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**In NCLA *Amicus* Win, Supreme Court Will Hear Case Against NLRB's Odd Prelim Injunction Standard**

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

**Washington, DC (January 12, 2024)** – Today, the U.S. Supreme Court took NCLA's advice and agreed to hear Starbucks's case against the National Labor Relations Board (NLRB) for depriving the company of property without due process of law via an administrative enforcement proceeding. NLRB used a preliminary injunction it obtained in federal district court without ever establishing that Starbucks likely broke the law. The U.S. Court of Appeals for the Sixth Circuit upheld the injunction per a textually baseless doctrine that allows NLRB to effectively punish an employer based on legal and factual allegations that fall far short of meeting the usual preliminary injunction standard. NCLA filed an *amicus curiae* [brief](#) in *Starbucks Corp. v. McKinney*, asking the Justices to grant cert, reverse the Sixth Circuit, and overturn NLRB's special injunction standard.

The Supreme Court has clarified, in many different contexts, that federal courts may not issue preliminary injunctions unless the party seeking the P.I. has met four requirements: (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 below, apply a far more relaxed standard when NLRB seeks a preliminary injunction. These courts 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 enjoined employer.

The National Labor Relations Act does not support this practice, and the special P.I. standard defies the Fifth Amendment's prohibition against the deprivation of property 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.

Once it secures a preliminary injunction under this inappropriately relaxed standard, NLRB has every incentive to drag out proceedings, because it has already forced the employer to do what the Board wants. Meanwhile, the P.I. 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 to stanch the bleeding. NCLA asked the Supreme Court to eliminate this coercive dynamic and will continue to stand strong against civil liberties violations by NLRB, the Department of Commerce, and other administrative agencies.

**NCLA released the following statements:**

“For years, NLRB has been able to obtain injunctions against employers whom it targets for administrative enforcement based on flimsy evidence and legal arguments that would not hold water in any other context. It then uses these injunctions to force targeted employers to settle on unfavorable terms. Several circuit courts have already closed this loophole by requiring NLRB to follow the same injunction standard that applies to everyone else. Now, the Supreme Court has an opportunity to end this abusive practice nationwide.”

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

“NLRB’s *sui generis* preliminary injunction standard is a judge-made departure from the norm. Like *Chevron* deference, which the Court will tackle next week in *Relentless*, it creates systematic judicial bias for the government. NCLA is delighted the Court will consider whether federal agencies should get equal footing with all other litigants—from Fortune 500 companies like Starbucks to smaller fry like NCLA’s *Relentless* clients.”  
— **Mark Chenoweth, President and Chief Legal Officer, 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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