

# In Win for Employers, Supreme Court Adopts Stricter Test for NLRB Injunctions

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The US Supreme Court, in an 8-1 decision in *Starbucks Corp. v. McKinney*, ruled that federal district courts must apply a traditional four-factor test when evaluating requests for injunctive relief brought by the National Labor Relations Board (NLRB or Board).

In doing so, the Court resolved a circuit-split and, significantly, rejected the NLRB's request to apply a more permissive standard for determining the appropriateness of temporary injunctions in labor-related matters.

## The Purpose of Section 10(j) of the National Labor Relations Act

Section 10(j) of the National Labor Relations Act (NLRA) provides, in pertinent part, that upon issuance of an unfair labor practice "complaint" by the Board against either an employer or a union, the NLRB General Counsel may petition "any United States district court for appropriate temporary relief...as it deems just and proper" during the pendency of unfair labor practice proceedings regarding the issues raised in the complaint. This process permits the NLRB, in appropriate circumstances, to obtain temporary injunctive relief to restore the status quo during the litigation of alleged violations of the NLRA.

## The Factual Background of the *McKinney* Case and Holding of the US District Court

In *McKinney*, several employees of a Starbucks location in Memphis, Tennessee, held an after-hours media event at the store to promote their unionizing effort. Following an investigation by the employer, the employees were discharged for violating company policy. Thereafter, the union seeking potential certification as the exclusive collective bargaining representative of the store's employees filed unfair labor practice charges with the NLRB. Following a determination by the Board's Regional Director that a *prima facie* case of violation existed and issuance of an unfair labor practice complaint against the employer, the NLRB General Counsel filed a Section 10(j) petition in

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the US District Court for the Western District of Tennessee seeking reinstatement of the terminated employees pending litigation of the underlying unfair labor practice complaint.

The district court granted the injunction against the store, applying a two-step test argued for by the NLRB in which it only had to establish “reasonable cause to believe that unfair labor practices have occurred,” and that temporary injunctive relief was “just and proper.” Starbucks appealed, arguing that the court should have applied a stricter four-part test for the issuance of preliminary injunctions articulated in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008) which requires a showing of:

- A likelihood of success on the merits.
- Irreparable harm in the absence of preliminary relief.
- The balance of equities tipping in favor of preliminary relief.
- An injunction being in the public interest.

## The Supreme Court’s Decision

Following appeal, the Supreme Court agreed with Starbucks. Justice Clarence Thomas, writing for the majority, noted that different courts across the country had applied either the reasonable-cause test argued for by the NLRB, the *Winter* test, or some combination of the two. However, here, the Court held that nothing in Section 10(j) of the NLRA “overcomes the presumption that the four traditional criteria govern a preliminary-injunction request by the Board.” In support of its holding, the Court noted that the “reasonable-cause” test advocated by the NLRB “substantively lowers the bar for securing preliminary injunction” by granting too much deference to the NLRB’s view of the law, fact, and equities in the case. In this regard, the Court further observed that it was “hard to imagine how the [NLRB] could lose” under its proposed test. Accordingly, the *Winters* test, which, in its view, applied a less deferential approach, was adopted by the Court.

## Justice Jackson Dissents and Argues for More Deference to the NLRB

Justice Ketanji Brown Jackson concurred in the judgment but dissented in part. Although she agreed that the *Winters* test controlled, she argued that Congress granted the NLRB, as the agency primarily responsible for adjudicating labor disputes, significant deference on the likelihood of success prong. Therefore, here, Justice Jackson posited that the district court’s analysis of the NLRB’s likelihood of success should be “far less searching than normal.”

## A Setback for the NLRB’s General Counsel

The *Starbucks* decision is undoubtedly a setback for the NLRB’s reform-minded General Counsel Jennifer Abruzzo. Since her appointment by President Biden in 2021, she has moved aggressively to step-up enforcement actions against employers accused of violations of the NLRA, including, among scores of other well-settled principles of NLRB law since the passage of the NLRA in 1935, [prioritizing Section 10\(j\) injunctions](#). In particular, over the past three years, Abruzzo, with the support of a majority of the NLRB, has also sought to overturn well-established NLRB-precedents in areas outside enforcement, including, but not limited to, [advancing union-friendly positions on noncompete agreements](#), [severance agreements](#), and [union elections](#). However, the Supreme Court’s decision in *McKinney* may well signal the judiciary’s willingness to slow the Biden Board’s proactive efforts in attempting to disrupt longstanding, foundational principles of NLRB law.

## Impact on Employers

Employers will welcome the Supreme Court's decision as providing needed clarity on the standard governing petitions for temporary injunctive relief under Section 10(j) of the NLRA. While potential Section 10(j) relief remains a powerful statutory weapon in the NLRB's arsenal, the *McKinney* decision provides assurances to respondents charged with unfair labor practices that the NLRB must satisfy a higher bar before deploying it.

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