



January 24, 2025

Kelly L. Stephens, Clerk of Court
United States Court of Appeals
for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988

RE: *ABC Michigan v. Abruzzo*, Case No. 23-1803

Dear Ms. Stephens:

Pursuant to FRAP 28(j), ABC Michigan responds to Jennifer Abruzzo’s notice to the Court of the National Labor Relations Board’s decision in *Amazon.com Services, Inc.*, 373 NLRB No. 136 (Nov. 13, 2024). Dkt. 39.

ABC Michigan agrees that the Board’s *Amazon* decision does not affect the issues on appeal. Br. at 2; *see* Dkt. 39 at 1-2. And it does not affect ABC Michigan’s arguments that this Court should reverse the district court. Br. at 21-68; Reply at 5-17; *Contra* Dkt. 39 at 1-2.

Specifically, the Board’s *Amazon* decision does not affect the first issue on appeal—subject-matter jurisdiction—because “ABC Michigan’s claims involve allegations of threats by Abruzzo in her public Memorandum *outside* the formal Board enforcement process.” Br. at 19. And ABC Michigan showed in its Complaint an arguable basis in law for its First Amendment claims, easily clearing the low hurdle of Abruzzo’s facial attack on jurisdiction. Br. at 21-38.

Nor does the Board’s *Amazon* decision affect the second issue on appeal—Article III associational standing—because the Complaint shows that all of ABC Michigan’s employer members would otherwise have standing to sue in their own right; their free-speech rights that ABC Michigan seeks to protect are germane to the organization’s purpose; and neither the constitutional claims asserted in the

Complaint, nor the relief requested, requires participation by its individual employer members. Br. at 38-51.

With regard to the third and fourth issues on appeal—the merits and injunctive relief—Abruzzo suggests that “if this Court reverses the lower court on jurisdiction and standing, it should not address the merits, but rather remand the matter for further proceedings.” Dkt. 39 at 2. ABC Michigan submits that Abruzzo forfeited her right to respond to ABC Michigan’s First Amendment argument on the merits, and remand is inappropriate. Br. at 51-63; Reply at 15. And ABC Michigan is entitled to a preliminary injunction. Br. at 64-68.

To be sure, the Board’s recent *Amazon* decision was not before the district court. Thus, this Court may reverse on jurisdiction and standing and remand for further proceedings in light of the *Amazon* decision.

Sincerely,

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CERTIFICATE OF COMPLIANCE

1. This letter complies with the type-volume limitation of Fed. R. App. P. 28(j), 32(a)(7)(B), and 6 Cir. R. 32(b) because it contains 350 words, as determined by the word-count function of Microsoft Word, excluding the parts of the letter exempted by Fed. R. App. P.

32(a)(7)(B)(iii).

2. This letter complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2025, the foregoing letter was filed through the Court's Electronic Filing System, which will send notice to all counsel appearing in this matter.

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