



FOR IMMEDIATE RELEASE

February 27, 2024

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Supreme Court To Reject Most-Favored-Litigant Status For The NLRB *(Starbucks v. McKinney)*

“The NLRB should play by the same rules as every other litigant in federal court.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Today, Washington Legal Foundation (WLF) filed an amicus brief urging the U.S. Supreme Court to reverse a Sixth Circuit decision that gave the National Labor Relations Board most-favored-litigant status.

The appeal arises from a unionization effort by some workers at a Memphis coffee shop. Starbucks fired seven pro-union employees who illegally entered a store and opened the safe without authorization. Starbucks took no action against the pro-union workers who complied with the law. Still, the NLRB accused Starbucks of violating the National Labor Relations Act by firing the seven employees who broke the law. After starting administrative proceedings against Starbucks, the NLRB asked the District Court to force Starbucks to re-hire the workers during the administrative proceedings.

Bound by Sixth Circuit precedent, the District Court did not apply the traditional four-part test for preliminary injunctions. Rather, it applied a relaxed two-part test. Finding that the NLRB met its burden under this watered-down test, the District Court granted the preliminary injunctive relief. The Sixth Circuit affirmed and the Supreme Court granted certiorari to decide which test applies when the NLRB seeks a preliminary injunction.

As WLF’s brief shows, the Supreme Court has frequently rejected special rules for special areas of the law. In bankruptcy, tax, and patent law, for example, the Court has consistently rejected exceptionalism and applied traditional legal rules. The Supreme Court should continue this trend and apply the traditional four-part test for preliminary injunctions in NLRB cases.

WLF’s brief also shows the absurdity of the Sixth Circuit’s rule. It essentially requires only that, viewed in the light most favorable to the NLRB, the facts support a non-frivolous legal theory. That bar is very low, especially for a government actor. It should not be the case that the only time the NLRB is denied preliminary injunctive relief is when its attorneys could face disciplinary proceedings. Yet that is the rule in the Sixth Circuit. This rule leads to increased costs and uncertainty for businesses, which hurts our national economy.

Celebrating its 47th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

###