No. 26A______

IN THE SUPREME COURT OF THE UNITED STATES

NP RED ROCK LLC D/B/A RED ROCK CASINO RESORT SPA,

Applicant,

v.

NATIONAL LABOR RELATIONS BOARD

Respondent.

EMERGENCY APPLICATION FOR A STAY OF MANDATE PENDING THE DISPOSITION OF PETITION FOR CERTIORARI AND REQUEST FOR ADMINISTRATIVE STAY

DAVID R. DOREY
Counsel of Record
FISHER & PHILLIPS LLP
1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005
(202) 429-3706
drdorey@fisherphillips.com

CHRISTOPHER J. MERKEN
FISHER & PHILLIPS LLP
Two Logan Square
100 North 18th Street, 12th Floor
Philadelphia, PA 19103

REYBURN W. LOMINACK, III
FISHER & PHILLIPS LLP
1320 Main Street, Suite 750
Columbia, SC 29201

MARK J. RICCIARDI
FISHER & PHILLIPS LLP
300 South Fourth Street, Suite 1500
Las Vegas, NV 89101

PARTIES TO THE PROCEEDING

Applicant (Petitioner below) is NP Red Rock LLC d/b/a Red Rock Casino Resort Spa.

Respondent (Respondent below) is the National Labor Relations Board.

RELATED PROCEEDINGS

National Labor Relations Board:

NP Red Rock LLC, 373 N.L.R.B. No. 67 (June 17, 2024)

United States Court of Appeals (D.C. Cir.):

NP Red Rock LLC, d/b/a Red Rock Casino Resort Spa v. National Labor Relations Board, No. 24-1221 (August 24, 2026) (order denying motion to stay mandate pending petition for writ of certiorari); (June 10, 2026) (judgment)

RULE 29.6 STATEMENT

Applicant NP Red Rock LLC d/b/a Red Rock Casino Resort Spa ("Red Rock") is wholly owned by Station Casinos LLC ("Station Casinos"). Station Casinos is a subsidiary of, and is managed and controlled by, Red Rock Resorts, Inc., a publicly held corporation (NASDAQ: "RRR").

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To The Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the District of Columbia Circuit:

Pursuant to Rules 22 and 23 of the Rules of this Court and 28 U.S.C. §§ 1651, 2101(f), Applicant NP Red Rock LLC d/b/a Red Rock Casino Resort Spa ("Red Rock") respectfully requests an emergency order staying the **August 31, 2026** issuance of the mandate of the United States Court of Appeals for the District of Columbia Circuit pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. Red Rock also respectfully requests an immediate administrative stay to prevent the threat of irreparable injury while this application is pending.

INTRODUCTION

Federal labor law permits employers to improve benefits for their employees. In 2019, Red Rock's parent company – Station Casinos – decided to enhance benefits for almost 14,000 employees across ten hotel and casino properties in Las Vegas, just one of which was Red Rock. That decision was part of a lengthy corporate strategy to restore Station Casinos' culture and ensure its ten properties would be the employers of choice for Las Vegas employees.

After significant corporate deliberation and complex implementation preparations, Station Casinos' corporate leadership approved the benefits-improvement rollout on November 19, 2019. Two days ***later***, the union representing employees at seven of Station Casinos' other properties petitioned to represent certain Red Rock employees. This was the first time that the union openly sought to represent such employees. An election was held a month later, and the union undeniably lost.

Upset at the loss, the union filed unfair labor practice charges and objections, principally claiming that Red Rock (through Station Casinos) unlawfully and objectionably influenced the outcome of the election by promising, granting, and announcing improved benefits before the vote. The NLRB sought an extraordinary bargaining order purportedly consistent with this Court's decision in *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575 (1969) (a "*Gissel* Order"). A *Gissel* Order requires an employer to bargain with a union even when the employees have not voted to join that union, stripping employees of their autonomy and ignoring their prerogatives. Accordingly, a *Gissel* Order is "an 'extreme remedy' warranted only under certain unusual scenarios." *United Steel Workers of Am. AFL-CIO-CLC v. N.L.R.B.*, 482 F.3d 1112, 1117 (9th Cir. 2007) (quoting *Gardner Mech. Servs., Inc. v. NLRB*, 115 F.3d 636, 642 (9th Cir. 1997)). This is because, like here, it forces union representations on employees who have rejected such representation.

There was nothing extraordinary or unusual about Station Casinos' decision to improve benefits for its 14,000 employees across ten properties, nine of which were not Red Rock. Nevertheless, the NLRB sought interim relief under Section 10(j) of the NLRA. Despite the enhanced benefits implementation starting before the union sought recognition of any Red Rock employees, the District Court found that the timing and rollout of the benefits were intended to deter the union's organizing effort and ordered Red Rock to recognize and bargain with the union pending completion of the Board's administrative proceedings. Red Rock complied with that interim order. After the administrative proceedings, the Board found that Red Rock's conduct, including the benefits rollout that were underway before the union formally sought recognition, warranted a remedial *Gissel* Order. In so doing, the NLRB ignored Red Rock's compliance with the district court's order, the absence of any adjudicated unfair labor practices, and all facts favorable to Red Rock (which would cut against the draconian *Gissel* Order).

Red Rock petitioned for review. In June, the United States Court of Appeals for the District of Columbia Circuit denied the petition and granted enforcement of the *Gissel* Order. Red Rock sought panel rehearing and rehearing *en banc*. The D.C. Circuit denied rehearing on August 6. Red Rock then sought a stay of the mandate pending its petition for a writ of certiorari. The D.C. Circuit denied a stay on August 24, 2026.

The NLRB improperly imposed an extraordinary order (against the wishes of Red Rock's own employees) to remedy an ordinary (and lawful) business decision mostly affecting non- Red Rock employees. The D.C. Circuit allowed that extraordinary order to stand. Both decisions were wrong, and Red Rock's petition for certiorari will explain why. But absent a stay of the issuance of the D.C. Circuit's mandate – which will issue on **August 31, 2026** – Red Rock and its employees will suffer irreparable harm because Red Rock senior executives will be forced to conduct and employees will be forced to participate during worktime in an extraordinary and damaging public-notice reading meeting, a bell that cannot be unrung, and Red Rock will be have to bargain with a union its employees rejected.

The D.C. Circuit has recognized the serious relational consequences between the employer and employees such a remedy may carry. Although it upheld the modified notice-reading order in *HTH Corp. v. N.L.R.B.*, 823 F.3d 668 (D.C. Cir. 2016), based on the employer's extensive history of severe and pervasive violations, the court discussed the concern that a compelled public reading can be humiliating and can have a lingering adverse effect on future labor relations. Thus, a compelled notice reading—particularly one conducted by a Board agent before employees and company management—is not simply another method of disseminating a notice. It is a highly public remedial measure that may undermine management credibility and aggravate, rather than repair, an already strained employer-employee relationship. Once carried out, its effects cannot realistically be undone through later litigation or a subsequent Board order.

The Court should issue a stay pending Red Rock's petition for a writ of certiorari to protect both the rights of employers to extend benefits to their employees and the rights of employees to reject union representation.

JURISDICTION

The Court has jurisdiction under 28 U.S.C. §§ 1651(a) and 2101(f) to stay the issuance of the D.C. Circuit's mandate pending the filing and disposition of Red Rock's petition for a writ of certiorari.

REASONS FOR GRANTING THE APPLICATION

An applicant is entitled to a stay pending the filing and disposition for a writ of certiorari upon a showing of likelihood of success on the merits, a reasonable probability of obtaining a writ of certiorari, and the likelihood of irreparable harm. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). If it is a close call, "the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* (citing *Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers)).

The Court's Circuit Justice may also issue injunctions under the All Writs Act, 28 U.S.C. § 1651(a) when "[a]pplicants are likely to succeed on the merits of their … claim," when they would be "irreparably harmed," and when issuing the injunction would not harm the public interest. *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam). This application presents "critical and exigent circumstances," the legal rights at issue are "indisputably clear," and an injunction is necessary to aid the Court's jurisdiction. *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regul. Comm'n*, 479 U.S. 1312 (1986) (Scalia, J., in chambers).

A Circuit Justice may grant an application for an injunction without it serving as "an expression of the Court's views on the merits." *Little Sisters of the Poor Home for the Aged v. Sebelius*, 571 U.S. 1171 (2014) (Mem). All that is needed is a "fair prospect" that the Court will reverse the judgment below and that irreparable harm is "likely." *Lucas*, 486 U.S. at 1304.

Presentation of a serious question is a significant factor in weighing whether to grant injunctive relief pending appeal. *Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021).

I. There is a Reasonable Probability That the Court Will Grant Certiorari.

A. Red Rock's Petition Will Allow the Court to Resolve a Circuit Split Concerning Whether a Benefits Grant is a Hallmark Violation Capable of Supporting a Bargaining Order.

The Courts of Appeals that have addressed the question unanimously agree that a *Gissel* bargaining order is an extraordinary remedy because it requires an employer to recognize and bargain with a union that did not win a Board-conducted election.[1] Such an order is appropriate only when the employer has committed a hallmark violation. *Scomas of Sausalito, LLC v. NLRB*, 849 F.3d 1147, 1156 (D.C. Cir. 2017); *see also Skyline Distribs. v. NLRB*, 99 F.3d 403, 410-12 (D.C. Cir. 1996) (declining to enforce bargaining order where the benefits grant was insufficiently serious and traditional remedies could adequately protect a fair election).

The Board identified Station Casinos' companywide benefits grant as the relevant hallmark violation, but the plan was approved two days ***before*** the union

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[1] *See, e.g.*, *Novelis Corp. v. N.L.R.B.*, 885 F.3d 100, 108-09 (2d Cir. 2018) (explaining that a *Gissel* bargaining order is "a rare remedy") (citation modified); *Overnite Transp. Co. v. N.L.R.B.*, 280 F.3d 417, 435-36 (4th Cir. 2002) (explaining that "it is the strong preference of our national labor policy not to impose collective bargaining representatives on employees except where they have, by a majority vote, elected to be so represented"); *Henry Bierce Co. v. N.L.R.B.*, 23 F.3d 1101, 1110 (6th Cir. 1994) (explaining that a "bargaining order . . . is an extraordinary remedy" which the Court of Appeals will "'scrutinize very closely'") (citation modified); *Montgomery Ward & Co. v. N.L.R.B.*, 904 F.2d 1156, 1159 (7th Cir. 1990) (explaining that *Gissel* orders lead to a "drastic consequence" and that "grant[ing] a bargaining order in any instance other than in the last resort (when other traditional remedies are available)" is an abuse of discretion) (citation modified); *United Steel Workers*, 482 F.3d at 1117 (9th Cir. 2007) ("A *Gissel* order is an 'extreme remedy' warranted only under certain unusual scenarios.") (quoting *Gardner Mech. Servs.*, 115 F.3d at 642); *N.L.R.B. v. Goya Foods*, 525 F.3d 1117, 1129 (11th Cir. 2008) (explaining that "an affirmative bargaining order is an 'extraordinary' remedy").

filed its petition. Critically, Red Rock's benefit changes preceded the union's petition, applied to nearly 14,000 employees across 10 properties, involved sweeping changes to multiple benefit plans and programs, and were approved by the union for properties it already represented. In its petition for certiorari, Red Rock will argue that those circumstances squarely fall under *Skyline* and that the D.C. Circuit panel improperly relied on *St. Francis Federation of Nurses & Healthcare Professionals v. NLRB*, 729 F.2d 844 (D.C. Cir. 1984), when that decision is inconsistent with the D.C. Circuit's later decisions in *Skyline* and *Scomas*.

The decision below further entrenches a highly consequential circuit split. The Sixth and Seventh Circuits, like the D.C. Circuit in *Skyline*, treat unlawful wage or benefit increases as non-hallmark conduct. *See, e.g.*, *DTR Indus., Inc. v. NLRB*, 39 F.3d 106, 115 (6th Cir. 1995) (concluding that an unlawful wage increase was "not of the hallmark variety"); *NLRB v. Gruber's Super Market, Inc.*, 501 F.2d 697, 703 (7th Cir. 1994) (concluding that an unlawful wage increase "clearly does not involve 'outrageous' unfair labor practices").

The Second and Ninth Circuits reject that approach and treat election-directed benefits grants as hallmark violations. *See, e.g.*, *N.L.R.B. v. J. Coty Messenger Serv., Inc.*, 763 F.2d 92, 99 (2d Cir. 1985) (citing *N.L.R.B. v. Jamaica Towing, Inc.*, 632 F.2d 208, 212-13 (2d Cir. 1980)); *Scott ex rel. N.L.R.B. v. Stephen Dunn & Assocs.*, 241 F.3d 652, 666 (9th Cir. 2001), *abrogated on other recognized by Int'l Bhd. of Teamsters v. N.L.R.B.*, 2026 WL 1952740, at *8 (9th Cir. July 1, 2026).

The circuit split here is patent. Moreover, it is outcome-determinative (in this and other actions) because the Board in this action relied on Red Rock's benefits grant as the hallmark violation purportedly justifying its extraordinary imposition of a *Gissel* Order.

B. Red Rock's Petition Will Present a Substantial Question Concerning Whether the Board Adequately Considered Existing Circumstances When it Imposed the Bargaining Order.

The Board was required to assess a *Gissel* order considering the then-existing circumstances when the order is entered. *Charlotte Amiptheater Corp. v. N.L.R.B.*, 82 F.3d 1074, 1078-80 (D.C. Cir. 1996). That requirement guards against the danger that an order intended to vindicate the rights of *past* employees will infringe the rights of *current* employees to decide whether they want to be represented.

Here, the Board failed to meaningfully account for Red Rock's yearslong compliance with the Section 10(j) injunction. Red Rock recognized and bargained with the union. Red Rock ceased the challenged conduct. Red Rock distributed and publicly read the injunction. Red Rock remained subject to judicial restraints against recurrence.

The Board ignored Red Rock's years of unquestioned compliance. The Board ignored the absence of any subsequent adjudicated unfair labor practices. Instead, according to the rehearing petition, the Board relied on allegations in an unproven complaint – allegations Red Rock categorically denies – to speculate that some innominate changed circumstances could maybe, possibly, hypothetically prevent a fair election. Multiplying its deficient analysis, the Board purported to rely on issuance of an unproven complaint against Red Rock and other Station Casinos' properties to reach its desired conclusion.

The Board's flawed analysis is consequential. The organizing campaign and election occurred in **2019**; the Board issued its order in **2024**; and the D.C. Circuit ordered enforcement in **2026**. Yet the remedy tenuously rests on the false premise that the historical violations still make a fair election unlikely and that authorization-card sentiment from an earlier workforce remains a better measure of employee choice. Whether the Board may impose that remedy without a reasoned, evidence-based assessment of intervening compliance and current labor circumstances presents an important and recurring federal question the Court should resolve.

II. There is a Fair Prospect That the Court Will Reverse the D.C. Circuit's Decision.

Red Rock's petition for a writ of certiorari will ask the Court to resolve an entrenched circuit split and confirm what conduct constitutes a hallmark violation under federal labor law. Specifically, Red Rock will ask the Court to confirm that (i) union elections – not NLRB orders – should be the vehicle for determining whether a union can represent employees; and (ii) the NLRB must consider all then-existing circumstances when imposing extraordinary *Gissel* Orders. The D.C. Circuit ignored both questions in the decision below. Accordingly, there is a fair prospect the Court will reverse the D.C. Circuit's decision.

To start, the D.C. Circuit improperly characterized certain other underlying conduct as pervasive and egregious. That was a misstep. The seriousness of historical violations does not eliminate the distinct legal requirements that a remedy must both rest on qualifying conduct and the NRLB's explanation for why current (not historical) circumstances render traditional remedies and a fair union election inadequate. There is at least a fair prospect that the Court will vacate the enforcement judgment based on the NLRB's (and D.C. Circuit's) failure to comply with these prerequisites.

Red Rock also raised a structural constitutional question below, which the D.C. Circuit declined to consider: whether the removal protections applicable to the NLRB and its ALJs conflict with *Noel Canning v. N.L.R.B.*, 705 F.3d 490, 496-98 (D.C. Cir. 2013), and *UC Health v. N.L.R.B.*, 803 F.3d 669, 672-73 (D.C. Cir. 2015). The D.C. Circuit's failure to consider these arguments squarely was error. *See Noel Canning*, 705 F.3d at 497 (considering structural constitutional challenge to the NLRB's authority to act without a quorum, raised for the first time on appeal, because it went "to the very power of the [NLRB] to act and implicate[d] fundamental separation of powers concerns"); *UC Health*, 803 F.3d at 672-73.

The D.C. Circuit improperly reviewed the *Gissel* Order and failed to consider the structural constitutional challenge to the NLRB. Both errors raise a fair prospect that the Court will reverse the D.C. Circuit's decision.

III. Red Rock Will Suffer Irreparable Harm Absent a Stay.

If the D.C. Circuit's mandate issues on August 31, absent a stay, the mandate will make the Board's bargaining order immediately enforceable before this Court can consider Red Rock's certiorari petition. Red Rock may be compelled to exchange confidential information, formulate and communicate bargaining proposals, make institutional commitments, address terms and conditions of employment, and perform extraordinary public affirmative remedies while its challenge to the legal basis for bypassing an election remains pending.

Most critically, the public affirmative remedies the *Gissel* Board's Order requires simply cannot be fully undone if the Court later grants certiorari and sets aside the order. Section 2(p) of the Order requires Red Rock to:

> Hold a meeting or meetings during working hours at its facility in Las Vegas, Nevada, scheduled to ensure the widest possible attendance of bargaining unit employees, at which the attached Notice to Employees marked "Appendix A" and the attached explanation of rights marked "Appendix B" will be read to employees in English and Spanish ***by human resources senior vice president Phil Fortino (or his successor), in the presence of General Manager Scott Nelson (or his successor)***, a Board agent, and, if the Union so desires, a union representative, or, at the Respondent's option, ***by a Board agent in the presence of Fortino (or his successor), Nelson (or his successor)*** and, if the Union so desires, a union representative. ***Chief Operating Officer Robert Finch must attend*** at least one meeting, and the meetings must be scheduled so that supervisors and managers of the Respondent's respective departments attend alongside the unit employees they supervise and manage. Copies of the notice and explanation of rights, in English and Spanish, after being signed by the Respondent's authorized representative, will be distributed by a Board agent during this meeting or

> meetings to each unit employee in attendance before the notice and explanation of rights are read.

30a-31a (emphases added). This is a one-time, non-reversible public action that reaches far beyond the customary remedy for an unfair labor practice, which is a Board notice simply requiring the employer to state that it will not engage in specified unlawful conduct and will honor employees' statutory rights. The notice is typically posted at the affected facility, with additional dissemination measures ordered when warranted. A public notice-reading requirement is materially different. It is an extraordinary remedy, reserved for circumstances in which the Board concludes that conventional remedies will ***not*** adequately dissipate the effects of serious or repeated violations. It is only in very rare situations where the NLRB compels a management or executive level official to read the Board's notice aloud to assembled employees or elect to have a Board agent read the notice in the mandatory presence of management or senior leadership. The Court's grant of certiorari cannot restore the *status quo*; absent the stay, Red Rock will suffer irreparable harm. *See, e.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (granting emergency application pending petition for writ of certiorari and noting that "'[t]he loss of first Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'") (quoting *Elrod v. Burns*, 427 U.S. 347, 374 (1976)).

Those consequences cannot be unwound. Disclosures from Red Rock to the union cannot later become confidential; proposals, concessions, and institutional commitments cannot be erased; and public notice-reading and related remedies may irreversibly affect employee perceptions and representation rights. Because Red

Rock's forthcoming petition for a writ of certiorari will challenge whether a permanent bargaining obligation may lawfully displace a secret-ballot election, enforcement before this Court's review would jeopardize the practice benefits of a successful appeal.

IV. The Remaining Equities and Public Interest Favor a Stay.

A stay will cause no cognizable prejudice. The events occurred in 2019, it is undisputed that Red Rock complied with extensive interim relief for years, and the proceedings have continued through 2026. Briefly preserving the *status quo ante* pending the Court's consideration of Red Rock's petition for certiorari presents no risk of renewed unlawful conduct or harm.

By contrast, denying a stay and allowing the D.C. Circuit's mandate to issue would impose the contested permanent bargaining relationship before this Court's review can occur. The public interest strongly favors this Court being afforded an opportunity to carefully review and scrutinize the D.C. Circuit's decision before enforcement of an extraordinary remedy that substitutes authorization cards from an earlier workforce for a secret-ballot election in which employees decisively voted against representation.

CONCLUSION

The Court should stay the issuance of the mandate by the United States Court of Appeals for the District of Columbia Circuit pending the resolution of Red Rock's petition for writ of certiorari. The Court should also grant an immediate administrative stay while it considers this emergency application.

Respectfully submitted,

CHRISTOPHER J. MERKEN
FISHER & PHILLIPS LLP
Two Logan Square
100 North 18th Street, 12th Floor
Philadelphia, PA 19103

REYBURN W. LOMINACK, III
FISHER & PHILLIPS LLP
1320 Main Street, Suite 750
Columbia, SC 29201

DAVID R. DOREY
Counsel of Record
FISHER & PHILLIPS LLP
1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005
(202) 429-3706
drdorey@fisherphillips.com

MARK J. RICCIARDI
FISHER & PHILLIPS LLP
300 South Fourth Street, Suite 1500
Las Vegas, NV 89101

Counsel for Applicant

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