

Testimony of Sharon Block
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Chairman Sanders, Ranking Member Cassidy and Committee Members – thank you for inviting me to testify today about the union organizing campaign at Starbucks. I’m Sharon Block and I’m a professor at Harvard Law School and the Executive Director of the Center for Labor and a Just Economy there. I am testifying in my personal capacity, not as a representative of Harvard. I also served for a long period of time as a career civil servant at the NLRB and then as a Member of the Board during the Obama Administration.

It is in the context of my long association with the NLRB that I would like to start my testimony by recognizing the great work that has been done by the NLRB career staff with regard to the Starbucks campaign. They have worked tirelessly to process hundreds of requests for elections, conduct those elections to ensure their fairness and then to investigate and assess the many hundreds of allegations of violations that Starbucks workers have made about the company’s conduct. Nothing about how professionally the career staff has handled this monumental task has surprised me. I know them first hand to be consummate professionals and dedicated public servants.

Next, I would like to address the purpose of the National Labor Relations Act so that we understand the consequences when an employer denies workers’ the rights guaranteed in the Act. The Act states in Section 1¹ that it is:

¹ 29 U.S.C. Sec. 151.

the policy of the United States to . . . encourage[e] the practice and procedure of collective bargaining and . . . protect[] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

It is important to understand that the NLRA does not guarantee a particular outcome. It does not guarantee workers that they will be represented by a union or that, if they are so represented, that they will secure particular outcomes at the bargaining table. Instead, it guarantees to them a fair process – both for deciding questions of representation and for negotiating with their employers. Thought of in this way, you can say that that NLRA establishes the rule of law for the workplace, just as our constitution and legal system establish the rule of law for our democracy.

And so the question for this hearing is whether Starbucks has undermined the ability of workers to be treated fairly in their quest to decide for themselves whether they want to act collectively through union representation. Put another way, when faced with the breadth and seriousness of the violations alleged by Starbucks workers, the question is whether Starbucks is denying workers the rule of law in the workplace.

I would like to make three main points in the remainder of my testimony. First, the scope of Starbucks' violations alleged and found so far is beyond the scope of the anti-union campaigns that I have witnessed during my career as a labor lawyer. Second, these violations should not be understood as isolated acts, but rather should be viewed as a coordinated campaign to stifle union activity across the company. Finally, it is critical that this kind of egregious conduct is taken very

seriously because otherwise it will send a message to workers across the economy that their rights are not real or have no meaning.

First, I will address the scope of the violations. As you have heard already, Starbucks is facing hundreds of allegations that it has violated the National Labor Relations Act. My understanding is that so far, in just the 18 months that the campaign has been underway, Starbucks workers have filed more than 500 unfair labor practice charges² in relation to the Company's conduct in response to the campaign. Already the NLRB General Counsel has found merit in more than half of those charges. In addition, four Board members (from both political parties)³ and seven administrative law judges⁴ have found that Starbucks has committed violations of the Act. The overwhelming majority of the remaining allegations have not yet been dealt with by Board agents -- very few allegations have been dismissed and no findings of violations by ALJs or the Board have been overturned.

While it sadly has become quite common for companies to respond hostilely and often unlawfully to organizing campaigns by their workers, I am not aware of another company of any size in recent years that has had this many allegations leveled against it – not merely viewed on a per employee basis but also when viewed on an aggregate basis. Although my career spans too long a period to be able to say this with absolute certainty, I am fairly confident that I have never witnessed a

² Reuters, "Barista union to ask Starbucks shareholders to back labor review," Hillary Russ, Mar. 10, 2023, <https://www.reuters.com/business/retail-consumer/barista-union-ask-starbucks-shareholders-back-labor-review-2023-03-10/>.

³ *Starbucks Corp.*, Case 18–CA–293653 (Mar. 3, 2023) (Judge Geoffrey Carter), *Starbucks Corp.*, Cases 03-CA-285671 *et al.* (Mar. 1, 2023) (Judge Michael Rosas), *Starbucks Corp.*, Cases 07-CA-293742 *et al.* (Feb 9, 2023) (Judge Christal Key), *Starbucks Corp.*, Cases 27–CA–290551 *et al.* (Feb. 6, 2023) (Judge Amita Tracy), *Siren Retail Corp.*, Case 19-CA-290905 (Jan. 31, 2023) (Judge John Giannopoulos), *Starbucks Corp.*, Cases 19-CA-289275 *et al.* (Nov. 3, 2022) (Judge John Giannopoulos), *Starbucks Corp.*, Cases 14-CA-290968 *et al.* (Oct. 12, 2022) (Judge Arthur Amchan), *Starbucks Corp.*, Cases 07–CA–292971 *et al.* (Oct. 7, 2022) (Judge Geoffrey Carter), and *Starbucks Corp.*, 372 NLRB No. 50 (2023) (Judge Andrew Gollin below).

⁴ *Starbucks Corp.*, 372 NLRB No. 50 (Chairman McFerran and Members Wilcox and Prouty participating), and *Siren Retail Corp. d/b/a Starbucks*, 372 NLRB No. 10 (2023) (Chairman McFerran and Members Kaplan and Wilcox participating).

company amass so many unfair labor practice allegations over a similar period of time.

The egregiousness of many of the violations also makes this campaign stand out. Let's start with allegations and findings that Starbucks has fired workers who were serving as union organizers. Already, administrative law judges and district court judges have found that Starbucks has fired more than 20 workers because of their organizing activity or because they cooperated with the Board's investigations.⁵ For decades, Board law has deemed the firing of pro-union workers during an organizing campaign as a "hallmark" violation – that is, one that is likely to have a significant impact on both the fired employee and the organizing rights of coworkers. In 1941, the Fourth Circuit in a case called *Entwistle Manufacturing*, recognized that this kind of conduct "goes to the very heart of the Act."⁶ By the Fourth Circuit's logic, Starbucks has struck at the heart of its workers' statutory rights again and again over the past 18 months.

Starbucks has been accused of committing a number of additional hallmark violations, ranging from threats to close stores to granting benefits for the purpose of influencing workers' feelings about the union to actually closing stores that had campaigns underway. The administrative law judges that have reviewed Starbucks' conduct have characterized it as extreme. For example, a judge in the Buffalo cases found that Starbucks had engaged in "egregious and widespread misconduct demonstrating a general disregard for employees' fundamental rights."⁷ It took the judge more than 200 pages to describe all the misconduct that he found Starbucks to have perpetrated. In addition, at least two federal district court judges have

⁵ *Kerwin v. Starbucks*, No. 22-cv-12761, ___ F. Supp.3d ___ (E.D. Mich. 2023), *McKinney v. Starbucks*, No. 2:22-cv-2292-SHL-cgc, 2022 WL 5434206, ___ F. Supp.3d ___ (W.D. Tenn. 2022), *Starbucks Corp.*, Cases 03-CA-285671 *et al.*, *Starbucks Corp.*, Cases 27-CA-290551 *et al.*, and *Starbucks Corp.*, Cases 07-CA-292971 *et al.*

⁶ 120 F.2d 532 (4th Cir. 1941).

⁷ *Starbucks Corp.*, Cases 03-CA-285671 *et al.*, slip op. at 196 (Mar. 1, 2023).

taken the extraordinary step of ordering baristas returned to their jobs even before the Board has made a finding because of the seriousness of the allegations that the workers had been fired for their union activity and the strength of the evidence supporting the allegations.⁸

Let's remember two important facts – (1) the Board agents who have investigated these charges and the administrative law judges who have made these findings of violations are career federal employees and (2) they are just at the beginning of adjudicating the allegations against Starbucks. There are more than 80 trials either underway or still to be held. So, it seems likely that this catalog of hallmark violations will grow in the coming days and months.

That observation leads to my second point. What has happened at Starbucks is not just a collection of individual violations. To see the full extent of the damage that Starbucks has done to its workers' rights, these violations must be viewed as part of a single effort to stop organizing at the company. In my experience, it simply isn't credible to assert that there have been more than 500 isolated incidents of misconduct during this campaign. Instead, it is much more credible that the company has launched its own campaign – to deny workers a fair chance to exercise the rights guaranteed to them by the National Labor Relations Act.

The geographic scope of these violations shows that these aren't isolated incidents or the product of a few bad supervisory apples in the barrel. The allegations or findings of violations span 38 states. Moreover, as was just discussed on the previous panel, Mr. Schulz's own conduct is the subject of many allegations of violations.⁹ The Board has long accorded particular weight to violations committed by high-ranking

⁸ *McKinney and Kerwin, supra.*

⁹ <https://www.nlr.gov/case/19-CA-294579>, <https://www.nlr.gov/case/21-CA-294571>, and <https://www.nlr.gov/case/19-CA-297589>.

company officials. During this campaign, until last week, there has been no one higher ranking at Starbucks than Mr. Schultz.

Most significantly, the violations alleged and found demonstrate a pattern to undermine the union at every stage of its campaign to represent and bargain on behalf of Starbucks workers. The allegedly unlawful conduct started during the onset of the first campaign in Buffalo. There have been allegations at multiple sites to threaten or intimidate baristas before they file petitions for elections, while those petitions are pending and then after the union has won elections. The NLRB also has found that Starbucks' unlawful behavior has extended to the bargaining table, finding that the company has refused to bargain in good faith. The pattern of violations has followed every stage of the campaign. As new locations start the organizing process, we see the same patterns play out. First, pro-union workers at Buffalo were fired, threatened or otherwise retaliated against by the company. Then in Tennessee, Michigan, Arizona, Pennsylvania, Colorado, Missouri and on and on as the organizing campaign spread across the country and matured in each location.

The message sent to Starbucks employees by this pattern of violations is one of disregard for their rights under the NLRA. Each time the company commits a new violation in a new location or at a new stage in the union's campaign, it can be understood to be communicating to all of its workers that the rights accorded to them by the law can be defeated -- that the company has the resources, the will and the stamina to undermine the exercise of their rights at every turn.

As someone who has been inspired by the energy of the baristas that I have met and read about, I am now concerned about the wider message that Starbucks' vast anti-union campaign sends. Workers across the country -- especially low-wage workers -- also have been inspired by what the Starbucks baristas have achieved over the past 18

months. It cannot be a coincidence that record high public support for unions according to several independent polling organizations has coincided with the Starbucks baristas' approximately 300 election victories. Nor can it be a coincidence that nascent union organizing campaigns have taken off in several other high profile retail chains in the baristas' organizing wake. But what do these workers and the public think when they see that Starbucks is willing to break the law that protects these rights hundreds of times?

I commend the Committee for holding this hearing to show that you take seriously the rights of Starbucks workers to organize and to sit at a bargaining table, if they choose, with their employer – even if their employer is a huge, Fortune 500 company and even if their employer really does not want them to have a union. It is a bedrock of our democracy that the law applies to everyone, including the most powerful. I believe that labor unions play an important role in protecting that bedrock principle. So I also believe that much is at stake in ensuring that Starbucks' workers' rights to choose whether to unionize are protected and respected.

Thank you for your time. I am happy to answer any questions.