren Cook Co. v. NLRB*, No. 6:24-cv-3277 (BCW), ECF No. 14 (W.D. Mo. Oct. 28, 2024); *Aguila Food Distrib. LLC v. NLRB*, No. 7:24-cv-00395, ECF No. 19 (S.D. Tex. Oct. 2, 2024); *Amazon.com Servs., LLC v. NLRB*, No. 5:24-cv-1000 (XR) (W.D. Tex. Sept. 27, 2024).

violations it and its supporters suffered functioned like an on-and-off switch—wholly absent before the Board issues an order, yet such a compelling interest that "Congress intended intervention rights to obtain" immediately thereafter. *Scofield*, 382 U.S. at 217. Besides, this argument runs contrary to this Court's understanding that the NLRA recognizes the "interests" of an "individual"—in addition to that of the NLRB—"*throughout the course of litigation* over a labor dispute." *Id.* at 209 (emphasis added).

NLRB v. United Food & Com. Workers Union, Local 23, 484 U.S. 112 (1987) ("*UFCW*"), on which SpaceX relies to make its argument, does not hold to the contrary—and indeed, does not address the strength of a charging party's interest in NLRB proceedings at all. Instead, it addressed a "narrow" question of statutory interpretation not at issue here: whether a General Counsel's post-complaint, pre-hearing informal settlement without the charging party's consent is a final order of the Board that is subject to judicial review. *Id.* at 114, 122–23. The Court held that such a dismissal was not a final order of the Board appealable to a court of appeals because it fell within the General Counsel's unreviewable "final authority" over the "filing, investigation, and prosecution of unfair labor practice complaints." *Id.* at 124 (cleaned up, citing 29 U.S.C. § 153(d)). Because General Counsel prosecutorial decisions are not subject to judicial review, *id.* at 126, the pre-hearing informal settlement at issue in *UFCW* was not subject to judicial review.

The instant case, as SpaceX itself stresses, SpaceX Opp. 2, is not an exercise of the General Counsel's unreviewable prosecutorial discretion. It is, instead, an

effort to enlist the federal courts in preventing the General Counsel from exercising his prosecutorial authority at all. *Id.* OPEIU does not seek review of the General Counsel's pre-hearing determinations to file an administrative complaint and set the complaint for hearing; OPEIU seeks to intervene in order to vindicate those determinations in the manner Congress prescribed: administrative adjudication at a hearing before an ALJ and, if needed, the NLRB. OPEIU thus has a clear interest, under the NLRA, in seeing that the General Counsel may actually exercise the final authority entrusted in him by statute, 29 U.S.C. § 153(d), to carry out his prosecutorial decisions as Congress envisioned—with full participation of OPEIU—in order to vindicate (in addition to the public interest) OPEIU's "parochial private interest." *Scofield*, 382 U.S. at 218. Until the NLRB can adjudicate the General Counsel's complaint, OPEIU's and its supporters' statutory rights are stymied.

SpaceX, however, asks this Court to conflate the General Counsel's exercise of prosecutorial authority within the NLRB proceeding with the NLRB's defense against SpaceX's constitutional challenge in federal court. But 29 U.S.C. § 153(d) says nothing about the General Counsel's authority over the defense of constitutional challenges in district court and what rights charging parties have in aiding that defense. The Federal Rules of Civil Procedure instead govern those federal district court proceedings. And Rule 24(a), not 29 U.S.C. § 153(d), sets forth the criteria for when an entity other than a named defendant may intervene as a party to aid in that defense.[5]

[5] Even on its own terms, SpaceX's misbegotten analogy between the General Counsel's pre-hearing prosecutorial authority in administrative unfair-labor-practice proceedings and the agency's defense

At a minimum, OPEIU has a protectable interest in this case, where it stands united with the General Counsel in seeking to proceed to hearing—the result of which would be a reviewable Board order that *Scofield* recognized would implicate OPEIU's parochial private interest. Its tactical disagreement about how to pursue this interest—namely, whether to petition for a writ of certiorari of the Fifth Circuit's judgment, as OPEIU wants, or to continue to defend the case in district court, as the NLRB desires—means that the "NLRB's interests no longer fully align with OPEIU's," App. 49a, not that OPEIU's interest is absent.

3. Finally, SpaceX references OPEIU's disclaimer of interest in future collective bargaining with Findhelp, and asserts that OPEIU's interest is diminished because the unremedied unfair labor practices would not "undermin[e] the union's ability to organize support from among the union's (sic) employees." SpaceX Opp. 13. Tellingly, SpaceX does not—and cannot—contend that OPEIU's charges are moot. The NLRA does not *only* protect employees' interest in collective bargaining—it grants them the right to "form, join, or assist labor organizations," 29 U.S.C. § 157, without fear of retaliation, 29 U.S.C. § 158(a)(3). And unions may bring such charges on behalf of their supporters regardless of whether they are certified as a

---

of constitutional litigation in district court fails. That's because charging parties have several procedural rights before a hearing. As mentioned, they are expressly deemed a "party" to the administrative proceedings, 29 C.F.R. § 102.1(h); they also may file motions, 29 C.F.R. § 102.24, seek Board review of motions to ALJs, 29 C.F.R. § 102.27, and request the issuance of subpoenas, 29 C.F.R. § 102.31. Charging parties thus have several protectable legal interests in the manner in which their charges are prosecuted, even though the General Counsel maintains "final authority" over those prosecutions prior to the opening of the hearing. 29 U.S.C. § 153(d). All this is consistent with *Scofield*'s account of an "intricate statutory scheme" that "interblend[s]" the charging party's private and the NLRB's public interest, rather than "dichotomize" between them. 382 U.S. at 218, 220.

bargaining unit's exclusive representative, or actively trying to attain such status. As soon as the injunctions are lifted, OPEIU's charges will go forward to adjudication, OPEIU will participate as a party in those proceedings, and, if successful, secure substantial remedies for discharged supporters who paid a heavy economic price for their support of OPEIU. OPEIU, as charging party, has a strong interest in vindicating these supporters' statutory rights regardless of whether it might later bargain a contract with their employer.

CONCLUSION

For the foregoing reasons, the motion for leave to intervene should be granted.

Dated: November 17, 2025

Respectfully submitted,

/s/ Maneesh Sharma
Matthew Ginsburg
Maneesh Sharma
(*Counsel of Record)*
Andrew Lyubarsky
Darin M. Dalmat
AFL-CIO
815 Black Lives Matter Plaza N.W.
Washington, D.C. 20006
(202) 637-5336
msharma@aflcio.org

Jane Lauer Barker
Pitta LLP
120 Broadway, 28th Floor
New York, NY 10271
(212) 652-3828
jbarker@pittalaw.com

Counsel for Movant OPEIU