



**UNITED STATES GOVERNMENT**

**NATIONAL LABOR RELATIONS BOARD  
OFFICE OF THE GENERAL COUNSEL**

Contempt, Compliance, and Special Litigation Branch  
1015 Half Street, S.E. – Fourth Floor  
Washington, D.C. 20003

December 11, 2024

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 of Michigan v. Abruzzo*,  
No. 23-1803

Dear Ms. Stephens:

Pursuant to FRAP Rule 28(j), Appellee NLRB General Counsel Jennifer Abruzzo notifies the Court of the decision in *Amazon.com Services, Inc.*, 373 NLRB No. 136 (Nov. 13, 2024).

There, the Board substantially adopted the legal theory articulated in GC Memorandum 22-04, which is challenged here by Appellant ABC. Specifically, the Board found that “an employer interferes with employees’ decision whether to exercise their Section 7 rights within the meaning of Section 8(a)(1) of the Act when it compels employees to attend a captive-audience meeting on pain of discipline or discharge.” *Id.*, slip op. at 2. But it “decline[d to] address circumstances other than those presented in th[at] case (mandatory meetings with assembled employees), such as unscheduled one-on-one encounters between an agent of the employer and an employee.” *Id.* at 9 n.19.

*Amazon.com* does not affect our arguments that this Court should affirm the district court’s dismissal of ABC’s complaint for lack of

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jurisdiction and standing. (See Doc. 30 at 17-56; *contra* ABC's Brief Doc. 24 at 21-50; ABC's Reply Doc. 37 at 8-15). Indeed, ABC appears to agree that *Amazon.com* may not affect the issues before this Court on appeal. Doc. 37 at 18, n.1.

But 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. (See Doc. 30 at 56-58; *contra* ABC's Brief Doc. 24 at 51-67; ABC's Reply Doc. 37 at 15-17). The district court can then properly assess whether *Amazon.com* affects the viability of ABC's claims targeting GC Memorandum 22-04. This is because future administrative complaints alleging captive-audience meetings as unfair labor practices will be grounded in the *Amazon.com* decision and not the GC Memorandum. Thus, there is a substantial question whether the Memorandum has any standalone impact at present.

Should this Court nonetheless choose to reach the First Amendment merits, the NLRB agrees that supplemental briefing would be warranted to address *Amazon.com*. Again, however, the district court correctly found that it lacked jurisdiction over ABC's complaint, so it is unnecessary for this Court to undertake this inquiry in order to affirm.

Sincerely,

*s/ Aaron Samsel*

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## CERTIFICATE OF COMPLIANCE AND SERVICE

The National Labor Relations Board certifies that this document complies with the typeface, type-style, and length requirements in Federal Rules of Appellate Procedure 28(j) and 32(a), because it contains 350 words, excluding those exempted by Federal Rule of Appellate Procedure 32(f), which are proportionally-spaced, 14-point Century Schoolbook font, and the word-processing software used was Microsoft Word for Office 365.

The NLRB further certifies that a copy of the foregoing Appellees' 28(j) letter was filed electronically with the Court's CM/ECF system on this date, which will send an electronic notice to all registered parties and counsel.

*/s/ Aaron Samsel*

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Washington, DC