No. 23-367

IN THE

Supreme Court of the United States

STARBUCKS CORPORATION,

Petitioner,

v.

M. KATHLEEN MCKINNEY, REGIONAL DIRECTOR OF REGION 15 OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether courts must apply the general four-part preliminary injunction test when deciding whether to grant temporary injunctive relief under 29 U.S.C. § 160(j).

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as amicus opposing the National Labor Relation Board's overreach. *See, e.g.*, *Atlanta Opera, Inc.*, 372 N.L.R.B. No. 95 (2023); *Browning-Ferris Indus. of Cal., Inc. v. NLRB*, 911 F.3d 1195 (D.C. Cir. 2018).

INTRODUCTION

Americans are always on the go. Whether it be heading to work before the sun rises, attending meetings in the morning, enjoying friends' company in the afternoon, or entertaining in the evening, there is little downtime for most adults. This never-stop attitude has helped our country enjoy immense prosperity and made our economy the envy of the world over.

One thing that helps Americans continue to live at such a fast pace is the proliferation of caffeinated beverages. A recent study shows that 94% of Americans drink caffeinated beverages and 64% drink them daily. Tina Smithers Peckham, *94% of Us Drink Caffeinated Beverages. But What Does it do to Our Sleep?*, Sleep Fdn. (Sept. 26, 2023), https://perma.cc/LXX2-YDU4.

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission.

Many who consume caffeinated beverages buy them from their local Starbucks. Over 80% of those who drink coffee have gone to a Starbucks in the past six months. *See* Jannik Lindner, *Starbucks Customers Statistics [Fresh Research]*, Gitnux (Dec. 23, 2023), https://perma.cc/JT2R-8DFZ. There are over 15,000 Starbucks locations in the United States—about two-thirds are owned by Starbucks and the rest are licensed. *See Starbucks Enters New Era of Growth Driven by an Unparalleled Reinvention Plan*, Starbucks (Sept. 13, 2022), http://tinyurl.com/mux9a25c. And that number continues to grow. *See id.*

If the NLRB has its way, however, Starbucks's days of running a successful business are numbered. One reason that so many people go to Starbucks is that they have a relationship with their baristas. The baristas, in turn, have a direct relationship with Starbucks. This direct relationship allows Starbucks to provide generous benefits and understand its employees' needs. The NLRB, however, does not like the ability of Starbucks to directly communicate with its employees.

The National Labor Relations Act does not give the NLRB the power to restructure that relationship. Employees decide whether they want to unionize—not the NLRB. That is why the NLRB strongly opposes applying the traditional four-part test for preliminary injunctive relief here. The same holds true for other unlawful agency actions. Rather than agree to be bound by sound judicial rules, the NLRB will ask this Court to treat it differently. Although there is no statutory or policy reason for granting the

NLRB most-favored-litigant status, the Sixth Circuit granted that status here.

This Court has repeatedly rejected parties' requests to be treated differently than others in federal court. This equal-footing jurisprudence is not limited to private parties. The Court has also held that federal agencies normally should be treated the same as other litigants. And the Court is likely to go even further this term in other administrative law cases.

If this Court tells lower courts to use the normal four-part test for preliminary injunctive relief, the NLRB will lose its crutch of not having to show a likelihood of success on the merits before obtaining preliminary relief. This will not only restore the rule of law, it also will help give businesses certainty. This certainty is key to helping our nation's economy recover. This Court should therefore vacate the Sixth Circuit's decision while once again rejecting the idea that some litigants may play by a different set of rules.

STATEMENT

Over 235,000 people in the United States work for Starbucks. Seeing an opportunity to boost its continuing dwindling ranks, Workers United began campaigning to unionize Starbucks's employees. But things have not gone according to plan. By the start of last year, over 60 stores' employees rejected unionization. The reason was simple: Workers recognized that unionization has few benefits and many costs.

In January 2022, Workers United tried to unionize a Starbucks in Memphis. To publicize their efforts, a handful of store employees who favored unionization broke the law. They broke into the store after hours and accessed the store's safe without authorization. After Starbucks reviewed the security footage and interviewed witnesses, it fired seven employees.

At least one store employee who favored unionization declined to participate in the illegal activity. And because Starbucks fired only those seven employees who illegally entered the store, that employee was not fired. But that did not stop Workers United from organizing protests about the firings. This included honking their horns as they drove backwards through the drive-thru lane. Starbucks employees at this location became so scared for their personal safety that they had to be escorted to their vehicles to avoid the Workers United mobs.

It thus was no surprise that most of the remaining employees at that Starbucks location decided that they should follow Workers United's wishes lest they be threatened next. So they voted to unionize and are still a union store today. Meanwhile, Workers United filed a complaint with the NLRB. That complaint alleged that Starbucks's firing the employees who broke the law violated the NLRA.

By the time the complaint was filed, the NLRB had been captured by pro-union supporters. So less than two weeks after receiving the complaint, the NLRB accused Starbucks of engaging in unfair labor practices by firing the employees. The NLRB then almost immediately asked the District Court for an

injunction pending the outcome of the administrative proceedings. It sought an order requiring Starbucks to rehire the workers within five days.

Bound by Sixth Circuit precedent, the District Court applied a relaxed standard for deciding whether to grant the interim relief. That test required that the NLRB show only (1) "reasonable cause to believe that an unfair labor practice ha[d] occurred," and (2) that "injunctive relief [wa]s just and proper." Pet. App. 88a (cleaned up). Finding that the NLRB satisfied this very low bar, the District Court granted the NLRB's requested interim relief. As the three-judge panel was also bound by circuit precedent, it affirmed the District Court's application of the relaxed test. This Court granted review to resolve the circuit split on which test district courts must apply when considering the NLRB's requests for interim relief.

SUMMARY OF ARGUMENT

I. Every lawyer thinks that his or her practice is unique and deserves "special" treatment by courts. And for some time, federal courts tolerated treating different areas of the law differently. But recently this Court has repeatedly rejected special rules. From the tax context to patent law to bankruptcy, the Court has endorsed applying general legal rules across the board. This includes endorsing the four-part test for preliminary injunctive relief.

II.A. The Sixth Circuit's two-part test for deciding whether the NLRB is entitled to preliminary injunctive relief is a form of NLRB exceptionalism. The test essentially asks whether the NLRB and its

counsel have complied with the Federal Rules of Civil Procedure, U.S. Code, and local ethics rules. If the answer is yes, then the NLRB is entitled to preliminary injunctive relief. This rule is unique to the NLRB and practically guarantees that the NLRB will obtain the relief it has requested.

B. This Court should reject NLRB exceptionalism. The NLRB dictates the timeframe for its in-house adjudications. This means that Section 10(j) injunctions often last years. The NLRB has also sought nationwide relief in many Section 10(j) cases—turning them into de facto class actions. The reason is simple. The NLRB would prefer that employers settle these cases; it knows that federal courts would eventually reject its legal theories if challenged in court. This Court should not allow such regulation by force to stand. Rather, it should make the NLRB satisfy the traditional four-part test for preliminary injunctive relief.

ARGUMENT

I. THE COURT HAS REJECTED SPECIAL RULES FOR SPECIAL AREAS OF LAW.

Ask a tax lawyer at a big firm which practice at the firm is most unique and the answer will be tax. The same goes for patent lawyers, employee benefit attorneys, and government contract attorneys. Most attorneys view their specialty as unique and decry comparisons to other areas of law. So it is no surprise that attorneys often argue for special rules for their practice areas. And judges often join in the charade. Judges who hear nothing but tax cases and those who hear almost exclusively patent cases are inclined to

view those areas as deserving special rules. But this Court's precedent is clear: all areas of the law should play under the same set of rules.

A. One decade ago, this Court made clear that tax exceptionalism is a dead letter. As the Court said, it is "not inclined to carve out an approach to administrative review good for tax law only." *Mayo Found. for Med. Educ. & Rsch. v. United States*, 562 U.S. 44, 55 (2011). In other words, the same rules apply when considering an issue in the tax context as apply in the intellectual-property or products-liability context.

The Court in *Mayo* then emphasized this point. It saw "no reason why [the Court's] review of tax regulations should not be guided by agency expertise * * * to the same extent as [its] review of other regulations." *Mayo*, 562 U.S. at 56. Rejecting two prior decisions, the Court clarified that "[t]he principles underlying" judicial review in other areas "apply with full force in the tax context." *Id.*

At first, the government did not get the message. Shortly after *Mayo*, the United States challenged a decision that invalidated a Treasury regulation governing final partnership administrative adjustments. The government argued that despite the Court's prior interpretation of an Internal Revenue Code provision, the Court should still defer to a contrary Treasury regulation. *See United States v. Home Concrete & Supply, LLC*, 566 U.S. 478, 486 (2012). The Court soundly rejected this tax-exceptionalism argument. It stayed true to *Mayo*

and applied the same rules that govern other areas of law. *See id.* at 486-90.

"Taken together, these cases have given tax lawyers a fresh awareness" that they must be fluent in general legal doctrines. Kristin E. Hickman, *Unpacking the Force of Law*, 66 Vand. L. Rev. 465, 466 (2013). The tax lawyer may no longer rely on tax exceptionalism to bypass general legal rules. *See* Steve R. Johnson, *Preserving Fairness in Tax Administration in the* Mayo *Era*, 32 Va. Tax. Rev. 269, 279 (2012) (*Mayo* "disposed of tax exceptionalism.").

B. Of course, the Court has also rejected other forms of exceptionalism. "Everywhere in bankruptcy, judges alter rights, create remedies, and steer cases out of fidelity to unwritten norms that seek to advance what those within the bankruptcy culture understand to be the better and more efficient functioning of the bankruptcy system." Jonathan M. Seymour, *Against Bankruptcy Exceptionalism*, 89 U. Chi. L. Rev. 1925, 1938 (2022). Like other forms of exceptionalism, "[j]udges that do this operate based on an understanding that bankruptcy is special: it is a unique field of law that requires its own distinctive approach." *Id.*

Although bankruptcy judges differ somewhat on the degree of exceptionalism they favor, *see* Diane Lourdes Dick, *Equitable Powers and Judicial Discretion: A Survey of U.S. Bankruptcy Judges*, 94 Am. Bankr. L.J. 265, 265 (2020), they generally agree that some form of exceptionalism is necessary. As one said, in bankruptcy "substance will not give way to form and [] technical considerations will not prevent substantial justice from being done." *In re Lyondell*

Chem. Co., 544 B.R. 75, 92 (Bankr. S.D.N.Y. 2016) (cleaned up).

But unlike bankruptcy courts, this "Court's bankruptcy jurisprudence is generalist." Seymour, 89 U. Chi. L. Rev. at 1946. One recent example proves the point. In *Law v. Siegel*, a debtor tried to keep his house from being sold to satisfy his debts by fabricating a second mortgage. *See* 571 U.S. 415, 418-19 (2014). It took over five years and $500,000 in fees for the trustee to prove that the mortgage did not exist. The exorbitant outlay required to make this showing meant that debtors would receive less money because the trustee was entitled to recover his costs. To maximize the amount the trustee could recover, the lower courts disallowed the debtor's homestead exemption, which allowed for the trustee to recover an additional $75,000.

This Court soundly rejected the lower courts' decisions. As it said, the question presented was a straightforward one of statutory interpretation. *See Law*, 571 U.S. at 422. Although this led to an inequitable result, *id.* at 426, allowing for bankruptcy exceptionalism to fix the problem was not the solution. *See id.* at 427. Rather, the solution was to go to Congress and seek a statutory fix to the alleged problem. *See id.*

C. The most analogous type of exceptionalism for purposes of this case, however, is patent exceptionalism. The Federal Circuit often crafts rules for patent litigation that differ from general legal principles. But this "Court has consistently sought to eliminate patent exceptionalism." Peter Lee, *The*

Supreme Assimilation of Patent Law, 114 Mich. L. Rev. 1413, 1413 (2016).

Two examples confirm this. The Federal Circuit created a unique rule for what parties had to prove to establish standing in a patent-validity declaratory-judgment action. This Court rejected that test and applied the general test for standing in declaratory-judgment actions. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 132 & n.11 (2007).

The Federal Circuit also had a special rule for what a party must prove to obtain injunctive relief. This, of course, is like the unique rule that the Sixth Circuit applies in Section 10(j) cases. This Court rejected the Federal Circuit's attempt at patent exceptionalism and held that courts must apply the same test in the patent context as they do in other contexts. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391-92 (2006). The Sixth Circuit here offered no rationale for why, if patent exceptionalism for injunctive relief is wrong, NLRB exceptionalism for injunctive relief is right. That is, of course, because nothing in this Court's jurisprudence supports this type of exceptionalism. Rather, this Court's recent precedent all points to rejecting exceptionalism and applying general legal rules.

In short, this Court has adhered to the premise that "the law [i]s comprised of principles * * * broad in their generality." Gerald B. Wetlaufer, *Systems of Belief in Modern American Law: A View from Century's End*, 49 Am. U. L. Rev. 1, 12 (1999); *see also* Oliver Wendell Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 457-58 (1897) (the goal of sound legal thinking is "to generalize [legal principles] into a

thoroughly connected system"). The Sixth Circuit here did the exact opposite. It created a unique rule governing only preliminary relief for the NLRB. This Court should follow its decisions in other areas of the law rejecting this type of exceptionalism and require lower courts to apply the same test to the NLRB's requests for preliminary injunctive relief as they do for other litigants.

II. THIS COURT SHOULD REJECT NATIONAL LABOR RELATIONS BOARD EXCEPTIONALISM.

A. The Sixth Circuit's Rule Displays National Labor Relations Board Exceptionalism.

The general test for preliminary injunctive relief is well-settled. "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citing *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008)). Besides whether the movant has shown "a likelihood of success on the merits," "court[s] must also consider whether the movant has shown that he is likely to suffer irreparable harm in the absence of preliminary relief, [whether] the balance of equities tips in his favor, and [whether] an injunction is in the public interest." *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (per curiam) (cleaned up). "Under *Winter*'s rationale, any modified test which relaxes one of the prongs for preliminary relief and thus deviates from the standard test is impermissible." *Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016).

At least four courts of appeals apply this traditional four-part test for granting preliminary injunctive relief in Section 10(j) cases. *See, e.g.*, *Muffley v. Spartan Mining Co.*, 570 F.3d 534, 543 (4th Cir. 2009). But five courts of appeals, including the Sixth Circuit, apply a less-restrictive two-part test. Under this framework, the NLRB need prove only that (1) the facts viewed in the light most favorable to the NLRB support a non-frivolous legal theory and (2) the injunction would help advance the NLRB's remedial powers. *See, e.g.*, Pet. App. 10a. As the Sixth Circuit itself acknowledges, this is a "relatively insubstantial" burden. *Gottfried v. Frankel*, 818 F.2d 485, 493 (6th Cir. 1987) (citation omitted). That is an understatement.

The difference between the two approaches is stark. Under one test, the NLRB must show that it is likely to succeed on the merits before considering whether the other three requirements are met. Under the other test, if a lawyer is smart enough to come up with any non-frivolous legal theory the facts support, the NLRB can get extraordinary, preliminary relief.

The Sixth Circuit's two-part test embodies NLRB exceptionalism at its worst. The test treats the NLRB—and this type of relief—differently than other parties and claims. As it has done with other types of exceptionalism, this Court should reject the Sixth Circuit's relaxed test and hold that the NLRB must satisfy the traditional four-part preliminary injunction standard to obtain relief under 29 U.S.C. § 160(j).

Again, under the Sixth Circuit's test the NLRB need only "show that its legal theory is substantial

and not frivolous" to obtain preliminary injunctive relief. *McKinney v. Ozburn-Hessey Logistics, LLC*, 875 F.3d 333, 339 (6th Cir. 2017) (cleaned up). "A legal contention is frivolous if it is obviously without merit under existing law and unsupported by a good-faith argument to change or extend the law." *King v. Whitmer*, 71 F.4th 511, 528 (6th Cir. 2023). A non-frivolous legal theory is a very low bar.

Any competent attorney can make a non-frivolous argument for why an employer's practices violate the NLRA. First, under the Sixth Circuit's test the facts are viewed in the light most favorable to the NLRB. So when seeking an injunction under Section 10(j), the NLRB's attorneys need only plead facts that could be construed to violate existing law—even if they know that they will be unable to prove those facts at final adjudication. Second, even if the lawyers cannot plead facts in such a manner, it is easy for the NLRB's attorneys to make a good-faith argument for why existing law should be changed or extended to fit the situation.

The NLRB "frequently changes its mind, seesawing back and forth between statutory interpretations depending on its political composition, leaving workers, employers, and unions in the lurch." *Valley Hosp. Med. Ctr., Inc. v. NLRB*, 2024 WL 678727, *5 (9th Cir. Feb. 20, 2024) (O'Scannlain, J., concurring) (citing Zev J. Eigen & Sandro Garofalo, *Less Is More: A Case for Structural Reform of the National Labor Relations Board*, 98 Minn. L. Rev. 1879, 1887 (2014)). In other words, NLRB attorneys often ask for a change or extension of existing law. *See id.* at *6 (The NLRB "veers

violently left and right, a windsock in political gusts.").

The non-frivolous bar that the Sixth Circuit (and others) apply when deciding whether to grant the NLRB preliminary injunctive relief is illusory. The Federal Rules of Civil Procedure, the United States Code, and attorney discipline rules all bar frivolous claims. The Federal Rules of Civil Procedure provide that attorneys and parties must certify that "the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(2). And "[t]he government is not immune from Rule 11 sanctions." *Mattingly v. United States*, 939 F.2d 816, 818 (9th Cir. 1991). This means that if the NLRB were to make frivolous arguments when seeking preliminary injunctive relief, it and its attorneys could be sanctioned under Rule 11.

The United States Code similarly bars attorneys from making frivolous arguments. *See* 28 U.S.C. § 1927. And although sovereign immunity may prevent sanctioning the NLRB under Section 1927, *see In re Graham*, 981 F.2d 1135, 1140 (10th Cir. 1992), that does not green light filing frivolous requests for preliminary injunctive relief. Rather, it only limits the authority of courts to grant monetary relief.

Ethics rules also bar attorneys from making frivolous arguments. The model rules provide that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not

frivolous." ABA Model Rule of Professional Conduct 3.1. Every State in the Sixth Circuit has adopted a version of this rule. *See* Ky. Sup. Ct. R. 3.130(3.1); Mich. R. Prof. Conduct 3.1; Ohio R. Prof. Conduct 3.1; Tenn. R. Prof. Conduct 3.1. Thus, under the Sixth Circuit's current test, district courts should probably refer NLRB counsel for disciplinary proceedings every time they deny a request for preliminary injunctive relief under Section 10(j). It is unconscionable that the bar is so low for the NLRB to meet that its attorneys could be disciplined if they do not win before the district court.

In short, if the NLRB and its attorneys comply with the Federal Rules of Civil Procedure, the United States Code, and local ethics regulations they satisfy the first prong of the test used by the Sixth Circuit. The absurdity of such a rule is self-evident and warrants no further elucidation.

The second prong of the Sixth Circuit's test is just as much of an illusion as the first prong. If an employer is violating the NLRA—the allegation that the NLRB must make to satisfy the first prong of the test—then preliminary injunctive relief would always help advance the NLRB's remedial powers. The point of the NLRB's remedial powers is to limit the damage to employees who are harmed by employers' NLRA violations. That goal is advanced if the relief is granted earlier. Thus, the only real question under the Sixth Circuit's test is whether the NLRB and its counsel made non-frivolous arguments about why the employer's conduct violated the NLRA.

As discussed above, satisfying this burden merely requires compliance with the Federal Rules of

Civil Procedure, United States Code, and attorney-ethics rules. Meeting this standard is laughably easy. A recent case shows why. A criminal defendant at sentencing asked to "withdraw [his] plea agreement and [his] plea of guilty." *United States v. Arce-Ayala*, 91 F.4th 28, 37 n.12 (1st Cir. 2024). The government argued that the defendant forfeited his right to withdraw his guilty plea because he only sought to withdraw his plea agreement. *See id.* To a normal person, that argument is frivolous. But the First Circuit held that the government's argument merely "bordered on" frivolous. *Id.*

Arce-Ayala shows how deferential courts are to the government's pleadings. It takes an overwhelming amount of evidence of bad faith for a court to find that the government is advancing a frivolous argument. As the NLRB is a government actor, courts often give it this deference too. Courts assume that the NLRB is acting in good faith, even when the evidence shows the contrary to be true.

This case is just one example of where any sane human would support firing workers who broke into the building after work and accessed the safe. But the NLRB advanced a "non-frivolous" legal argument about how these firings violated the NLRA. If any other party had made this argument, the District Court would have likely imposed Rule 11 sanctions and referred counsel to disciplinary authorities. Here, however, the District Court was required by circuit precedent to accept these "non-frivolous" arguments as true. This stems from NLRB exceptionalism, something this Court should reject.

B. NLRB Exceptionalism Causes Serious Problems.

Starbucks's brief explains how the text, structure, history, and purpose of Section 10(j) all suggest that the NLRB must satisfy the traditional four-part preliminary injunction test to obtain preliminary relief. The Court's inquiry could (and should) end there. But if the Court examines the policy ramifications of the competing tests, that comparison also supports Starbucks.

Section 10(j) injunctions burden businesses. Even the NLRB admits that there is "a strong catalyst for settlement" once a District Court grants it the requested preliminary injunctive relief. *See Section 10(j) Manual*, NLRB Office of the Gen. Counsel, 15 (Feb. 2014), https://perma.cc/8K89-DX9A. The NLRB sees this as a feature, not a bug. Rather than prove its case after a full hearing on the merits, the NLRB can simply force employers to settle the claims against them.

Employers are forced to settle for many reasons. The NLRB's in-house processes "often are protracted" and employers prevail in only 16% of cases decided in-house. *Section 10(j) Manual*, *supra*, at app. D p. 1; *Performance & Accountability Report FY 2022*, NLRB, 26, https://perma.cc/S2NJ-H4TB. This causes two big problems for employers. First, if the employer does not settle quickly, they are stuck with the preliminary injunctive relief for years. This means that bad employees may have to be retained and other policies that hurt the employer must remain in place. If the employer settles, they can mitigate the damage by negotiating away some of the

relief that the district court granted. Second, the costs of litigating through the NLRB process for years with less than a one-in-six chance of success is crushing financially. In most cases, employers lose before the NLRB and then must spend more to challenge that decision in federal court. Many employers simply lack the resources to engage in this protracted litigation.

Employers also face uncertainty about how long the Section 10(j) injunction will last. On average, the delay in adjudication will last years. But it is the NLRB that ultimately determines the timeline—not the employer. So if the NLRB is happy with the preliminary injunctive relief it obtained and sees that it is one of the few cases it might lose in-house, the NLRB can delay issuing the final ruling. This extends the time that the unjust preliminary injunctive relief lasts and costs the employer more. This too puts pressure on the employer to settle a case—even if it lacks merit.

Another reason that so many employers settle Section 10(j) cases is that the stakes become very high. Recently, the NLRB has started asking district courts for injunctions barring employers from engaging in "unfair" practices "nationwide." *E.g., Kerwin v. Starbucks Corp.*, 657 F. Supp. 3d 1002, 1012 (E.D. Mich. 2023). This transforms an unfair labor practices case stemming from one event in one location into a de facto class action. And as this Court has repeatedly said, class actions "allow plaintiffs with weak claims to extort settlements from innocent companies." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 163 (2008) (citing *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740-41 (1975)).

Combined, these pressures have led to about half of all Section 10(j) cases settling over the past fourteen years. *See 10(j) Injunctions*, NLRB, https://perma.cc/P89X-JHHW. In short, the NLRB is engaged in a shakedown of employers. Rather than enforce the law, the NLRB tries to impose its policy preferences by seeking nationwide Section 10(j) injunctions in circuits that apply the relaxed two-part test. This then forces the employers to settle meritless claims for fear of the costs and uncertainty that come with litigating the case. It is hard to imagine a worse type of exceptionalism. Yet that unfairness is what the Sixth Circuit blessed here.

CONCLUSION

This Court should vacate the Sixth Circuit's decision.

Respectfully submitted,

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