UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NEXSTAR MEDIA GROUP, INC., DENVER HUB,

Plaintiff,

Civ. Action No. 3:26-CV-00593-K

Judge Ed Kinkeade

v.

NATIONAL LABOR RELATIONS BOARD, et. al.

Defendants.

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS—COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO'S
BRIEF IN SUPPORT OF MOTION TO INTERVENE

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The National Association of Broadcast Employees and Technicians—Communication Workers of America, AFL-CIO ("NABET" or "Union") submits this brief in support of its motion to intervene. NABET is the Charging Party in the unfair labor practice ("ULP") proceedings of the National Labor Relations Board ("NLRB") at issue in this matter. NABET has significant legal interests that it seeks to protect through intervention and it prays that the Court grant its motion.

BACKGROUND

In an effort to better their terms and conditions of employment, Nexstar's employees sought to organize a union. Their right to do so is protected by the National Labor Relations Act ("NLRA"), which declares that all employees "shall have the right to self-organization, to form, join, or assist labor organizations . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. Relying on their statutory rights—and the statutory promise that those rights will be protected by the NLRB—Nexstar's employees voted overwhelmingly in a secret ballot election to authorize NABET to represent them for collective bargaining purposes. *Nexstar Media Inc. on behalf of its Denver Hub*, Case No. 27-RC-333280, https://www.nlrb.gov/case/27-RC-333280.[1]

The NLRB's unfair labor practice proceedings at issue in this matter relate to Nexstar's retaliation against employees who chose to exercise their statutory right to support unionization. As alleged in the NLRB General Counsel's January 13, 2026, consolidated complaint, Nexstar violated its workers' rights by imposing "the industrial equivalent of capital punishment"—the

[1] After Nexstar refused to bargain with NABET, the Fifth Circuit enforced the Board's order compelling Nexstar to bargain. *See Nexstar Media, Inc. v. NLRB*, No. 24-60658, 2025 WL 2926141 (5th Cir. Oct. 15, 2025). NABET was allowed to intervene in that case. *Nexstar*, No. 24-60658, Doc. 26-1 (5th Cir. Feb. 10, 2025).

discharge of employees due to their support for the Union, and as well as discharging employees without first bargaining with the Union. *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 421 (1981) (Powell, concurring) (cleaned up); ECF No. 4-1 at PageID 78-82.

Under the NLRA, neither NABET nor the affected employees have a private right of action or any ability to vindicate their statutory rights outside the NLRB's administrative processes. Accordingly, NABET and its members rely on the NLRB's adjudication of the ULP charges filed by the Union to obtain any remedy.

ARGUMENT

I. The Court Should Grant NABET's Motion as of Right Because the Union has a Significant Legal Interest in the Case that Will Not Be Adequately Represented by the Parties

The Court should allow intervention under Federal Rule of Civil Procedure 24(a). Notably, "[a]lthough the movant bears the burden of establishing its right to intervene, Rule 24 is to be liberally construed" to allow intervention. *Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016). Thus, intervention should be permitted "where no one would be hurt and greater justice could be attained." *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994). Any doubts over the propriety of the intervention should be "resolved in favor of the proposed intervenor." *Id.*

In similar constitutional challenges to the NLRB's authority, courts have routinely permitted intervention by unions who had a stake in the underlying administrative proceedings. *See, e.g., Dutra Grp. v. NLRB*, 1:25-cv-90, ECF No. 48 (E.D. Tex. Aug. 27, 2025); *Spring Creek Rehab. & Nursing Ctr., LLC v. NLRB*, No. 24-3043, ECF No. 20 (3rd Cir. Jan. 20, 2025); *YAPP USA Auto. Sys., Inc. v. NLRB*, No. 24-1754, ECF No. 33 (6th Cir. Nov. 21, 2024); *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); *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); *Aguila Food Distrib. LLC v. NLRB*, No. 7:24-cv-00395, ECF No. 19 (S.D. Tex. Oct. 2, 2024).

According to Federal Rule of Civil Procedure 24(a), an intervenor must meet the following factors: "(1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and] (4) the applicant's interest must be inadequately represented by the existing parties to the suit." *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015) (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984)).

Applying these factors, NABET has demonstrated that it is entitled to intervene as of right.

A. <u>NABET's Motion is Timely</u>

"There are no absolute measures of timeliness" of a motion to intervene. *Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996). "Instead, timeliness is to be determined from all circumstances." *Id.* (cleaned up). The Fifth Circuit has developed certain factors to aid in evaluating whether, in context, a motion to intervene is timely. The *first factor* is the "length of time during which the would-be intervenor actually knew or reasonably should have known of its interest in the case before it petitioned for leave to intervene[.]" *St. Bernard Parish v. Lafarge N.A., Inc.*, 914 F.3d 969, 974 (5th Cir. 2019) (cleaned up). "The timeliness clock runs either from the time the applicant knew or reasonably should have known of his interest, or from the time he became aware that his interest would no longer be protected by the existing parties to the lawsuit." *Edwards*, 78 F.3d at 1000 (internal citations omitted). The *second factor* is "the extent of the

prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as it knew or reasonably should have known of its interest in the case[.]" St. *Bernard Parish*, 914 F.3d at 974. The *third factor* looks to the "the extent of the prejudice that the would-be intervenor may suffer if intervention is denied;" and the *fourth factor* considers "the existence of unusual circumstances militating either for or against a determination that the application is timely." *Id*.

NABET's motion is timely under these factors.

First, Union files this motion within days of initiation of the lawsuit. It is undeniable that this is timely.

Second, the existing parties will suffer no prejudice from NABET's intervention. The Court's current scheduling order sets a response date for the Company's Motion for Temporary Restraining Order/Preliminary Injunction of March 6. NABET intends to abide by that filing deadline. Accordingly, no existing party will be prejudiced by NABET's intervention.

Third, NABET would be significantly prejudiced if not allowed to intervene. NABET seeks to protect its interest on grounds that no other party will raise and will seek different relief (including, if needed, on appeal). Denial of intervention would entirely deny NABET the opportunity to expand the grounds for a decision beyond those presented by the parties or to seek different relief. It would be required to sit on the sidelines while its interests were litigated by others, with no ability to advocate directly for itself and to protect in interests through appeals, if necessary.

Because these factors all favor NABET's intervention, the motion is timely.

B. NABET Has a Legally Cognizable Interest in the Outcome of this Case

The Union has an "interest relating to the property or transaction which is the subject of the action." Fed. R. Civ. P. 24(a)(2). The Fifth Circuit has interpreted the interest needed for intervention as of right as a "direct, substantial, legally protectable interest in the proceedings." *Texas*, 805 F.3d at 657. This "inquiry turns on whether the intervenor has a stake in the matter that goes beyond a generalized preference that the case come out a certain way." *Id.*

NABET does not need to address its legal interest on a blank slate. Over half a century ago, a unanimous Supreme Court in *UAW Local 283 v. Scofield*, 382 U.S. 205 (1965), explained that the interest of a charging party in NLRB proceedings differs from that of the Board such that intervention is warranted in judicial review of Board orders. There, the Court rejected the argument that the charging party was just "another member of the public whose interests the Board is designed to serve." *Scofield*, 382 U.S. at 218. Instead, the Court explained that the Board's duty to enforce "public rights" did not "exclude[] recognition of parochial private interests." *Id.* The NLRA "does not dichotomize 'public' as opposed to 'private' interests" but rather "the two interblend in the intricate statutory scheme." *Id.* at 220.[2] Indeed, charging parties have full party status in unfair labor practice proceedings before the ALJ and the Board members. *Id.* at 219.

Therefore, if Nexstar had raised its constitutional arguments through the normal NLRB process, and filed a petition for review if the Board ruled against it, NABET would be allowed to

[2] Since *Scofield*, the Fifth Circuit has regularly allowed charging parties to intervene in cases involving a petition for review of an NLRB order, including NABET when Nexstar petitioned for review of the Board's earlier decision requiring the Company to engage in collective bargaining, *supra* n.2. *See also, e.g., Concrete Materials of Ga., Inc., v. NLRB*, 440 F.2d 61, 67 (5th Cir. 1971) ("[E]ither the charged party or the charging party who is successful before the Board may intervene as of right in any review proceedings before the Court of Appeals."); *Lion Elastomers, L.L.C. v. NLRB*, 108 F.4th 252 (5th Cir. 2024) (noting union intervenor); *Tesla, Inc. v. NLRB*, 63 F.4th 981 (5th Cir. 2023) (same); *Indep. Elec. Contractors of Houston, Inc. v. NLRB*, 720 F.3d 543 (5th Cir. 2013) (same).

intervene as a matter of law under *Scofield*. The fact that Nexstar filed suit in district court to directly challenge the Board's authority doesn't change the analysis of NABET's legal interest. *Scofield* makes clear that charging parties have interests in NLRB proceedings that differ from the Board's, and that interest has been recognized to allow charging parties to intervene throughout the NLRB proceeding and through any appeal in the circuit courts. This Court should recognize that NABET's significant legal interest also adheres to where a party seeks to declare unconstitutional those Board proceedings.

And, on the facts of this case, NABET's interest in the NLRB proceedings is particularly vital. NABET and the NLRB allege that Nexstar committed egregious unfair labor practices that resulted in three employees losing their livelihoods. The Union seeks to have its members' rights vindicated, both as a matter of justice and in order for Nexstar's employees to not be intimidated in the exercise of their rights.

C. NABET's Interest Will Be Impaired if Intervention is Denied

Having demonstrated the Union's substantial legal interest in the matter, it requires little further analysis to demonstrate that this interest would be impaired—indeed, potentially extinguished—absent intervention.

Nexstar seeks to leave NABET and its members with a right, but potentially no remedy—and no proper forum in which to pursue it. The Board has exclusive jurisdiction over unfair labor practice charges and the NLRA provides for no private right of action. Accordingly, NABET must rely on the Board's procedures—and the independence of those procedures and the decision-makers within them—to secure an order requiring Nexstar to return the wrongly discharged employees to work and remedy their losses. Depriving NABET of the opportunity to participate in this case as

intervenor would leave the Union voiceless in a case in which its and its supporters' rights are ultimately at stake.

D. NABET May Not Be Adequately Represented by the NLRB

The Fifth Circuit has explained that inadequacy of representation by the existing parties is a "minimal" burden. *Sierra Club*, 18 F.3d at 1207 (quoting *Trbovich v. United Mine Workers,* 404 U.S. 528, 538 n.10 (1972)). In order to meet this minimal burden, NABET "need not show that the representation by existing parties will be, for certain inadequate, but instead that it *may* be inadequate." *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 307 (5th Cir. 2022) (emphasis added). And while the Fifth Circuit recognizes a presumption of adequate representation when the intervenor "has the same ultimate objective as a party to the lawsuit," that presumption is easily overcome when the interests are not "precisely" aligned, particularly when "combined with real and legitimate additional or contrary arguments." *Brumfield v. Dodd*, 749 F.3d 339, 345-46 (5th Cir. 2014). That is the case here.

Both NABET and the NLRB share the common objective of ultimately prevailing so that the NLRB may adjudicate the charges filed by the Union. The commonalities largely stop there, however. As discussed above, the Supreme Court explained in *Scofield* that a union and the NLRB have such different interests that intervention is warranted, even where the intervening union also sought to defend the Board's decision. 382 U.S. at 218-220. While the NLRB's interest in moving forward with its proceeding is to remedy Nexstar's unfair labor practices, NABET's interest in moving forward includes its more "parochial private interests," *id*. at 218, in avoiding the lingering effects Nexstar's unfair labor practices may have on the newly-certified collective-bargaining relationship between NABET and Nexstar at the Denver Hub, or even at other stations where the Union and Company have long-standing bargaining relationships.

In furtherance of its parochial private interests, the Union intends to protect the independence of the decision-makers in the NLRB's proceedings to the greatest extent possible. To do so, NABET will seek different relief and put forth arguments that the NLRB may not, including that events have mooted Nexstar's removal claims or at least removed a necessary predicate for the ALJ removal-protection claim, and that the removal protections are constitutional, and potentially seek to appeal any adverse decisions. The NLRB will likely not make any of these arguments. Indeed, the NLRB has made clear that it will not defend the removal protections at issue in this case. *See Space Explor. Techs. Corp. v. NLRB, et al.*, 151 F.4th 761, 766 n.4 (5th Cir. 2025). Considering its position, it is not even clear that the NLRB will contest the Company's request for injunctive relief. Moreover, NABET is in the unique position to present evidence of the harm a delay in the NLRB's proceedings will have on it, the discharged members, and its remaining membership. These differing positions are sufficient to meet the minimal burden of showing that the NLRB's representation *may* be inadequate. *See Brumfield*, 749 F.3d at 346.

II. Even if this Court Denies the Union Intervention as of Right, It Should Grant NABET Permission to Intervene

Federal Rule of Civil Procedure 24(b)(1)(B) gives the Court broad discretion to grant permissive intervention when:

> (1) timely application is made by the intervenor, (2) the intervenor's claim or defense and the main action have a question of law or fact in common, and (3) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

League of United Latin Am. Citizens, Council No. 4434 v. Clements, 884 F.2d 185, 189 n.2 (5th Cir. 1989).

NABET has already established that its motion is timely. And the Union has largely already demonstrated that its motion for intervention raises common questions of law and fact. The Union

intends to argue that Nexstar is not entitled to relief against the NLRB proceedings. However, NABET's arguments will not simply cover the same ground as the NLRB. The Union's unique legal interests, and those of its members, mean that it intends to seek different relief and make different arguments than the NLRB.

The Court should grant NABET permissive intervenor status, if it denies that the Union may intervene as of right. *See Coway USA, Inc. v. NLRB*, No. 1:25-cv-03853 (TJK), Minute Order (D.D.C. Jan. 6, 2026); *Hannam Chain USA, Inc. v. NLRB*, No. 1:25-cv-2896 (TJK), ECF No. 18 at 3–4 (D.D.C. Sept. 27, 2025).

CONCLUSION

For the reasons stated above, NABET respectfully asks this Court to grant its motion to intervene, either as of right or by permission.

Dated: February 27, 2026 Respectfully Submitted,

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Certificate of Service

This paragraph is to certify that on February 27, 2026, the undersigned served this document on all parties through the court's CM/ECF filing system.

/s/ Matthew G. Holder
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