

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 STARBUCKS WORKERS AS
AMICI CURIAE IN SUPPORT OF RESPONDENT**

G. MICAH WISSINGER
Levy Ratner, P.C.
80 Eighth Avenue, 8th Floor
New York, NY 10011
(212) 627-8100
mwissinger@levyratner.com

DANIEL M. ROSENTHAL
Counsel of Record
MICHAEL P. ELLEMENT
CHARLOTTE H. SCHWARTZ
EMILY R. POSTMAN
James & Hoffman, P.C.
1629 K Street, NW, Suite 1050
Washington, DC 20006
(202) 496-0500
(202) 496-0555 facsimile
dmrosenthal@jamhoff.com
mpellement@jamhoff.com
chschwartz@jamhoff.com
erpostman@jamhoff.com

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. <i>Amici</i> and other Starbucks workers have exercised their legal right to improve working conditions at Starbucks.	5
A. The worker movement for better working conditions at Starbucks.....	5
B. <i>Amici</i> 's efforts to support unionization.....	8
II. Starbucks has engaged in an extraordinary anti-union campaign, including by repeatedly violating the law in its treatment of <i>amici</i> and other workers.....	10
A. Starbucks has engaged in significant unfair labor practices and other efforts to resist workers collectively organizing.	10
B. <i>Amici</i> have suffered devastating consequences from Starbucks's unlawful retaliation.	13
III. Interim injunctive relief is essential to the ability of workers to exercise their rights under the NLRA.	16
A. The purpose of the NLRA cannot be fulfilled without effective interim relief.	16

TABLE OF CONTENTS—Continued

	Page
B. The experiences of <i>amici</i> demonstrate the need for effective injunctive relief.....	22
CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page
Cases	
<i>Fuchs ex rel. NLRB v. Hood Indus., Inc.</i> , 590 F.2d 395 (1st Cir. 1979)	20
<i>NLRB v. Gissel Packing Co.</i> , 395 U.S. 575 (1969)	17
<i>NLRB v. Juniata Packing Co.</i> , 464 F.2d 153 (3d Cir. 1972)	17
<i>Siren Retail Corporation</i> , 372 N.L.R.B. No. 10 (2022)	11
<i>Starbucks Corp.</i> , No. 03-CA-285671, JD-17-23 (Mar. 1, 2023) (NLRB ALJ Decision)	11
<i>Starbucks Corp.</i> , No. 04-CA-294636, JD-50-23 (Aug. 10, 2023) (NLRB ALJ Decision)	23
<i>Starbucks Corp.</i> , No. 19-CA-294579, JD(SF)-29-23 (Sept. 28, 2023) (NLRB ALJ Decision)	12
<i>Starbucks Corp.</i> , No. 27-CA-307542, JD-82-23 (Dec. 19, 2023) (NLRB ALJ Decision)	14
<i>Starbucks Corporation</i> , 372 N.L.R.B. No. 93 (2023)	11
<i>Starbucks Corporation</i> , 372 N.L.R.B. No. 122 (2023)	11
<i>Starbucks Corporation</i> , 373 N.L.R.B. No. 21 (2024)	11

TABLE OF AUTHORITIES—Continued

	Page
Statutes	
29 U.S.C. § 151	16
29 U.S.C. § 158	16
29 U.S.C. § 160	16
Legislative History	
S. Rep. No. 105 (1947).....	20
Other Authorities	
<i>Administrative Law Judge Decisions</i> , National Labor Relations Board (last visited Mar. 1, 2024), https://www.nlr.gov/cases-decisions/decisions/administrative-law-judge-decisions [https://perma.cc/LU8W-DKBL]	11
Ann Stansbury, <i>Do US Firms Have an Incentive to Comply with the FLSA and the NLRA?</i> , Peterson Inst. for Int’l Econ., Working Paper No. 21-9 (June 2021), https://www.piie.com/publications/working-papers/do-us-firms-have-incentive-comply-flsa-and-nlra#:~:text=These%20analyses%20illustrate%20that%20neither,toward%20unions%2C%20is%20not%20surprising [https://perma.cc/W7V9-X7PZ]	20
<i>Board Decisions</i> , National Labor Relations Board (last visited Mar. 1, 2024), https://www.nlr.gov/cases-decisions/decisions/board-decisions [https://perma.cc/CVY8-ZK9U]	11

- Chris Isidore, *These Baristas are Leading a Nationwide Campaign to Unionize Starbucks*, CNN Bus. (Nov. 2, 2022, 9:11 AM), <https://tinyurl.com/yeha9x3y> [<https://perma.cc/B7WH-5SUG>] 5
- Ihna Mangundayao & Celine McNicholas, *Congress Should Boost NLRB Funding to Protect Workers' Well-Being*, Econ. Pol'y Inst. (Feb. 28, 2022, 2:52 PM), <https://www.epi.org/blog/congress-should-boost-nlrp-funding-to-protect-workers-well-being/> [<https://perma.cc/N8ZE-X3XQ>] 17
- Jennifer A. Abruzzo & Lauren McFerran, *Memo to the ABA Committee on Practice and Procedure Under the National Labor Relations Act* (Mar. 4, 2024), <https://www.nlrp.gov/guidance/memos-research/general-counsel-memos> [<https://perma.cc/6RZL-P7KF>] 18
- Lauren Kaori Gurley, *A Starbucks Supervisor Sexually Assaulted a Barista. Starbucks Knowingly Kept Him Employed for Months*, VICE (May 4, 2022, 10:08 AM), <https://www.vice.com/en/article/93bpy7/a-starbucks-supervisor-sexually-assaulted-a-barista-starbucks-knowingly-kept-him-employed-for-months> [<https://perma.cc/J94N-DGTW>]... 7
- Megan K. Stack, *Inside Starbucks' Dirty War Against Organized Labor*, N.Y. Times (Jul. 21, 2023), <https://tinyurl.com/5n6efud7> [<https://perma.cc/S4N9-PNJV>] 6
- Mike Winters, *How Much Money Americans Have in their Savings Accounts—Nearly Half Have Less than \$500*, CNN (Jan. 24, 2024,

12:59 PM), https://www.cnn.com/2024/01/24/how-much-money-americans-have-in-savings.html [https://perma.cc/ ZHP2-JACE].....	19
Natalie Sherman, ‘ <i>Starbucks fired me for being three minutes late</i> ’, BBC (Aug. 15, 2022), https://www.bbc.com/news/business-62426940 [https://perma.cc/WAY2-DJZ5].....	13
NLRB 10(j) Manual § 5.0, https://www.nlr.gov/guidance/key-reference-materials/manuals-and-guides [https://perma.cc/WR4E-YHVL].....	21
<i>NLRB Case Search</i> , NLRB (last visited Mar. 1, 2024), https://www.nlr.gov/search/case [https://perma.cc/4Z4F-E89H].....	11
NLRB ULP Manual § 10310.3, https://www.nlr.gov/guidance/key-reference-materials/manuals-and-guides [https://perma.cc/TXM3-Y4ZL].....	21
NLRB, <i>Injunction Activity under Section 10(j)</i> , https://www.nlr.gov/reports/nlr-case-activity-reports/unfair-labor-practice-cases/litigation/injunction-litigation#:~:text=Injunction%20Activity%20under%20Section%2010,moves%20through%20the%20Board’s%20process [https://perma.cc/L9T3-FSJN].....	21
NLRB, <i>Seventy Fourth Annual Report</i> (2009), https://www.nlr.gov/reports/agency-performance-reports/historical-reports/annual-reports [https://perma.cc/MA25-PATT].....	18
Noam Schreiber, <i>Starbucks workers at a Buffalo store unionize in a big symbolic win for labor</i> , N.Y. Times (Dec. 9, 2021), https://tinyurl.com/5xj6stcu [https://perma.cc/8C4A-B34B]....	5

Paul Blest, <i>Inside the Wild Starbucks Manager Kidnapping Incident That Wasn't</i> , Vice (Oct. 19, 2022, 11:09 AM), https://www.vice.com/en/article/5d3jbn/starbucks-manager-kindapping-lawsuit [https://perma.cc/QMK2-4K44]	13
Shira Li Bartov, <i>Starbucks Worker Says She Was Fired for Being 2 Minutes Late: 'No Surprise'</i> , Newsweek (Aug. 8, 2022, 3:56 PM), https://www.newsweek.com/starbucks-worker-says-she-was-fired-being-2-minutes-late-no-surprise-1731783 [https://perma.cc/Q9RN-WDB9]	13
Stock Analysis, Starbucks Corporation (Mar. 21, 2024), https://stockanalysis.com/stocks/sbux/revenue/ [https://perma.cc/K334-BK54]	20
<i>Unfair Labor Practices Charge Filings Up 10%, Union Petitions Up 3% in Fiscal Year 2023</i> (Oct. 13, 2023), https://www.nlr.gov/news-outreach/news-story/unfair-labor-practices-charge-filings-up-10-union-petitions-up-3-in-fiscal [https://perma.cc/9Q94-S665]	18
Workers United, https://sbworkersunited.org/ (last visited Mar. 8, 2024) [https://perma.cc/3CPP-N3L8]	5

INTEREST OF *AMICI CURIAE*¹

Amici are twelve current and former employees of Starbucks Corporation. All exercised their right under the National Labor Relations Act (NLRA) to join with co-workers to advocate for better terms and conditions of employment. And all suffered retaliation as a result. The stories of *amici* demonstrate the need for prompt and effective injunctive relief under the NLRA to fulfill Congress's purpose in enacting the statute.

Although *amici* live in different areas of the country, come from different backgrounds, and supported unionization for different reasons, they are united in their conviction that effective interim relief is critical to preventing employers from illegally suppressing attempts to improve working conditions. Though some *amici* fear that they will face further retaliation for submitting this brief, they believe it is important for the Court to hear directly from Starbucks workers.

A complete list of *amici* follows:

Donta Cunningham worked at a Starbucks store in Washington, D.C. from 2021 until April 2023, when he was fired.

A.C. worked at a Starbucks store in Illinois from January 2022 until April 2023, when she was fired.²

Florentino Escobar worked at a Starbucks store in Tennessee from February 2020 to February 2022,

¹ Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from counsel to *amici*, made any monetary contribution intended to fund the preparation or submission of this brief.

² E.G. and A.C. are identified by their initials for privacy reasons and due to fear of retaliation.

when he was fired. He was reinstated in September 2023 as a result of the injunction issued by the district court in this case.

E.G. has been working at a Starbucks store in Virginia since 2019.

Len Harris worked at a several Starbucks stores in Maine and Colorado from 2016 until November 2022, when she was fired.

Brianna Hurst worked at a Starbucks store in Maryland from April 2022 to January 2023, when she was fired.

Meghin Martin worked at a Starbucks store in Virginia from October 2021 until September 2023.

Christian Oakry worked at a Starbucks in Maryland from June 2021 until January 2023, when he was fired.

Alexis Rizzo worked at Starbucks stores in Florida in New York from 2015 to 2023, when she was fired.

Jaysin Saxton worked at a Starbucks store in Georgia from 2019 until August 2022, when he was fired. He was reinstated in July 2023 as part of a settlement, but he left in November 2023 because the Company did not give him sufficient hours of work.

Nicole Taylor worked at a Starbucks store in Tennessee from January 2020 until February 2022, when she was fired.

Aneil Tripathi worked at a Starbucks store in South Carolina from June 2019 until September 2022, when he was fired.

INTRODUCTION AND SUMMARY OF ARGUMENT

Absent the possibility of effective interim relief, the NRLA cannot serve the purposes for which Congress enacted it. The experience of *amici* illustrate this point.³

Each of the *amici* exercised their rights under the NLRA. They supported union organizing campaigns at their Starbucks stores with the common goal of making Starbucks a better place to work. Like many employers, Starbucks reacted with hostility to the unionization effort. Each of the *amici* was disciplined, and the majority were eventually terminated, after management became aware of their support for the union. In several cases, the company's treatment of *amici* has been found unlawful by administrative law judges (ALJs); others are still waiting for agency decisions.

Amici are not alone. Starbucks has committed more than 400 violations of federal labor law, including firing 59 union leaders and supporters, according to decisions of administrative law judges. More than 60 additional complaints against Starbucks are awaiting decisions.

Amici suffered grave harm from Starbucks's illegal retaliation. Several had to rely on public assistance or the help of family members to pay bills and buy

³ In its merits brief, Starbucks relies heavily on material outside the record to paint a rosy picture of how the company treats its workers and to insinuate that the push to unionize stores did not originate with Starbucks employees. *See, e.g.*, Pet. Br. at 7–8. *Amici* submit this brief so that the Court may hear the first-hand experiences of Starbucks employees, which are not consistent with Starbucks's representations.

food. They lost their health insurance coverage and struggled to pay medical bills, sometimes deferring care. One of them could no longer support her children, who had to move out of her home. Another began skipping meals and was unable to pay bills to the electric company, leading to the loss of electricity (and thus heat) in her apartment. The mental toll led several to struggle with depression, anxiety, and panic attacks. For some, this manifested in thoughts of suicide and self-harm. One was hospitalized as a result.

Many of the *amici* are still awaiting a remedy for Starbucks's conduct—even after findings of unlawful conduct by ALJs, which are issued after full trials. This is due to the slow pace of unfair labor practice cases. Workers with meritorious claims must wait years for their case to be investigated by National Labor Relations Board (NLRB) employees, heard by an ALJ, decided by the ALJ, and reviewed by the Board. Even after all of this work is complete, the Board lacks the power to enforce its orders, and thus the NLRB must petition a court of appeals for enforcement. Meanwhile, union organizing often fizzles as workers see their union-supporting colleagues terminated without any timely remedy.

In light of the multi-step NLRB process, Congress knew that effective interim relief was critical. Thus, Congress authored Section 10(j) to provide interim relief while the Board processes proceeded to final resolution.

In contrast to the vast majority of cases in which workers are still waiting for a remedy, the Section 10(j) injunction issued by the district court in this case fulfilled the NLRA's purpose by providing prompt relief that allowed the union campaign at the Memphis store to rebuild and continue to this day, despite the com-

pany’s attempts to stifle it. Yet, Starbucks seeks to overturn that injunction based on a misreading of the NLRA. The Court should reject Starbucks’s attempt to limit a critical tool for combating employers’ unlawful suppression of rights guaranteed by the NLRA.

ARGUMENT

I. *Amici* and other Starbucks workers have exercised their legal right to improve working conditions at Starbucks.

A. The worker movement for better working conditions at Starbucks

In December 2021, workers at a Starbucks store in Buffalo, New York, voted to form a union in an NLRB election.⁴ Since then, workers at four hundred Starbucks locations, representing ten thousand workers across the country, have voted to unionize—making it one of the most sweeping union organizing efforts in modern American history.⁵

The unionization effort has been led by Starbucks workers around the country.⁶ As workers learned of the election victory in Buffalo, many began discussing the possibility of unionization with their colleagues. *Amici* were among them.⁷

⁴ Noam Schreiber, *Starbucks workers at a Buffalo store unionize in a big symbolic win for labor*, N.Y. Times (Dec. 9, 2021), <https://tinyurl.com/5xj6stcu> [<https://perma.cc/8C4A-B34B>].

⁵ Workers United, <https://sbworkersunited.org/> (last visited Mar. 8, 2024) [<https://perma.cc/3CPP-N3L8>].

⁶ See Chris Isidore, *These Baristas are Leading a Nationwide Campaign to Unionize Starbucks*, CNN Bus. (Nov. 2, 2022, 9:11 AM), <https://tinyurl.com/yeha9x3y> [<https://perma.cc/B7WH-5SUG>].

⁷ When discussing the experiences of the *amici* in this brief, we rely on interviews of them conducted by counsel.

Amici and their colleagues were motivated by a desire to make Starbucks a better place to work and to patronize. They loved their initial experiences as Starbucks employees. They chose to work at the company because of its stated values, including its commitment to treat employees as “partners,” as well as its promise of generous employment benefits. Many of the *amici* prided themselves on creating connections with their regulars and making their stores a welcoming environment. As *amicus* Alexis Rizzo described, her Starbucks store felt like a “family environment.”

Over time, however, *amici* became disillusioned by the way Starbucks treated its employees. For many, the COVID-19 pandemic was a turning point. Several *amici* put their personal safety at risk to serve Starbucks customers—and increase the company’s profits—during the height of the outbreak. While Starbucks initially provided some workers with hazard pay, the program was short-lived.

Meanwhile, *amici*’s working conditions became more difficult as the company cut staff and increased workload. *Amici* and their colleagues were required to keep stores open without adequate staff—making it nearly impossible to work effectively or safely.

Increasingly, employees felt set up to fail. One Starbucks worker described having to work so frantically that she could not stop even to take a sip of water.⁸ When *amicus* Aneil Tripathi raised concerns about understaffing with his District Manager, the response was: “just deal with it.”

⁸ See Megan K. Stack, *Inside Starbucks’ Dirty War Against Organized Labor*, N.Y. Times (Jul. 21, 2023), <https://tinyurl.com/5n6efud7> [<https://perma.cc/S4N9-PNJV>].

Separate from the pandemic, a host of other issues led *amici* and their Starbucks colleagues to seek better working conditions. Many struggled to pay their bills, even while working full time. They also watched management deny requests to make the workplace safer. For instance, *amicus* Christian Oakry repeatedly requested non-slip mats at his store, which were used at other stores in the area, to no avail. *Amicus* Donta Cunningham received no help from management when an unhoused and unwell individual started to strip naked in the store and bathe himself in hand sanitizer on a daily basis. Along with co-workers, Cunningham requested appropriate safety equipment to clean up needles and other drug paraphernalia from the store’s restrooms, but Starbucks never responded to these requests.

Amici grew frustrated with management’s failure to abide by its stated values. *Amicus* Jaysin Saxton, who met his wife working at Starbucks, remembers that after their daughter was born, his wife was prohibited from pumping in the bathroom because “that’s for customers.” Instead, she had to pump in the supply room, behind a make-shift curtain affixed to a shelving unit with zip ties, while staff continued to come in and out.

Amicus Meghin Martin was troubled by management’s inaction when a colleague was sexually assaulted by a Starbucks supervisor.⁹ Even after the police arrested the supervisor for “object sexual penetration by

⁹ This paragraph draws from public reporting on the incident, along with an interview of Martin. See Lauren Kaori Gurley, *A Starbucks Supervisor Sexually Assaulted a Barista. Starbucks Knowingly Kept Him Employed for Months*, VICE (May 4, 2022, 10:08 AM), <https://www.vice.com/en/article/93bpy7/a-starbucks-supervisor-sexually-assaulted-a-barista-starbucks-knowingly-kept-him-employed-for-months> [<https://perma.cc/J94N-DGTW>].

force,” Starbucks continued to employ him. By contrast, the victim of the assault was fired just nine days after she reported it to Starbucks management. When Martin told a manager that workers were unionizing because of the company’s response to the assault, a manager asked when the workers were “going to get over” it.

Amicus Len Harris will always remember the day of the Marshall Fire—the most destructive residential fire in Colorado history. As the city went up in flames, Starbucks seemed unconcerned with workers’ safety and wellbeing, insisting on keeping the store open as the fire spread to adjoining neighborhoods. Instead of evacuating, the store manager instructed staff to tidy the store while they waited for a “greenlight” from corporate. Later that day, one barista learned that her house had burned down. Others did not know whether their loved ones were safe, or whether they would have a home to return to. In her hotel that night, Harris got a call from her manager telling her she was expected to be at work the next day. The city was still on fire.

While *amici* were drawn to the company’s benefits, it turned out that those benefits were often inaccessible. At many stores, variable scheduling meant that workers lacked sufficient hours to qualify for health insurance, and those who did qualify encountered high premiums and limited coverage.

B. *Amici*’s efforts to support unionization

Amici decided to support the unionization campaign because they believed that Starbucks could do better. They wanted to continue working for Starbucks while ensuring that they were treated fairly.

Amicus Brianna Hurst hoped that a union would bring job security, providing the stability she needed for herself and her young son. Rizzo hoped a union

would lead to better health insurance that would cover more of her medical expenses arising from multiple surgeries. She also hoped the union would help workers negotiate pay raises and more reliable hours, which were frequently cut. *Amicus* A.C. became interested in unionizing after the company failed to give her enough hours of work to qualify for the health insurance she was promised when she was hired.

Amici's stories provide a snapshot of the ongoing unionization efforts over the last few years. Workers who support unionization have a wide diversity of life experiences. Despite the stereotype that Starbucks workers are often teens working part-time for pocket money, the reality is that many Starbucks employees are experienced workers who have college degrees, have served in the military, are raising children, or take care of elderly family members. They take pride in their work and rely on their employment with Starbucks as their main source of income to support themselves and their families.

For example, Rizzo worked at Starbucks for eight years before she was fired in retaliation for her union organizing activity. Most *amici* relied on their wages from Starbucks as their main or exclusive source of income, while also relying on Starbucks for health insurance benefits. And many *amici* supported family members with their pay from Starbucks. *Amicus* E.G., who has worked at Starbucks for five years, relies on his income to support himself and his daughter. Hurst is a single mother who relied on her income to support herself and her infant son. Cunningham relied on his Starbucks income to support himself and to help his elderly mother with her living and medical expenses. Saxton's daughter was two years old when he was fired. A.C. relied on her income from Starbucks to support her two school-aged boys.

Many *amici* were motivated to unionize to make a better world for their children. E.G. started unionizing for his daughter, and not just because he relies on his job to support her financially. Rather, as E.G.'s daughter turned fourteen and began looking for her first job, E.G. wanted her to live in a world where her rights were respected. Similarly, Saxton fought for a union because he wanted his daughter to “grow up in a better world.” As he explained, he “want[s] her to know that her parents fought for [her] to have that, even when it was hard, even when it was scary.”

II. Starbucks has engaged in an extraordinary anti-union campaign, including by repeatedly violating the law in its treatment of *amici* and other workers.

A. Starbucks has engaged in significant unfair labor practices and other efforts to resist workers collectively organizing.

Starbucks did not welcome its employees' attempts to unionize. The company engaged in a national campaign to coerce employees to drop the effort. Further, it resorted to illegal retaliation, as found by administrative law judges and the NLRB Board.

Workers and their union have had to file hundreds of administrative charges against Starbucks for violating the NLRA throughout the country. These cases are now moving through the NLRB process.

Already, administrative law judges have ruled that Starbucks committed more than 400 violations of federal labor law, including by firing 59 union leaders and supporters.¹⁰ Each of these violations has been

¹⁰ The numbers in this paragraph were compiled based on data that is publicly available on the NLRB website, which tracks indi-

found after a full trial. There are 60 additional complaints against Starbucks awaiting a decision.¹¹

The Board has also issued five decisions against Starbucks, including in cases involving the company's refusal to bargain with the Union, *see Siren Retail Corporation*, 372 N.L.R.B. No. 10 (2022); its threats against workers for complying with an NLRB subpoena, *see Starbucks Corporation*, 372 N.L.R.B. No. 93 (2023); and the illegal termination and threats of termination of workers in retaliation for their pro-union speech and activities, *see Starbucks Corporation*, 372 N.L.R.B. No. 122 (2023); *Starbucks Corporation*, 373 N.L.R.B. No. 21 (2024); *Starbucks Corporation*, 373 N.L.R.B. No. 33 (2024).

As one ALJ described, Starbucks responded to the initial unionizing efforts in Buffalo with “egregious and widespread misconduct demonstrating a general disregard for the employees’ fundamental rights,” including by terminating and disciplining union supporting employees, closing down stores on the verge of unionizing, and refusing to bargain with those stores that managed to unionize. *Starbucks Corp.*, No. 03-CA-285671, JD-17-23, 196 (Mar. 1, 2023) (NLRB ALJ Decision).

vidual charges, decisions, and election petitions. This information is current as of March 26, 2024. *Administrative Law Judge Decisions*, National Labor Relations Board (last visited Mar. 1, 2024), <https://www.nlr.gov/cases-decisions/decisions/administrative-law-judge-decisions> [<https://perma.cc/LU8W-DKBL>]; *Board Decisions*, National Labor Relations Board (last visited Mar. 1, 2024), <https://www.nlr.gov/cases-decisions/decisions/board-decisions> [<https://perma.cc/CVY8-ZK9U>]; *NLRB Case Search*, NLRB (last visited Mar. 1, 2024), <https://www.nlr.gov/search/case> [<https://perma.cc/4Z4F-E89H>].

¹¹ Complaints are issued in less than four percent of cases in which an employee or union files a charge with the NLRB. *See infra* at 21.

Starbucks conducted its anti-union campaign through nationwide policies as well as store-by-store acts of retaliation. The company announced that all workers at unionized stores would be excluded from raises offered at non-union stores. Further, the denial of wage increases extended to any store where a petition for an NLRB election was filed, even if no union was certified. Reviewing this policy, an ALJ ruled that Starbucks violated the law by “adopting a corporate-wide antiunion policy of explicitly conditioning eligibility for increased enhanced wages and benefits on its employees’ refraining from seeking union representation.” *Starbucks Corp.*, No. 19-CA-294579, JD(SF)-29-23, 2 (Sept. 28, 2023) (NLRB ALJ Decision).

Amici have personally witnessed the anti-union fervor among Starbucks management. For Rizzo, it was terrifying to go to work due to the constant anti-union statements and interrogation by management. Many of her co-workers chose to resign instead. For Harris, the worst moment of the union campaign was not the Marshall Fire or even when she lost her job. Instead, it was the day Starbucks flew in a corporate executive from Seattle. Harris remembers seeing a younger co-worker in tears and visibly shaking as she left a “two-on-one meeting”— a mandatory meeting in which two managers meet with a single barista and attempt to discourage the worker from supporting the union.

Tripathi’s supervisory falsely accused workers of assault after they jointly approached the supervisor to request a pay raise. The manager asked the police to arrest the workers, and Starbucks suspended them. But after investigating the incident, the local police announced that the workers had done nothing

wrong and stated conclusively that “none of the allegations were true.”¹²

B. *Amici* have suffered devastating consequences from Starbucks’s unlawful retaliation.

Each of the *amici* were disciplined or terminated after publicly supporting unionization efforts at their Starbucks locations. Many were terminated or disciplined for minor policy violations that had previously gone unenforced before the workers expressed their support for the union. For instance, Starbucks fired Rizzo for tardiness, citing examples of her clocking-in about one to three minutes late on a few occasions over the course of several months. Starbucks has frequently used similar instances of minor alleged tardiness to target union supporters.¹³

The retaliation by Starbucks had an immediate financial impact on many of the *amici*. Several had to rely on public assistance or the help of family members to pay bills and buy food.

¹² See Paul Blest, *Inside the Wild Starbucks Manager Kidnapping Incident That Wasn’t*, VICE (Oct. 19, 2022, 11:09 AM), <https://www.vice.com/en/article/5d3jbn/starbucks-manager-kindapping-lawsuit> [<https://perma.cc/QMK2-4K44>].

¹³ Natalie Sherman, ‘*Starbucks fired me for being three minutes late*’, BBC (Aug. 15, 2022), <https://www.bbc.com/news/business-62426940> [<https://perma.cc/WAY2-DJZ5>] (union-supporter Joselyn Chuquillanqui fired after arriving three minutes late after nearly seven years with the company); Shira Li Bartov, *Starbucks Worker Says She Was Fired for Being 2 Minutes Late: ‘No Surprise*’, Newsweek (Aug. 8, 2022, 3:56 PM), <https://www.newsweek.com/starbucks-worker-says-she-was-fired-being-2-minutes-late-no-surprise-1731783> [<https://perma.cc/Q9RN-WDB9>] (union-supporter at a Starbucks in Pittsburgh reported being fired for being two-minutes late).

Amicus Harris had been putting \$100 a month into her savings account since she turned eighteen, a practice she continued for thirteen years. After she was fired, she used almost all of those savings to get by. She applied for jobs constantly, and then for unemployment, which Starbucks contested. She was poised to lose her apartment when, after months of searching, she finally got a job offer. She was forced to delay medical care and car repairs. Now, she faces the daunting prospect of rebuilding her savings—which she expects to take the better part of a decade—while worrying that she cannot afford another emergency. After thorough investigation and trial, an Administrative Law Judge found that Harris’s November 2022 termination was unlawful and ordered her reinstated. *See Starbucks Corp.*, No. 27-CA-307542, JD-82-23 (Dec. 19, 2023) (NLRB ALJ Decision). But Starbucks is appealing the decision, meaning Harris continues to wait for a remedy.

Oakry was financially devastated by his termination. To get by, Oakry emptied out what little he had in his retirement savings, while desperately searching for a job. Prior to being terminated, Oakry had been using some of the little savings he was able to scrounge to help his co-worker, *amicus* Hurst, a single mother struggling to provide for her young son. That stopped when Oakry and Hurst were both fired on the same day.

That day was equally devastating for Hurst. She had quit her second job to focus on Starbucks, where she had been promised a promotion only two weeks earlier. To get by after being fired, she had to sell her car—making her job search that much more difficult.

Rizzo applied for public benefits after she was terminated. She was supporting her long-time partner at the time, who had been seriously injured commuting

from work. Since she relied on Starbucks for her health insurance coverage, she was no longer insured after she was fired. She now works two jobs to support herself while she continues to wait (for over a year now) for an ALJ decision about her discharge following trial.

After Cunningham's store unionized, the manager began slashing his hours, down from 30-35 to sometimes as low as 10 hours per week. This worsened his already precarious financial situation. Then he was terminated. Cunningham, who had never struggled to find work in the past, now had to explain to potential employers that he was fired from Starbucks. To get by, he relied on public benefits and borrowed from family and friends.

After Starbucks cut Martin's hours, Martin could no longer afford many expenses, including rent and heat, and began skipping meals to save money.

After E.G.'s store unionized, management cut everyone's hours, scheduling them just short of the number of hours needed to trigger their right to a break. The corresponding reduction in pay made it hard for E.G. to provide for his daughter and forced them to eliminate all non-essential expenses.

Saxton applied to hundreds of jobs after he was fired but was unable to find work. His young family depleted their savings. They could not keep up with car payments and lost a family car as a result. Even after he was reinstated as a result of a settlement of a Section 10(j) complaint, Saxton and his family still struggle to recover and pay bills. He worries about losing their family home as a result.

A.C. has been unable to find steady work since Starbucks fired her a year ago. As a result, she can no longer support her family, and her children have tempo-

rarily moved in with their father. She misses her boys constantly and now has panic attacks.

Several *amici* described the mental health impact of the retaliation they have faced. On top of the daily stress of understaffing and unsafe working conditions, some *amici* dealt with open hostility and constant criticism from management after they began to unionize. Anxiety built as they watched union leaders across the country and in their own stores get fired for minor infractions. Then, each *amici* was fired or had their hours cut, losing their income and benefits overnight. Parents struggled to provide for their children, and families were separated. *Amici* struggled to pay their bills and get back on their feet. As a result, several *amici* described struggling with depression, anxiety, panic attacks, and thoughts of suicide and self-harm. One was hospitalized as a result. When they lost their jobs or had their hours significantly decreased, they also lost the ability to afford critical mental health care to deal with these issues.

III. Interim injunctive relief is essential to the ability of workers to exercise their rights under the NLRA.

A. The purpose of the NLRA cannot be fulfilled without effective interim relief.

Congress enacted the NLRA to “encourag[e] the practice and procedure of collective bargaining,” as a way to reduce industrial strife. 29 U.S.C. § 151. To meet that purpose Congress passed a comprehensive statute that protects employees’ right to engage in concerted activity (like forming a union), and prohibits employer practices that interfere with those rights. *Id.* § 158. Congress empowered the Board to enforce the statute. *Id.* § 160.

For enforcement of the Act to be effective—and thereby meet the Congressional purpose of affording employees the right to self organize—remedies for an employer’s violation must “deter future misconduct,” lest employers determine that their legal violations are merely the cost of doing business. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 612 (1969). Further, remedies must come quickly enough to avoid the chilling effect on workers when they see colleagues suffer unlawful anti-union retaliation. Even in the absence of open retaliation, employees often fear that management will punish them for supporting unionization. This fear intensifies when workers see management retaliate again union-supporting colleagues, without facing any prompt consequence. *See NLRB v. Juniata Packing Co.*, 464 F.2d 153, 156 (3d Cir. 1972) (recognizing that employer threats and termination of union supporters are “likely to intimidate employees who otherwise would be disposed to support unionization”).

Under the NLRB’s procedures, it takes years for meritorious claims to be investigated, heard by an ALJ, decided, reviewed by the Board, and eventually enforced by a court of appeals. This administrative process is slow through no fault of the workers, and that slowness is exacerbated by rising caseloads.¹⁴

Since Starbucks workers began successfully unionizing in 2021, the Board’s caseload has ballooned, partly due to the surge in interest in unionizing and the sheer volume of violations by Starbucks. In 2022, the Board saw a 53% increase in workers filing for a

¹⁴ Inna Mangundayao & Celine McNicholas, *Congress Should Boost NLRB Funding to Protect Workers’ Well-Being*, Econ. Pol’y Inst. (Feb. 28, 2022, 2:52 PM), <https://www.epi.org/blog/congress-should-boost-nlrp-funding-to-protect-workers-well-being/> [<https://perma.cc/N8ZE-X3XQ>].

union election, including in 174 Starbucks stores. In 2023, those numbers continued to rise, and the Board saw an additional 10% spike in Unfair Labor Practice charges, representing almost 2,000 more cases than the previous year. NLRB, *Unfair Labor Practices Charge Filings Up 10%, Union Petitions Up 3% in Fiscal Year 2023* (Oct. 13, 2023), <https://www.nlr.gov/news-outreach/news-story/unfair-labor-practices-charge-filings-up-10-union-petitions-up-3-in-fiscal> [<https://perma.cc/9Q94-S665>].

Under these circumstances it takes an average of 454 days from the time a charge is filed for an ALJ to issue a decision. Jennifer A. Abruzzo & Lauren McFerran, *Memo to the ABA Committee on Practice and Procedure Under the National Labor Relations Act* (Mar. 4, 2024) (“GC Memo 24-03”), <https://www.nlr.gov/guidance/memos-research/general-counsel-memos> [<https://perma.cc/6RZL-P7KF>].¹⁵

But an ALJ decision does not end the matter. The employer can appeal to the NLRB Board, which draws the process out further. The median time between when a case reaches the Board on appeal and the issuance of a Board Decision is an additional 117 days. *See*

¹⁵ Notably, these numbers understate the length of time it takes for the NLRB to process unfair labor practice (ULP) charges because the statistics include representation cases, which move more quickly. Since 2009, the Board appears to have consolidated representation cases and ULP cases in its statistics. But in 2009, the Board estimated that it took twice as long to process ULP cases as representation cases. *See* NLRB, *Seventy Fourth Annual Report* at 14 (2009), <https://www.nlr.gov/reports/agency-performance-reports/historical-reports/annual-reports> [<https://perma.cc/MA25-PATT>].

id. That means that full adjudication can take upwards of a year and a half, and often longer.¹⁶

Even a favorable Board decision does not guarantee a remedy. Board decisions are not self-executing. That means an employer may choose to either abide by the decision or force the NLRB to petition a court of appeals for enforcement. The process can take years.

In the meantime, other employees remain in the workplace, watching months and years pass while victims of retaliatory termination wait to be reinstated. These remaining workers will often learn of the struggles of their fired colleagues—the inability to pay bills or care for children, deferred medical coverage, and mental health issues. And the remaining workers will wonder whether they can risk exercising their rights under the NLRA, after they have seen others pay the price. When nearly half of all Americans have less than \$500 in savings, most workers cannot afford to wait upwards of 571 days to get their jobs back.¹⁷

The passage of time inevitably affects the mindset of employers, too. They know they can violate the NLRA without facing consequences until years into the future. A compounding factor is the limited nature of remedies in NLRB cases. Unlike many employment

¹⁶ This estimate is based on adding 454 days (the average amount of time it takes from issuance of a complaint until an ALJ decision) to 117 days (the median time between when a case reaches the Board to the issuance of a Board Decision), which amounts to 571 days on average from filing a charge to final disposition. *See* GC Memo 24-03 at 3–4.

¹⁷ Mike Winters, *How Much Money Americans Have in their Savings Accounts—Nearly Half Have Less than \$500*, CNN (Jan. 24, 2024, 12:59 PM), <https://www.cnn.com/2024/01/24/how-much-money-americans-have-in-savings.html> [<https://perma.cc/ZHP2-JACE>].

claims litigated in court, punitive damages and emotional distress damages are unavailable in NLRB proceedings. Likewise, employers face no risk of paying attorney's fees to the NLRB. Rather, damages are usually limited to backpay.¹⁸ For example, Starbucks is likely to pay at most approximately \$12,000 for its unlawful termination of Saxton.¹⁹

Given these circumstances, effective interim relief is critical. Without it, organizing efforts will often fizzle out due to the chill caused by unlawful and unremedied anti-union retaliation. And employers will have little incentive to self-correct their unlawful practices as the NLRB process unfolds. Congress therefore enacted Section 10(j) to permit prompt interim relief before final adjudication. *See* S. Rep. No. 105, at 27 (1947); *Fuchs ex rel. NLRB v. Hood Indus., Inc.*, 590 F.2d 395, 397 (1st Cir. 1979) (Section 10(j) “is designed to fill the considerable time gap between the filing of a complaint by the Board and issuance of its final decision, in those cases in which considerable harm may occur in the interim”).

¹⁸ *See* Ann Stansbury, *Do US Firms Have an Incentive to Comply with the FLSA and the NLRA?*, Peterson Inst. for Int'l Econ., Working Paper No. 21-9, 32 (June 2021), <https://www.piie.com/publications/working-papers/do-us-firms-have-incentive-comply-flsa-and-nlra#:~:text=These%20analyses%20illustrate%20that%20neither,toward%20unions%2C%20is%20not%20surprising> [<https://perma.cc/W7V9-X7PZ>] (concluding that because the “maximum penalty” under the NLRA is “having to reinstate [a] worker with backpay,” employers have little financial incentive to comply with the Act).

¹⁹ The revenue of Starbucks Corporation in 2023 was \$36.69 billion. *See* Stock Analysis, Starbucks Corporation (Mar. 21, 2024), <https://stockanalysis.com/stocks/sbux/revenue/> [<https://perma.cc/K334-BK54>].

While Section 10(j) provides a critical mechanism in enforcing the NLRA in the cases in which it is utilized, the Board acts carefully in deciding when to seek it. In the most recent fiscal year, 19,869 charges were filed with the agency, leading to 743 complaints issued. *See* GC Memo 24-03 at 2. Regional Offices submitted 81 of those cases to the agency's Injunction Litigation Branch to consider for Section 10(j) relief. *Id.* at 10. The Board authorized seeking Section 10(j) relief in only 14 cases. *Id.*²⁰ This number of injunctions authorized is fairly consistent over the prior five years, with the average per year over that timeframe being 15.6.²¹

²⁰ Starbucks wrongly suggests that the Regional attorneys who prosecute unfair labor practices themselves decide whether to seek a Section 10(j) injunction. In fact, the 10(j) process works as follows: A Regional Director files a complaint and determines that an injunction is warranted. The Director then submits a memorandum to the General Counsel's Injunction Litigation Branch (ILB) in Washington, D.C. recommending that the Board seek an injunction. If the ILB and the General Counsel agree, they make a recommendation to seek an injunction to the Board. If the Board agrees and approves seeking injunctive relief, the matter is transferred back to ILB with instructions to file for an injunction. *See* NLRB ULP Manual § 10310.3, <https://www.nlr.gov/guidance/key-reference-materials/manuals-and-guides> [<https://perma.cc/TXM3-Y4ZL>]; *see* NLRB 10(j) Manual § 5.0, <https://www.nlr.gov/guidance/key-reference-materials/manuals-and-guides> [<https://perma.cc/WR4E-YHVL>]. As evidenced by the number of requests made by Regions in 2023 (81) and the comparatively few authorizations by the Board to seek injunctions (14), the Board is discerning in which cases to authorize seeking injunctive relief.

²¹ *See* NLRB, *Injunction Activity under Section 10(j)*, <https://www.nlr.gov/reports/nlr-case-activity-reports/unfair-labor-practice-cases/litigation/injunction-litigation#:~:text=Injunction%20Activity%20under%20Section%2010,moves%20through%20the%20Board's%20process> [<https://perma.cc/L9T3-FSJM>].

B. The experiences of *amici* demonstrate the need for effective injunctive relief.

As *amici* engaged in union activity protected by the NLRA, they relied on the protections guaranteed by law. Yet, many have since waited years for any type of remedy. *Amici* and many of their colleagues who remain in the workplace now fear that the law cannot adequately protect them in exercising their rights under the NLRA.

Although an NLRB ALJ has already ruled that Rizzo was illegally disciplined, she has been waiting for nearly a year for a separate decision regarding the lawfulness of her termination. While she still believes she did the right thing in seeking better working conditions, her experience has shaken her faith in the process. Rizzo's colleagues fear that their statutory rights have little meaning if they cannot be enforced in time to protect them from the impact of the violation.

Cunningham was fired along with the other members of his store's organizing committee, the first to unionize in the District of Columbia. The long delay in relief for Cunningham has caused the union organizing campaign at his store to go cold. The Union has not been able to assuage workers' fears about participating in union activities. It is not hard to see why—those most vocal in supporting the union are now gone. The message to the remaining workers was loud and clear: if you support the union, you will be fired. And the message that workers hear when their proceedings drag on without interim relief is just as clear: Starbucks can get away with firing workers and will suffer no consequences in the near term.

On the day Oakry and Hurst were fired, their manager insisted on announcing it in front of their co-workers, who saw the store lose two devoted union

leaders before their eyes. After more than a year, Oakry and Hurst are still waiting for relief. In the meantime, the unionization effort at their store failed—one of the few Starbucks stores where workers have voted against unionization.

A.C. is holding her breath for a 10(j) decision because she needs her job back to be able to provide for her children. She wants her children back home more than anything. If she is reinstated, she says the first thing she would do is get in the car and pick up her kids. After that, she is eager to return to the job that she loved, and the promotion she was working towards. She is also committed to reigniting the unionization effort that she started more than a year ago. After she was fired, A.C.'s co-workers feared that they would face a similar fate if they continued their union activities in her absence. Although A.C. tried to reassure them, the union campaign at the store seems to have come to a halt.

E.G. has had to temper his union advocacy in an attempt to avoid termination, especially after his manager issued him a final written warning and slashed his hours. He still works at Starbucks but now thinks twice before standing up for his rights at work, speaking up for a co-worker, or discussing the union in the store. The policy under which E.G. was apparently disciplined has been declared illegal by NLRB ALJs. *See Starbucks Corp.*, No. 04-CA-294636, JD-50-23 (Aug. 10, 2023) (NLRB ALJ Decision) (finding Starbucks “How We Communicate” policy unlawful). Now, E.G. is waiting for the agency process to run its course. But the prospect of eventual relief from the Board, which could easily take years, is of little comfort to E.G., who has to provide for himself and his daughter in the meantime.

In contrast to the loss of union support at Starbucks locations where the company's labor violations have

thus far gone unabated, the union campaign was able to rebuild at the Memphis location due to the injunctive relief the district court ordered in the instant case. After Starbucks decimated the bargaining committee by firing all but one of its members on the same day, the 10(j) relief ordered in this case was able to bring the store back from the brink by restoring the bargaining committee and mitigating the chill caused by the retaliatory firings. *Amicus* Escobar continues to work at the store. He was able to get his life back on track when he was reinstated under the district court's order. He still remembers when he got the call saying he could return to work. It seemed too good to be true. Getting his job back meant that he could once again afford his tuition payments and living expenses. It also restored his faith in the system. Moreover, by returning to work, he was able to show his co-workers that the law would protect them too. Escobar explained, "the last thing I wanted to do was leave the store behind, especially our store. Because if we don't have the Memphis 7 there, that would be scary for other workers who want to be part of the union." Escobar believes that his coworkers were almost as happy to have him back as he was to return to work. For them, his return affirmed that the right to organize had the full force of law behind it.

CONCLUSION

Amici decided to unionize because they believed that, by joining together with their co-workers, they could ensure better treatment for themselves, better lives for their families, and even a better experience for customers. They relied on the central guarantee of the NLRA: the right to organize at work without employer retaliation.

The company's violations of the NLRA have been devastating to *amici* and many other Starbucks work-

ers. Starbucks has violated its workers' rights over 400 times, according to ALJ decisions. But the administrative process is slow—and made slower by the deluge of violations by Starbucks in recent years. Many charges are still stuck in preliminary proceedings. In the meantime, the affected workers have emptied their savings accounts, deferred medical care, and struggled to keep a roof over their heads and their children fed and clothed. Their nascent organizing efforts that are supposed to be protected under law have been wrongfully stifled at many stores. Workers have learned that the deck is stacked against them. Adopting Starbucks's arguments will only decrease the effectiveness of one of most important tools in advancing the purpose of the NLRA.

For all the foregoing reasons and those stated in the National Labor Relations Board's brief, the decision of the Sixth Circuit should be affirmed.

Respectfully submitted,

G. MICAH WISSINGER
 Levy Ratner, P.C.
 80 Eighth Avenue, 8th Floor
 New York, NY 10011
 (212) 627-8100
 mwissinger@levyratner.com

DANIEL M. ROSENTHAL
Counsel of Record
 MICHAEL P. ELLEMENT
 CHARLOTTE H. SCHWARTZ
 EMILY R. POSTMAN
 James & Hoffman, P.C.
 1629 K Street, NW, Suite 1050
 Washington, DC 20006
 (202) 496-0500
 (202) 496-0555 facsimile
 dmrosenthal@jamhoff.com
 mpellement@jamhoff.com
 chschwartz@jamhoff.com
 erpostman@jamhoff.com

