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NCLA Amicus Brief Asks Supreme Court to Hear Case Challenging NLRB's Unfair Injunction Standard

Starbucks Corporation v. M. Kathleen McKinney, Regional Director of Region 15 of the NLRB

Washington, DC (November 7, 2023) – The National Labor Relations Board (NLRB) has deprived Starbucks of property without due process of law via an administrative enforcement proceeding, utilizing a preliminary injunction it obtained without even establishing that the company likely broke the law. The U.S. Court of Appeals for the Sixth Circuit upheld the district court injunction per a textually baseless doctrine that allows an employer to be punished based on legal and factual allegations that fall far short of meeting the ordinary preliminary injunction standard. The New Civil Liberties Alliance has filed an *amicus curiae* [brief](#) urging the U.S. Supreme Court to hear the *Starbucks Corp. v. McKinney* case, reverse the Sixth Circuit's error, and overturn the injunction.

The Supreme Court has made clear, in a variety of statutory contexts, that federal courts may not issue preliminary injunctions unless the party seeking the injunction has met four requirements. It must establish that: (1) it is likely to succeed on the merits; (2) it would suffer irreparable injury absent an injunction; (3) the balance of equities favors an injunction; and (4) an injunction serves the public interest. Yet, five federal circuit courts, including the Sixth Circuit, apply a far more relaxed standard when NLRB seeks a preliminary injunction against an employer. They uphold an injunction if NLRB's claims are not frivolous—even if they are more likely than not meritless—and where it serves NLRB's remedial powers, even if it inflicts disproportionate burdens on the employer.

The National Labor Relations Act does not support this practice, and it defies the Fifth Amendment's guarantee that no property shall be taken without due process of law. Under the Sixth Circuit's approach, NLRB can obtain a punitive injunction that forces Starbucks to retain and pay unwanted employees for an indefinite period—without the government having to prove even a likely violation of law. This judge-made departure from the usual preliminary injunction standard amounts to systematic judicial bias in favor of injunctions being sought by NLRB.

After securing a preliminary injunction under this inappropriately relaxed standard, NLRB has every incentive to drag out proceedings because it has already halted the conduct it opposes. Meanwhile, the injunction imposes mounting economic costs on the employer for the duration of the administration proceeding, which is entirely within NLRB's control. Capitulation is often the company's only viable option. NCLA asks the Supreme Court to eliminate this coercive dynamic, which exemplifies many deep-seated problems in the Administrative State.

NCLA released the following statements:

“Obtaining a preliminary injunction is often the whole ballgame in an NLRB administrative enforcement action. Such burdensome injunctions can last for as long as NLRB wants because the agency controls the pace of the enforcement proceeding. Yet, the Sixth Circuit hands out injunctions like Halloween candy. Under its atextual, judge-made standard, NLRB may obtain an extremely expensive injunction against an employer even if the district court concludes NLRB's claims are most likely meritless. So, NLRB can bring meritless claims against an employer, get an injunction from a court, and use it to coerce an employer to admit to the meritless allegations.”

— **Sheng Li, Litigation Counsel, NCLA**

“The *Starbucks v. McKinney* case provides an excellent vehicle to correct a lopsided evil in American labor law. There is no good reason why NLRB—or any other federal agency—should be able to obtain a preliminary injunction under a flimsier standard than every other litigant must meet. Administrative law is chock-full of judge-made doctrines like this one that lack statutory support and defy due process of law. Congress never authorized such a rule, and the Constitution forbids this farce. It is high time for the High Court to right this wrong.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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