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 CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights and freedoms it guarantees. CAC has an interest in ensuring that courts interpret important federal statues, like the National Labor Relations Act, in accordance with their text and history, and thus has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In early 2022, Workers United filed charges of unfair labor practices against Petitioner Starbucks Corporation. Pet. App. 7a-9a. The charges alleged that Starbucks disciplined and then terminated seven employees who were publicly involved in a union organizing effort at a Memphis store, *id.* at 3a-7a, and took additional retaliatory actions at the store, including removing union literature from the community bulletin board, increasing managerial oversight of unionizing employees, and closing the store's café on pretextual grounds, *id.* at 79a-87a.

The General Counsel of the National Labor Relations Board ("Board"), the entity that Congress has "entrust[ed]" with the "maintenance and promotion of

[1] Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

industrial peace," *Phelps Dodge Corp. v. NLRB,* 313 U.S. 177, 194 (1941), investigated these charges. *See NLRB v. United Food & Com. Workers Union, Loc. 23, AFL-CIO*, 484 U.S. 112, 117 (1987) (explaining that the Board's General Counsel is responsible for the filing, investigation, and prosecution of unfair labor practice complaints, which are then adjudicated by the Board).

Following that investigation, the Board issued a complaint against Starbucks, and a Regional Director of the Board petitioned a district court for interim relief under Section 10(j) of the NLRA. Pet. App. 8a. Section 10(j) empowers the Board to seek "appropriate temporary relief or restraining order" from a district court during the pendency of its enforcement proceedings, and allows the district court to grant "such temporary relief or restraining order as it deems just and proper." 29 U.S.C. § 160(j). After reviewing evidence and hearing witness testimony, Pet. App. 69a-70a, the district court agreed with the Board's determination that the firing of Starbucks employees at the Memphis store had a chilling effect on unionization efforts at Starbucks locations as far as Florida and Tennessee, *id.* at 110a, and granted the Board's request for an injunction that, among other things, ordered that the employees be reinstated for the duration of the Board's proceedings, *id.* at 117a-20a.

Starbucks challenges this order. Relying on a line of cases in which this Court has "required a clear statement from Congress to supplant ancient rules governing equitable remedies," Pet'r Br. 14, it argues that a court determining whether the Board's requested relief is "just and proper" must apply a "stringent four-factor test," *id.* at 2, that does not permit deference to the Board's "version of the facts and law" or consideration of the Board's expertise, *id.* at 4.

This argument is simply wrong. Courts can and should consider the statutory context when exercising equitable authority authorized by a statute, and the statutory context here requires deference to the Board's findings.

Indeed, Starbucks's argument is belied by the text and history of Section 10(j). By the time Congress passed Section 10(j) in 1947, lawmakers had already engaged in a decades-long effort to limit the jurisdiction of federal courts over labor disputes, a "type of controversy for which many believed [courts] were ill-suited." *Marine Cooks & Stewards, AFL v. Panama S. S. Co.*, 362 U.S. 365, 369 n.7 (1960). Indeed, in the years preceding the 1947 amendment of the NLRA, Congress had almost entirely prohibited federal courts from using their inherent equitable powers to intervene in labor relations. In the 1947 amendments, Congress, consistent with that trend, left the mediation of the nation's labor disputes primarily to the Board's authority, but gave district courts jurisdiction to grant injunctive relief to facilitate the Board's exercise of its own authority in circumstances in which such relief was "just and proper." Because Congress had made the Board the primary authority for resolving disputes between unions and management, and court injunctions were only supposed "to preserve the issues presented for the determination of the Board as provided in the Act, and to avoid irreparable injury to the policies of the Act," *Jaffee v. Henry Heide, Inc.*, 115 F. Supp. 52, 58 (S.D.N.Y. 1953), district court determinations of whether to grant relief under Section 10(j) necessarily required deference to the Board's determinations.

Starbucks contends that such deference is improper because, in its view, Section 10(j)'s use of the phrase "just and proper" invokes "classic equity

language" that is at odds with such deference. Pet'r Br. 22. But this argument ignores the many times that Congress used the phrase "just and proper" to refer to inquiries in which the specific type of equitable test that Starbucks now says is required would be inappropriate, including in many statutory provisions passed in the years immediately preceding the enactment of Section 10(j).

For example, sections 10(e) and 10(f) of the NLRA, enacted in 1935, gave courts of appeals the "power to grant such temporary relief or restraining order as [they] deem[] just and proper" while reviewing orders of the Board. *See* National Labor Relations Act of 1935 ("NLRA"), Pub. L. No. 74-198, ch. 372, § 10(e-f), 49 Stat. 449, 454-55 (codified at 29 U.S.C. § 160(e-f)). Courts used their authority under these subsections to preserve the Board's authority during enforcement proceedings, and reviewed Board determinations deferentially, *see, e.g.*, *NLRB v. Waterman S.S. Corp.*, 309 U.S. 206, 226 (1940) (courts not permitted to "substitut[e] [their] judgment on disputed facts for the Board's judgment" when reviewing orders of the Board). Given the "presumption that equivalent words have equivalent meaning," especially "when repeated in the same statute," *Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998), the same deferential approach should inform this Court's understanding of "just and proper" in Section 10(j).

Finally, Starbucks purports to find support for its rule in several of this Court's more recent cases. Pet'r Br. 26-27 (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982); *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531 (1987); and *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483 (2001)). But none of these cases supports Starbucks's position that equitable relief should be divorced from the context of

the statute that authorizes such relief, and they certainly do not speak to what the statutory context requires here. In fact, these cases support the argument that any test—no matter how many factors it involves—must account for the "distinctive context of the NLRA." Resp. Br. 11; *see id.* at 9 ("The government's position . . . is not that courts should disregard traditional equitable principles, but rather that the statutory context should inform courts' application of those principles."). As this Court has made clear, whenever courts consider a request to enjoin violations of a law, they must remain "focused . . . on the underlying substantive policy" the law embodies. *Amoco Prod.*, 480 U.S. at 544.

In sum, since the early 1930s, lawmakers had endeavored to make "order out of the industrial chaos . . . that had resulted from the interjection of the federal judiciary into union-management disputes" by "limit[ing] severely" the availability of injunctions in the labor context. *Boys Markets, Inc. v. Retail Clerks Union, Loc. 770*, 398 U.S. 235, 251 (1970). In passing Section 10(j), Congress did not upend this arrangement. Rather, it sought to ensure that the Board would bear primary responsibility for resolving the nation's labor disputes, but that district courts would have the authority to grant injunctions at the Board's request when doing so was "just and proper." Starbucks's argument—that the words "just and proper" require courts to use a test that does not permit consideration of statutory context or deference to the Board's findings of fact and law—finds no support in Section 10(j)'s text and is at odds with its history. This Court should reject it.

ARGUMENT

I. Congress Passed Section 10(j) to Give Courts the Limited Power to Issue Injunctions to Aid the Board's Exercise of its Authority.

A. By the time lawmakers drafted Section 10(j), the use of injunctions to prevent labor unrest had become a matter of longstanding legislative concern. State and federal courts frequently enjoined strikes and other forms of labor activism, such that preventing "[g]overnment by injunction" and correcting the "abuses due to judicial intervention in labor conflicts" became a party plank in several presidential campaigns. Felix Frankfurter & Nathan Greene, *The Labor Injunction* 1-17 (1930). From the end of the nineteenth century to the first few decades of the twentieth, "the injunction asserted itself vigorously in the growing conflict of industrial forces in America," *id.* at 23, with the number of labor injunctions growing "like a rolling snowball," *id.* at 21; *see also* William E. Forbath, *Law and The Shaping of The American Labor Movement* 158 (1991) ("During the 1920s . . . the proportion of strikes met by injunctions to the total number of strikes reached an extraordinary 25 percent.").

When enjoining labor activity, courts relied predominantly on their own inherent equitable powers and issued injunctions whenever they thought traditional equitable tests made injunctive relief appropriate. For example, courts would enjoin strikes or protests upon an employer's claim of irreparable damage to property or business, *see* Frankfurter & Greene, *supra*, at 54, and judges would "estimate the probabilities" of the success of the employer's action, *id.* at 55; *see also id.* at 20-22 (describing tort claims raised by employers when seeking labor injunctions), before issuing injunctive relief.

Inspired by state-level precedents and labor activists' appeals to "liberty of contract," Forbath, *supra*, at 136, Congress became "intent upon taking the federal courts out of the labor injunction business," *Marine Cooks*, 362 U.S. at 369. In the Norris-LaGuardia Act, lawmakers "curtail[ed] and regulate[d] the jurisdiction of courts," *id.* at 372 n.7, prohibiting the issuance of "any restraining order or temporary or permanent injunction" in a "labor dispute," with limited exceptions, Pub. L. No. 72-654, § 4, 47 Stat. 70, 70-71 (1932); *id.* § 7 (injunction shall not issue "except after findings of fact by the court"). The impact of the Act, as one observer put it, was to "depriv[e] the courts . . . from using the injunction in the debonair fashion to which they had become accustomed." Charles O. Gregory, *Labor and the Law* 197 (1961); *see also* Forbath, *supra*, at 162 (describing the Norris-LaGuardia Act as a product of "growing disenchant[ment] with the courts").

Several years later, Congress passed the NLRA, which established substantive rights of covered employees and created the Board to enforce these rights and otherwise govern relationships between unions and management. NLRA, 49 Stat. 449 (codified at 29 U.S.C. §§ 151 *et seq*.). As Justice Frankfurter put it, the NLRA endeavored to preserve "industrial peace" by establishing the rights of covered employees to unionize. *Phelps Dodge Corp.*, 313 U.S. at 183; *see also* Robert F. Koretz, *Statutory History of the United States Labor Organization* 169 (1970) (noting that Frankfurter was likely the author of the Norris-LaGuardia Act's anti-injunction provision).

Much like the Norris-LaGuardia Act, the NLRA deliberately limited the role of federal courts in the administration of labor law. Eager to avoid "government by labor injunction," and to prevent labor organizations from being "subject[ed] . . . to the shifting canons

of the antitrust laws," Koretz, *supra*, at 342 (citing 79 Cong. Rec. 8537, 8539 (June 3, 1935) (Rep. Connery)), Congress limited the involvement of federal courts in the enforcement of the rights guaranteed by the NLRA. Instead, lawmakers "set up machinery for the peaceful settlement of labor disputes" in the form of the Board's policymaking and enforcement procedures. *Id.* at 341. As this Court observed at the time, Congress "deemed it wise to entrust the finding of facts" to the Board, *Waterman S.S. Corp.*, 309 U.S. at 208-09, leaving labor policy to "administrative competence," with limited judicial interference, *Phelps Dodge*, 313 U.S. at 194.

Under the NLRA's judicial review provisions, the Board had the authority to bring and adjudicate charges of unfair labor practices and petition courts of appeals for enforcement if needed. When the Board's adjudications were reviewed by courts of appeals, its determinations were subject to a "substantial evidence" standard of review, in which the Board's findings would be accepted when the record was not "wholly barren of evidence" to sustain them. *Consol. Edison Co. of N.Y. v. NLRB,* 305 U.S. 197, 229 (1938); 2 Ludwig Teller, *The Law Governing Labor Disputes and Collective Bargaining* 1092 (1940) (describing the substantial evidence standard of review under the NLRA); *id.* at 1071 ("The Board is exclusively vested with the power and duty to enforce the Act."). In the years immediately following the NLRA's passage, appellate judges so bristled at the Act's deferential standard of review that one judge allegedly complained that the courts had become "rubber stamps" whose only option was to approve what the Board had ordered. Gregory, *supra*, at 350. It was clear that, as this Court put it, it was "[t]he Board [and] not the courts [that] determines under this statutory scheme how the effect

of unfair labor practices may be expunged." *NLRB v. Link-Belt Co.*, 311 U.S. 584, 600 (1941).

B. When drafting Section 10(j) in the 1940s, members of Congress sought to maintain the limited jurisdiction of federal courts in labor disputes. Section 10(j) was a component of the Labor Management Relations Act ("LMRA"), Pub. L. No. 80-101, ch. 120, § 10(j), 61 Stat. 136, 149 (1947), a set of amendments to the NLRA. Enacted in response to a reported increase in "industrial strife," these amendments sought to "equalize legal responsibilities of labor organizations and employers" by subjecting unions to obligations that would be enforced by the Board alongside the NLRA's existing constraints on employers, *see* S. Rep. No. 80-105, at 1-2 (1947). Section 10(j) created a limited exception to the Norris-LaGuardia Act's prohibition on labor injunctions, allowing courts to grant temporary relief against "any person [who] has engaged in or is engaging in an unfair labor practice," but only if the Board petitioned for such relief. *See* LMRA § 10(j), 61 Stat. at 149; Koretz, *supra*, at 552 (describing Section 10(j) as a "limited" revival of the use of injunctions in labor cases).

Neither Section 10(j) nor any other provision of the LMRA changed the NLRA's basic premise that the Board had the ultimate authority to enforce labor law, subject to limited review by the courts of appeals. The LMRA made limited procedural reforms to the NLRA to address the Board's "reputation for partisanship." S. Rep. No. 80-105, at 2 (1947). Convinced that "Congress intended the Board to function like a court," *id.* at 9, the amendments separated the Board's prosecutorial and investigatory components and implemented other reforms to encourage individual Board members to come to their own decisions, much like judges on the courts of appeals. Koretz, *supra*, at 552. Lawmakers

saw this separation of powers—not the intervention of the courts—as key to preventing administrative abuses, noting that a "judicial decision of the Board" would "provide for the redress of any injustice." *Id.* at 670 (quoting 93 Cong. Rec. 7523, 7538 (June 23, 1947) (Sen. Taft)). They did not change the NLRA's provisions regarding judicial review.

In this context, the injunctions permitted by Section 10(j) served only to supplement the Board's authority to redress injustice by allowing it to preserve the status quo during enforcement proceedings. As the Senate Committee that drafted Section 10(j) put it, the Board's existing hearing and enforcement procedures had failed to "achiev[e] the desired objectives," S. Rep. 80-105, at 8 (1947), because its orders were not self-enforcing and could be violated during the "lengthy" period of litigation required to secure an enforcement order from the courts of appeals, *id.* at 27. To solve this problem, lawmakers "provided that the Board, acting in the public interest and not in vindication of purely private rights, may seek injunctive relief in the case of all types of unfair labor practices." *Id.* at 8. The availability of this new form of relief would make it possible for the Board to "restore or preserve the status quo pending litigation," *id.* at 27, and more effectively eliminate "obstructions to the free flow of commerce," *id.* at 8.

The Board's discretion was essential to Congress's plan in enacting Section 10(j). Some members of Congress opposed even the small incursion of the federal courts into the field of labor law occasioned by Section 10(j). They feared that the Board would be "harassed by demands that it seek immediate injunctive relief," which would eventually "oust the Board of jurisdiction" over the issue. *See* S. Rep. 80-105, pt. 2, at 18 (1947). Others wanted courts to exercise *more* control

over labor organizations. *See* Koretz, *supra*, at 551 (noting that Congress considered, but abandoned, the option of permitting direct injunctive relief against unions); *Muniz v. Hoffman*, 422 U.S. 454, 466 (1975) (describing the defeat of an amendment that would have authorized private injunctive actions against unions).

In this environment, Section 10(j) was a compromise proposal in which the Board's discretion was essential to limiting judicial power regarding the fraught issue of labor relations. Lawmakers were convinced that Section 10(j) would give the Board "adequate authority to discharge [its] duty expeditiously," and that, because the Board would "exercise an informed discretion" in obtaining injunctive relief, the proposal would in no way invite the labor injunctions that had "applied in days gone by." 93 Cong. Rec. 1884, 1912 (Mar. 10, 1947) (Sen. Morse).[2]

C. This history is reflected in two aspects of the text of Section 10(j). First, Section 10(j) is primarily a grant of authority to the Board, rather than to district courts. *See* 29 U.S.C. § 160(j) ("[t]he Board *shall have*

[2] To support its four-factor test, Starbucks points to the fact that Board representatives pledged to take a cautious approach to seeking 10(j) injunctions. *See* Pet'r Br. 31 (citing 1947 statement of then-General Counsel Denham). The *Board's* discerning approach, which persists today, *see* Resp. Br. 39 (describing the Board's "highly selective" approach to Section 10(j) relief, and noting that 14 of its 743 complaints resulted in Section 10(j) petitions in FY 2023), has no bearing on the standard that *courts* should use to evaluate the Board's requests under Section 10(j). If anything, the Board's initial hesitation to seek Section 10(j) relief only confirms that Board staff have understood that it was primarily the Board—not the courts—that would perform a searching review of the facts to assess when injunctive relief was appropriate. *See* Rothenberg, *supra*, at 632 (quoting Denham to support the statement that "[w]hether or not such proceedings will be instituted is a matter of discretion with the Board").

power, upon issuance of a complaint . . . to petition any United States district court" (emphasis added)). It "confers a right in the Board to institute the described injunctive proceedings," I. Herbert Rothenberg, *Rothenberg on Labor Relations* 632 (1949), and merely permits district courts to issue injunctions that facilitate the Board's efforts when it is "just and proper" to do so.

Second, Section 10(j) does not grant district courts jurisdiction to review the Board's ultimate resolution of the underlying complaint. Rather, an entirely separate section of the NLRA vests judicial review of "the findings of the Board with respect to questions of fact" in an entirely different judicial body: the courts of appeals. *See* 29 U.S.C. § 160(e); *id.* § 160(f) (providing for review upon petition from the Board in "any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business" and allowing any person "aggrieved by a final order of the Board" to petition for review). And even that review—again, by a court of appeals rather than a district court—must be deferential in nature: the Board's factual findings "shall be conclusive" if "supported by substantial evidence on the record considered as a whole." *Id.* § 160(e).

A district court operating under Section 10(j), therefore, has a distinct and very minimal role. It is "not to adjudicate the merits of the unfair labor practice case," because "[t]he question of whether a violation of the Act has been committed is a function reserved exclusively to the Board," subject to judicial review in an entirely different federal court. *NLRB v. Ky. May Coal Co.*, 89 F.3d 1235, 1239-40 (6th Cir. 1996) (quoting *Fleischut v. Nixon Detroit Diesel, Inc.*, 859 F.2d 26, 29 (6th Cir.1988)) (alteration in original);

see 1621 Route 22 W. Operating Co., LLC v. NLRB, 825 F.3d 128, 148 (3d Cir. 2016) (observing that "a § 10(j) proceeding gives a district court authority to enter temporary interim relief even as the Board retains exclusive authority to decide the merits of the case" (internal quotation marks omitted)). All district courts can do under Section 10(j) is grant temporary injunctive relief at the Board's request, when doing so would be "just and proper" in the context of the statutory scheme.

* * *

In sum, the history of federal labor law makes clear that Congress—long concerned with the "debonair fashion" with which courts had used their equitable jurisdiction, Gregory, *supra*, at 197—drafted Section 10(j) to confer limited authority on district courts to grant injunctive relief when the Board convinced them that such relief was appropriate. Section 10(j)'s text reflects this history and requires deferential review, as described further in the next Section.

II. Section 10(j)'s Use of "Just and Proper" Is Consistent with a Deferential Standard of Review.

Ignoring this history, Starbucks argues that Section 10(j)'s use of "'just and proper' invokes equitable principles" that do not permit consideration of statutory context or deference to the Board. Pet'r Br. 23. But Congress did not use the words "just and proper" to silently return to the type of rules that drove lawmakers to take "federal courts out of the labor injunction business" fifteen years earlier. *Marine Cooks*, 362 U.S. at 369. Rather, in using the words "just and proper," Congress was borrowing from other statutes that directed courts to make the types of deferential

and context-specific assessments that the government argues for here.

A. When Section 10(j) was drafted, courts of appeals already had the power to grant "just and proper" relief in existing provisions of federal labor law, *see* 29 U.S.C. § 160(e)-(f), and the relief under those provisions was not—and could not have been—assessed under the particular sort of balancing test that Starbucks argues for here.

Sections 10(e) and (f) of the NLRA, written in 1935, created the pathway for judicial review of Board orders—notably, in courts of appeals rather than district courts, *see supra* Section I.C. They also set the standards of review for these orders, explicitly providing that the Board's factual findings would be "conclusive" if supported by substantial evidence. 29 U.S.C. § 160(e) ("the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive"); *id.* § 160(f) (same); *see also* Teller, *supra*, at 1092 (describing the "substantial evidence" standard of review under the NLRA). In the context of providing for this review, these provisions gave courts of appeals the "power to grant such temporary relief or restraining order as [they] deem[] just and proper." 29 U.S.C. § 160(e); *see id.* § 160(f) (giving the district court the "same jurisdiction" to grant relief "as it deems just and proper" when a private party petitions for review of a final order of the Board).

In other words, Sections 10(e) and 10(f) created a regime under which courts of appeals reviewed the Board's findings on the merits pursuant to the deferential "substantial evidence" standard, while also authorizing those courts to grant "just and proper" relief for the duration of that process. *See id.* § 160(e)-(f). If these subsections did not permit courts to "substitut[e]

[their] judgment on disputed facts for the Board's judgment" when reviewing orders of the Board on the merits, *Waterman S.S. Corp.*, 309 U.S. at 226 (interpreting 29 U.S.C. § 160(e)), they certainly did not envision courts performing a more searching review of disputed facts at an earlier stage of the process, when determining whether temporary relief was "just and proper."

Although the Board rarely sought temporary relief under Sections 10(e) and (f) in the years before Section 10(j) was drafted, *see* S. Rep. 80-105, pt. 2, at 18 (1947), the few cases referring to these provisions make clear that courts did not understand them to require the application of an equitable test divorced from statutory context—the sort of test that Starbucks now argues that Section 10(j) requires. Instead, courts adjudicated requests for temporary relief with respect for the Board's ultimate authority to enforce national labor law and resolve labor disputes. As one court observed, temporary relief under Section 10(e) was "relief appropriate and incidental to proceedings in the court concerning an order theretofore made by the Board," *Int'l Bhd. of Teamsters, Chauffeurs, Stablemen & Helpers v. Int'l Union of United Brewery, Flour, Cereal & Soft Drink Workers of Am.*, 106 F.2d 871, 877 (9th Cir. 1939); *cf. NLRB v. Sunshine Mining Co.*, 125 F.2d 757, 760 (9th Cir. 1942) (observing that Section 10(e) "commits to the Board the responsibility of determining in each case what affirmative action will best serve to effectuate the policies of the Act" and courts should act to ensure "expeditious performance" of the Board's decrees). In other words, relief was to be crafted against the backdrop of the limited supporting role that the statutory scheme gave to district courts.

Indeed, courts granted temporary relief under Section 10(e) in instances much like this one. In one case, the Seventh Circuit granted an injunction when it

appeared that doing otherwise would "irreparably damage the effectiveness of [the Board's order] in the event of its ultimate enforcement," National Labor Relations Board, *Tenth Annual Report* 70 (1945) (summarizing unpublished order in *NLRB v. Servel, Inc.*, No. 8686 (7th Cir. Sept. 29, 1944)), much like the court below granted the injunction here because it was "needed to preserve the Board's remedial power to be exercised at the conclusion of the administrative proceedings," Pet. App. 110a; *id.* at 108a (injunction just and proper when "necessary to return the parties to status quo pending the Board's proceedings in order to protect the Board's remedial powers" (quoting *McKinney v. Ozburn-Hessey Logistics, LLC*, 875 F.3d 333, 339 (6th Cir. 2017)).

This understanding of Sections 10(e) and (f) belies Starbucks's suggestion that the Board should not "receive deference for [its] preliminary takes on the law and facts" when it seeks "just and proper" relief. Pet'r Br. 4. Courts of appeals deferred to the Board when granting "just and proper" relief under Section 10(e) and 10(f), and district courts should do the same under 10(j)'s identical "just and proper" language. After all, "when a statute uses the very same terminology as an earlier statute[,] especially in the very same field[,] . . . it is reasonable to believe that the terminology bears a consistent meaning." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012); *see Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 721-22 (2018) (describing presumption that Congress is "aware of the longstanding judicial interpretation" of statutory language, and intends to "retain" this "established meaning" when using the "materially same language").

B. Other provisions of federal law further undermine Starbucks's argument that Congress used the

phrase "just and proper" to endorse a test that denies courts the authority to defer to the NLRB's determinations.

In several instances, Congress used "just and proper" to guide the discretion of courts reviewing agency actions, and courts interpreting these provisions took account of statutory context and gave some measure of deference to the agency in question, much as they did when acting under Sections 10(e) and (f). For example, the Federal Seed Act instructed courts reviewing decisions of the Secretary of Agriculture to order the reopening of a hearing "[i]f the court determines that the just and proper disposition of the case requires the taking of additional evidence." Federal Seed Act, Pub. L. No. 76-354, ch. 615, § 410, 53 Stat. 1275, 1288 (1939); *see* Packers and Stockyards Act of 1921, Pub. L. No. 67-51, ch. 64, § 203(f), 42 Stat. 159, 162 (same). As in the Section 10(e) context, judicial review of the Secretary of Agriculture's decisions under these schemes permitted the Secretary's orders to stand if supported by "substantial evidence," *Farmers' Livestock Comm'n Co. v. United States*, 54 F.2d 375, 377 (E.D. Ill. 1931); *Trunz Pork Stores v. Wallace*, 70 F.2d 688, 690 (2d Cir. 1934) ("We think the Secretary of Agriculture's finding of the facts here involved justifies his conclusion.").

Given this standard of review, courts assessing requests to reopen under these statutes did not adjudicate factual disputes or engage in the specific type of equitable balancing that Starbucks claims is required here.

C. In addition to these judicial review provisions, lawmakers used the phrase "just and proper" in other circumstances in which the type of equitable balancing Starbucks calls for would have been inappropriate. For example, many laws written in the decade before

Section 10(j) permitted courts or officials to levy "just and proper" costs and expenses. *See* Act of June 4, 1935, Pub. L. No. 74-89, ch. 168, § 1, 49 Stat. 321, 321 (authorizing the Secretary of the Interior to award "just and proper compensation" to certain attorneys); Act of June 15, 1938, Pub. L. No. 75-617, ch. 390, § 1, 52 Stat. 688, 688 (1938) (same); An Act to Consolidate and Codify the Internal Revenue Laws of the United States, Pub. L. No. 76-1, § 2874(a), 53 Stat. 1, 332 (1939) (referring to a "just and proper expense"); *id.* at § 3039, 53 Stat. 1, 353-54 ("just and proper" allowance for losses). In these instances, "just and proper" initiated an inquiry that, even if undertaken by a court, would entail some amount of deference to a party's submissions, rather than a searching inquiry of the type that Starbucks urges here. *See, e.g.*, Hon. Joseph C. Hutcheson, Jr., *Federal v. State Rules*, 2 F.R.D. 101, 102 (1943) (under federal rules, costs and fees to be assessed "according to the facts"); *Allowance of Attorney's Fee Against Property or Fund Increased or Protected by Attorney's Services*, 49 A.L.R. 1149 (1927) (in trust cases, costs awarded should be "founded upon the knowledge of the court making the allowance of the real value of the services performed"). In bankruptcy cases, Congress instructed judges to allow interested parties to intervene when "just and proper" to do so, *see* Bankruptcy Act of 1898 Amendments, Pub. L. No. 77-747, ch. 610, § 720, 56 Stat. 787, 790 (1942); Bankruptcy Act of 1898 Amendments, Pub. L. No. 76-242, ch. 393 § 720, 53 Stat. 1134, 1137 (1939) (same), another situation that did not refer to the application of any particular equitable test.[3]

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[3] Starbucks invokes statutes—ones drafted long after Section 10(j)—that "authoriz[e] courts to award preliminary injunctions if 'just and proper'" and "to consider equitable factors." See Pet'r

D. Notably, courts interpreting Section 10(j)'s "just and proper" language in the years immediately following its passage did not understand that language to require a rigid test that denied courts the authority to consider statutory context or defer to the Board's findings. *Cf. Edwards' Lessee v. Darby*, 25 U.S. 206, 210 (1827) ("the co[n]temporaneous construction of those who were called upon to act under the law . . . is entitled to very great respect"). In fact, the opposite was true.

As these courts explained it, Section 10(j) authorized injunctions when such injunctions "preserve[d] the issues presented for the determination of the Board as provided in the Act, and . . . avoid[ed] irreparable injury to the policies of the Act." *Jaffee*, 115 F. Supp. at 58; *see also Madden v. Int'l Union, United Mine Workers of Am.*, 79 F. Supp. 616, 622 (D.D.C 1948) ("[t]o preserve the issues presented for the orderly determination of the Board as provided in the Act, and to avoid irreparable injury to the Nation, to the policies of the Act").

Courts reviewing the Board's Section 10(j) requests also presumed a deferential posture. *See, e.g.*, *id.* at 617 ("a court of equity should not undertake" to assess a factual dispute before it is "disposed of" by the Board). As one district court judge observed, "it would

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Br. 23-24, 42. But neither of the cases Starbucks cites addresses the question here—that is, whether a court considering equitable factors is precluded from also considering statutory context. *See Am. Foreign Serv. Ass'n v. Baker*, 895 F.2d 1460, 1463 (D.C. Cir. 1990) (noting that statute giving district courts the authority to issue "just and proper" relief authorizes "appropriate" relief and observing that the district court's role is "limited" under that statutory scheme); *United States v. Szoka*, 260 F.3d 516, 524 (6th Cir. 2001) ("This statutory language . . . presumably gives the D.C. Circuit the ability to consider equitable factors . . . .").

seem logical that something less than a finding of the ultimate facts is contemplated" by Section 10(j), because "the Act plainly contemplates a trial by the Board" and a detailed fact-finding under Section 10(j) would leave the parties "subject[ed] . . . to two trials." *Douds v. Loc. 294, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 75 F. Supp. 414, 418 (N.D.N.Y. 1947).

* * *

In the years before they drafted Section 10(j), lawmakers used the phrase "just and proper" many times and in many different contexts, yet none of those provisions suggests that the phrase "just and proper" compels the rigid meaning Starbucks attributes to it. Nor do this Court's cases compel the approach Starbucks advances, as the next Section discusses.

III. The Cases Starbucks Cites Do Not Demand the Rigid Four-Part Test for Which It Advocates.

Starbucks purports to find support for its rule in several of this Court's more recent cases. Pet'r Br. 26-27 (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982); *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531 (1987); and *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483 (2001)). But none of these cases supports Starbucks' position that equitable relief must be divorced from statutory context—and they certainly do not speak to what the statutory context requires in the unique framework of the NLRA.

In *Romero-Barcelo*, residents of Puerto Rico sought to enjoin the Navy from using an island near the Puerto Rican coast for weapons training exercises, claiming that the exercises harmed the water quality and, when conducted without a permit, violated the Federal Water Pollution Control Act ("FWPCA"). 456

U.S. at 307. The First Circuit held that there was, in its view, an absolute statutory duty to obtain a permit and therefore that traditional equitable balancing of competing interests was inappropriate. *Id.* at 310. This Court reversed. As Starbucks observes, this Court held that the FWPCA's "command d[id] not require district courts to automatically enjoin unlawful pollutant discharges," Pet'r Br. 27, instead emphasizing traditional factors like "irreparable injury and the inadequacy of legal remedies," *Romero-Barcelo*, 456 U.S. at 312. Significantly, though, this Court also evaluated the injunction with reference to the "statutory scheme," *id.* at 316, including whether an injunction would align with the "objective" of the FWPCA and the manner of achieving that objective—"compliance with the permit requirements." *Id.* at 314-15. Because the district court "neither ignored the statutory violation nor undercut the purpose and function of the permit system," *id.*, it had exercised its equitable discretion effectively, *see id.* at 318 ("We read the FWPCA as permitting the exercise of a court's equitable discretion . . . to order relief that will achieve compliance with the Act.").

In *Amoco Production*, this Court considered a preliminary injunction against Amoco's petroleum exploration activities in Alaska, which allegedly violated the Alaska National Interest Lands Conservation Act ("ANILCA"). The court of appeals had assumed that the statutory violation necessarily meant that the plaintiffs had suffered irreparable injury. This Court disagreed, stating that the appeals court's "presumption" was "contrary to traditional equitable principles." 480 U.S. at 545. Once again, statutory context was important to this Court's decision. In rejecting the appeals court's presumption, the Court emphasized that courts should consider the "underlying substantive

policy" behind a provision when exercising their "traditional equitable discretion in enforcing the provision." *Id.* at 544. Because the ANILCA's purpose—preventing injury to "subsistence resources"—could be achieved without a presumption of irreparable harm, this Court reversed. *Id.* at 545.

In *Oakland Cannabis*, this Court once again emphasized the role of the statutory scheme in a court's exercise of its equitable authority. 532 U.S. at 497. There, federal authorities sought to enjoin a medical marijuana cooperative from distributing marijuana in violation of the Controlled Substances Act. *Id.* at 486-87. As Starbucks explains, this Court rejected the argument that the district court had an "absolute duty" to enjoin any violation of the Act. Pet'r Br. 26 (quoting *Oakland Cannabis*, 532 U.S. at 496). After coming to that conclusion, though, this Court went on to hold, just like the government is arguing here, that district courts must exercise their equitable discretion to align with "Congress' policy choice[s]" and the "order of priorities" set by a given statute. *Oakland Cannabis*, 532 U.S. at 497. For this reason, this Court rejected the cooperative's argument that the district court could exercise its equitable discretion to account for medical necessity when the statute did not recognize necessity as a defense. *Id.* at 495. As this Court explained, courts must defer to the "judgment of Congress" when assessing whether an injunction is appropriate. *Id*. at 497 (quoting *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515 (1937)).

Indeed, *Romero-Barcelo*, *Amoco Production*, and *Oakland Cannabis* are all consistent with this Court's longstanding view that a court considering whether to grant equitable relief should consider statutory context—a view that predates the passage of Section 10(j). For instance, in *Hecht Co. v. Bowles*, 321 U.S. 321

(1944), this Court emphasized that district courts' equitable discretion under the Emergency Price Control Act should "be exercised in light of the large objectives of the Act." *Id.* at 331. In that case, the Hecht Company department stores had sold consumer goods at prices that violated the Emergency Price Control Act. *Id.* The trial court found that the violations were innocent and that there was no substantial likelihood that they would recur, and it therefore refused to enjoin the company's violations. *Id.* at 325. The court of appeals reversed, reasoning that the Act required that a court issue an injunction whenever it found a violation of the Act. As Starbucks notes, this Court rejected that argument, holding that the Act's language did not supplant district courts' equitable discretion to deny injunctions. Pet'r Br. 26 (citing *Hecht*, 321 U.S. at 330). But in remanding the case, this Court instructed the court below to determine whether refusing the government's request for an injunction was appropriate in light of Congress's interests. *Hecht*, 321 U.S. at 330. It observed that courts exercising their authority under § 205(a) should aim to achieve the ends of the statute—fighting inflation through "coordinated action" with the federal agencies that enforced the Act's provisions—and exercise their discretion with "an acute awareness" of Congress's "admonition[s]" in the Act. *Id.* at 331; *Ford Motor Co. v. NLRB*, 305 U.S. 364, 373 (1939) (courts exercising equitable powers under Section 10(e) of the NLRA can issue equitable relief that aligns with the "purpose" of judicial review under the NLRA—that is, to "secure a just result with a minimum of technical requirements").

Thus, none of the cases on which Starbucks relies supports the position that courts exercising their equitable authority are precluded from engaging in deferential review when the statutory context demands it.

And certainly none of those cases speaks to what degree of deference is required in this context, because none of them involved statutory schemes like the NLRA or statutory language like "just and proper."

Specifically, none of the cases on which Starbucks relies involved a deliberate congressional decision to provide a limited grant of jurisdiction to a federal court to issue a preliminary injunction in a case in which that court does not have jurisdiction to decide the merits, and in an area of law in which judicial injunctions had been highly circumscribed. *See, e.g.*, *Chester ex rel. NLRB v. Grane Healthcare Co.*, 666 F.3d 87, 96 (3d Cir. 2011) (distinguishing relief under Section 10(j) from circumstances "where district courts determine whether to grant relief in cases over which they possess both the jurisdiction and competence to decide the merits").

Moreover, Starbucks's iteration of the test it advances does not consider the specific statutory context here at all, or reflect the deference that the specific statutory context makes appropriate. Conversely, the district court's assessment of whether injunctive relief was "just and proper" in this case reflected "acute awareness," *Hecht*, 321 U.S. at 331, of the policies underlying the NLRA, *see* Pet. App. 116a ("Granting temporary injunctive relief will enable the Board to determine the merits of these alleged acts without frustration of the 'policy of the United States' to 'encourag[e] . . . collective bargaining.'" (quoting 29 U.S.C. § 151) (alterations in original)); *id.* at 13a ("a district court may consider prospective harm to . . . rights protected under the Act"); *id.* at 10a-12a (considering threats to the Board's remedial powers).

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In giving the Board full authority to enforce American labor law and secure "industrial peace," *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 42 (1937), the NLRA gives courts the power to issue appropriate relief and "secure a just result with a minimum of technical requirements," *Ford Motor Co.*, 305 U.S. at 373. Ignoring the long history of Congress's efforts to "prevent the injunctions of the federal courts from upsetting the natural interplay of the competing economic forces of labor and capital," *Bd. of R.R. Trainmen v. Chicago River & Ind. R.R. Co.*, 353 U.S. 30, 40 (1957), Starbucks argues that the NLRA prevents courts from considering the Act's statutory scheme when exercising its authority under Section 10(j). This argument is at odds with the text and history of that section, and this Court should reject it.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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