FARMWORKERS ON THE FRONTLINE: THE ONGOING ATTACK AGAINST THE ADMINISTRATIVE STATE'S AUTHORITY TO PROTECT WORKERS' RIGHTS

By Ally Coll[†] *and Astrid Aune*[‡]

INTRODUCTION

This term, the Supreme Court is reconsidering a check on administrative agency power that has largely been dormant for almost a century: the nondelegation doctrine and its corresponding intelligible principle test. In 1928, the Court reconciled constitutional concerns over the legislative branch's delegation of power to executive branch agencies in *J.W. Hampton, Jr. & Co. v. United States*, concluding that Congress may do so only if it provides "an intelligible principle to which [the agency] is directed to conform."[1] In 1935, the Court twice invoked this test to strike down key provisions of Congress's New Deal legislation for failing to provide adequately specific intelligible principles in the relevant authorizing statutes.[2] Yet, despite the intelligible principle test's potential as a powerful constraint on agency power, the Supreme Court has

† Professor Coll is a Visiting Assistant Professor at the City University of New York School of Law, where she teaches Administrative Law and Federal Courts. Her scholarship focuses on how the Constitution's federal power structures affect the advancement of civil and equal rights in the United States. She was previously an Assistant Professor of Legal Studies at George Mason University's School of Policy and Government, where she taught courses on constitutional law, civil rights law, public law, and the judicial process. From 2018 to 2023, Coll lead a non-profit advocacy organization she cofounded to address workplace harassment in the wake of the #MeToo movement. She continues to write and speak about advancing gender equity and addressing workplace harassment and discrimination. Coll received her B.A. from Tulane University and her J.D. from Harvard Law School.

‡ Astrid Aune is a J.D. Candidate at the City University of New York School of Law. Prior to attending CUNY Law, she received her B.S. in Global Liberal Studies from NYU and her MSc in Social Policy and Development at the London School of Economics & Political Science, where she focused on gaps in the social safety net. She currently works as the Deputy Chief of Staff to Senator Jessica Ramos, who chairs the standing Committee on Labor in the New York State Senate.

[1] J.W. Hampton, Jr. & Co. v. United States, 276 U.S. 394, 409 (1928).

[2] *See* Panama Ref. Co. v. Ryan, 293 U.S. 388, 429-30 (1935); A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 537-38 (1935).

not invalidated an act of Congress on nondelegation grounds in almost ninety years.[3]

While acknowledging that "the Supreme Court has not in the past several decades held that Congress failed to provide a requisite intelligible principle," the Court of Appeals for the Fifth Circuit nonetheless recently invoked the test to invalidate the enforcement powers of the Securities and Exchange Commission ("SEC") in *Jarkesy v. Securities and Exchange Commission*.[4] Considering a challenge to agency power of the kind the SEC has been exercising since its initial formation in 1934, the court concluded that if "the intelligible standard means anything, it must mean that a total absence of guidance is impermissible under the Constitution." By extension, the court posited, "[the SEC's] exclusive authority and absolute discretion to decide whether to bring securities fraud enforcement actions within the agency instead of in an Article III court" is unconstitutional.[5] The U.S. Supreme Court granted certiorari on this issue and heard oral arguments in November 2023.[6]

Regardless of whether the Court agrees with the Fifth Circuit's analysis in *Jarkesy*, a majority of the current justices have expressed interest in revisiting the nondelegation doctrine. In *Gundy v. United States*, for example, a four-justice plurality narrowly upheld a provision of the Sex Offender Registration and Notification Act against a nondelegation challenge.[7] While Justice Samuel Alito concurred in the judgment, he wrote separately to point out that even though "the Court has uniformly rejected nondelegation arguments" since 1935, if "a majority of this Court were willing to reconsider the approach we have taken for the past 84 years, I would support that effort."[8] Justice Neil Gorsuch, joined by Chief Justice John Roberts and Justice Clarence Thomas, expressed a similar view in their dissent, opining that the current deferential version of the intelligible principle test "has been abused to permit delegations of legislative power that on any other conceivable account should be held unconstitutional."[9] While Justice Brett Kavanaugh recused himself from the case and did not participate in the decision, he wrote separately in the denial of certiorari in a subsequent

---

[3] *See, e.g.*, Whitman v. Am. Trucking Associations, 531 U.S. 457, 458 (2001) (concluding that "[s]tatutes need not provide a determinate criterion" in order to constitutionally delegate legislative power).

[4] Jarkesy v. Sec. & Exch. Comm'n, 34 F.4th 446, 462 (5th Cir. 2022).

[5] *Id.* at 462-63.

[6] *See* Sec. & Exch. Comm'n v. Jarkesy, 143 S. Ct. 2688 (2023); Oral Argument - Audio, Sup. Ct. of the U.S. (Nov. 29, 2023), https://perma.cc/598C-HA9A.

[7] Gundy v. United States, 139 S. Ct. 2116, 2121 (2019).

[8] *Id.* at 2130-31 (Alito, J., concurring).

[9] *Id.* at 2140 (Gorsuch, J. dissenting).

case to explain that "Justice Gorsuch's scholarly analysis of the Constitution's nondelegation doctrine in his *Gundy* dissent may warrant further consideration in future cases."[10] Particularly given that Justice Ruth Bader Ginsburg (who joined the plurality in *Gundy*[11]) has now been replaced on the Court by Justice Amy Coney Barrett (who, as a law professor expressed support for "a more demanding application of the nondelegation doctrine"[12]) the Court appears open to reviving the intelligible principle test as a constraint on agency action in the coming years.[13]

Recognizing the Court's apparent interest in reconsidering the nondelegation question, large private sector employers including Amazon, Trader Joe's, Starbucks, and SpaceX are now challenging the constitutionality of the National Labor Relations Board ("NLRB") and its authority to regulate the rights of their employees. In an ongoing NLRB enforcement action against Trader Joe's, the company is defending itself against a variety of anti-union practices by raising an "affirmative defense" that "[t]he National Labor Relations Act as interpreted and/or applied in this matter, including but not limited to the structure and organization of the National Labor Relations Board and the Agency's administrative law judges is unconstitutional."[14] Amazon, which is defending itself against charges that it illegally retaliated against recently unionized workers at one of its warehouses, is likewise arguing that the NLRB's actions "implicate the Major Questions Doctrine and associated principles of non-delegation and therefore violate Article I of the United States Constitution."[15] SpaceX and Starbucks are similarly bringing constitutional challenges to the NLRB's structure, alleging that removal protections for its Board members and Administrative Law Judges ("ALJs") are unconstitutional restrictions on the President's authority

---

[10] Paul v. United States, 140 S. Ct. 342, 342 (2019).

[11] Gundy v. United States, 139 S. Ct. 2116, 2120 (2019).

[12] Amy Coney Barrett, *Suspension and Delegation*, 99 CORNELL L. REV. 251, 319 (2014).

[13] A revival of the nondelegation doctrine would also be in line with the Court's recent trajectory toward constraining agency power through its recent invocation of the Major Questions Doctrine and its decision to reconsider its holding in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) this term. *See* Relentless, Inc. v. United States Dep't of Com., 62 F.4th 621 (1st Cir.), *cert. granted in part sub nom.* Relentless, Inc. v. Dep't of Com., 144 S. Ct. 325 (2023); Loper Bright Enterprises, Inc. v. Raimondo, 45 F.4th 359 (D.C. Cir. 2022), *cert. granted in part sub nom.* Loper Bright Enterprises v. Raimondo, 143 S. Ct. 2429 (2023).

[14] Transcript of Trader Joe's N.L.R.B. Hearing, 01-CA-296847 at 21 (Jan. 16, 2024) (on file with CUNY Law Review).

[15] Answer to Second Amended Complaint, 29-CA-296817 et. al. (N.L.R.B. Feb. 15, 2024) (on file with CUNY Law Review).

under Article II of the Constitution.[16] The timing of these challenges coincides with the fact that a favorable public opinion towards unions and organized labor is at a record high for the first time since the 1950s.[17] The NLRB is a particularly desirable target for private sector companies resistant to regulation because, unlike other legal doctrines, labor disputes are most often relegated to administrative court systems and arbitration.[18]

While the recent high-profile challenges by Amazon, Starbucks, Trader Joe's, and SpaceX have drawn much national attention,[19] the attack on the administrative state's authority to regulate workers' rights has been ongoing in a less noticed industry for years: agriculture. Protection for agricultural workers' concerted activity is patchwork at best and, even at its strongest, does not cover the critical escalation of protected activity available to other private sector workers: the right to strike.[20] The result is a more flexible doctrine that is vulnerable to the changing of presidential administrations and their subsequent appointments and one that may be even more vulnerable to litigation challenges than more traditional workplaces. Considering this context, those who are concerned about the government's continued ability to protect workers from violations of their legally protected rights should understand the unique vulnerability of federal regulation of farmworkers rights, as demonstrated by two recent cases: *Sun Valley Orchards v. Dep't of Labor*[21] and *New York State Vegetable Growers Ass'n v. Hochul*.[22]

I. FEDERAL REGULATION OF FARMWORKER RIGHTS

The New Deal was characterized by a focused push to stabilize the American economy through state action. Agencies were created, the government stepped in to employ and regulate private industry, and the bureaucratic capacity of the executive branch saw a dramatic increase.

---

[16] *See* Space Expl. Techs. Corp. v. Nat'l Lab. Rels. Bd., No. 1:24-CV-00001, 2024 WL 974625, 2-4 (S.D. Tex. Mar. 1, 2024); Cortes v. Nat'l Lab. Rels. Bd., No. CV 23-2954 (JEB), 2024 WL 1555877, 1 (D.D.C. Apr. 10, 2024).

[17] Lydia Saad, *More in U.S. See Unions Strengthening and Want it that Way,* GALLUP (Aug. 30, 2023), https://perma.cc/RC8X-8XCW.

[18] *See generally* JOHN F. MANNING & MATTHEW C. STEPHENSON, LEGISLATION AND REGULATION, CASES AND MATERIALS (2021).

[19] *See, e.g.*, Steven Greenhouse, *Major US Corporations Threaten to Return Labor to 'Law of the Jungle'*, GUARDIAN (Mar. 10, 2024), https://perma.cc/3N8R-PS2Q.

[20] *Farm Laborers Fair Labor Practices Act*, DEP'T OF LAB., https://perma.cc/6B95-4ELK (last visited April 13, 2024).

[21] Sun Valley Orchards, LLC v. U.S. Dep't of Lab., No. 1:21-CV-16625, 2023 WL 4784204 (D.N.J. July 27, 2023).

[22] New York State Vegetable Growers Ass'n, Inc. v. Hochul, No. 23-CV-1044, 2024 WL 656007 (W.D.N.Y. Feb. 16, 2024).

In the rapid expansion of the administrative state that characterized the New Deal, the regulation of the conditions and circumstances of labor received particular attention. Both the National Labor Relations Act of 1935 ("NLRA") and the Fair Labor Standards Act of 1938 ("FLSA") shifted the paradigm for the American worker, making it the official policy of the United States to support worker organizing and setting a floor for wages and a ceiling for overtime. Both of these foundational pieces of labor law, however, share a targeted exclusion of two fields of employment that, at the time, were predominantly composed of Black workers: farm work and domestic work. Southern legislators in the 1930s would not support a bill that would so drastically change both the cost of their local labor markets and the power dynamic between employers and formerly enslaved people.[23]

As the demographics of farmworkers have shifted to a strong majority of Mexican and Central American immigrant workers,[24] the goal of preserving a class of excluded workers has persevered. Although there have been state-level efforts to support farmworkers' right to organize, the federal government has done anything to correct its original exclusion of farm workers from the right to organize under the NLRA. A round of 1966 amendments to the FLSA extended minimum wage coverage and employer recordkeeping requirements to agricultural workers and their employers.[25] This shift moved the typical piecework wage structure to guarantee a minimum wage guarantee regardless of the actual yield of crop during a given shift.[26] These amendments were bitterly opposed by employers but still managed to leave behind overtime protections and the strongest child labor protections contained in the FLSA.[27]

Three years before the H-2A visa program was established through the Immigration Reform and Control Act of 1986 ("IRCA"), the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") broke through as the main federal law granting specific labor protections to farmworkers. The legislative intent behind AWPA recognized that protecting farmworkers makes the agricultural sector more resilient and productive, stating that the goal of the policy is to " . . . remove the restraints on commerce caused by activities detrimental to migrant and

---

[23] Kamala Kelkar, *When Labor Laws Left Farm Workers Behind - and Vulnerable to Abuse*, PBS NEWS WEEKEND (Sept. 18, 2016), https://perma.cc/PF5J-BLXH.

[24] *See Facts About Agricultural Workers*, NAT'L CTR. FOR FARMWORKER HEALTH, INC. (Jan. 2022), https://perma.cc/FQ8E-J59W.

[25] *See US Labor Law for Farmworkers*, FARMWORKER JUST., https://perma.cc/7CKM-PCHC (last visited May 10, 2024).

[26] *See id.*

[27] *See id.*

seasonal agricultural workers; to require farm labor contractors to register . . . and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers."[28] Many of the standards established in AWPA were later mirrored in the employer requirements of the H-2A program, emphasizing the visa program's goal of supplementing a labor force with immigrant workers without lowering sectoral standards in a way that weakened the American worker's bargaining position.[29]

The federal government's persistent unwillingness to amend the NLRA to allow for farmworkers to collectively bargain for wages, benefits, and working conditions, and generally turn to the NLRB with grievances, places significant importance on the Department of Labor's ("DOL's") ability to enforce existing legislation. If the legislative intent of federal action to protect this workforce is to be upheld, any efforts to challenge the administrative capacity and authority of the DOL should be assessed in the context of its potential ramifications for this workforce.

II. SUN VALLEY ORCHARDS

In 2021, Sun Valley Orchards, a family owned and operated asparagus farm, sued the DOL contesting an Administrative Law Judge ("ALJ") determination that it had violated several provisions of DOL's H-2A visa program requirements.[30] Rather than seek a reversal of the DOL's findings, the farm challenged the constitutionality of the DOL's entire ALJ system. Sun Valley framed the issue as a "fundamental question" of "whether a federal administrative agency can impose potentially ruinous liability . . . on a family farm via administrative adjudication before non-Article III administrative judges."[31] In July 2023, a federal judge in the District of New Jersey rejected the claim, determining that "Congress authorized the DOL to adjudicate civil monetary penalties or back pay in administrative proceedings" through clear statutory language.[32]

---

[28] *See* 29 U.S.C. § 1801 (West).

[29] *See H-2A Temporary Agricultural Workers*, U.S. CITIZENSHIP & IMMIGR. SERV., https://perma.cc/T43P-3L8L (last visited May 10, 2024).

[30] Complaint, Sun Valley Orchards, LLC v. U.S. Dep't of Lab., No. 1:21-CV-16625, 2023 WL 4784204 (D.N.J. July 27, 2023) [hereinafter Sun Valley Orchards Complaint].

[31] Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment at 1, Sun Valley Orchards, LLC v. U.S. Dep't of Lab., (No. 1:21-CV-16625), 2023 WL 4784204 (D.N.J. July 27, 2023).

[32] Sun Valley Orchards, LLC v. U.S. Dep't of Lab., No. 1:21-CV-16625, 2023 WL 4784204, at *7 (D.N.J. July 27, 2023).

The suit stemmed from a 2015 enforcement action against Sun Valley Orchards by the DOL, which had been tasked with enforcement of employer compliance through appropriate penalties of the agricultural worker H-2A visa program under § 1188(g)(2) of the IRCA.[33] In 2015, Sun Valley Orchards filed two job orders with the Department to hire H-2A workers for their crop picking season, which spanned from April to October.[34] In May 2015, nineteen workers attempted to raise concerns about their living and working conditions with the management of Sun Valley.[35] These issues included access to potable drinking water and acceptable bathroom facilities, insufficient break periods during twelve-hour shifts, various forms of wage theft, and farm equipment and transportation-related safety concerns, stemming from the employer's contractual obligation to share in writing both with their H-2A employees and the DOL.[36] Sun Valley management responded to this meeting by firing the workers and submitting false reports to the DOL that the workers were leaving voluntarily.[37] Two months later, this practice was repeated when management laid off another forty-four workers before the end of their contractual work period; these workers were also reported as leaving voluntarily to the DOL.[38]

In its enforcement capacity, the DOL Wage and Hour Division investigated Sun Valley, which was followed by a Notice of Determination from the DOL administrator alleging multiple violations of the H-2A program.[39] The Administrator ordered roughly $370,000 in back wages and $212,250 in civil penalties, an amount that was affirmed at every level of appeal within the DOL's adjudicatory system.[40] Among a multitude of arguments within Sun Valley's complaint in the District of New Jersey was the assertion that the legal issue was better suited for adjudication in an Article III court, rather than in an agency where, in the words of Sun Valley's counsel, the "DOL . . . has appointed itself prosecutor, judge, and jury."[41] Despite the clear discretion granted to the DOL to levy fines and pursue employer compliance,[42] Sun Valley, together with their pro bono representation from the impact litigation firm

---

[33] See 8 U.S.C. § 1188(g)(2) (West).

[34] See Sun Valley Orchards, LLC, Admin. Rev. Bd., Case No. 2020-0018, 2-5 (U.S. Dep't of Lab. May 27, 2021).

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See id.*

[39] *See Sun Valley Orchards, LLC* 2023 WL at *3.

[40] *See id.*

[41] *See* Sun Valley Orchards Complaint, *supra* note 30, at ¶ 3.

[42] *See* 8 U.S.C. § 1188(g)(2) (West).

Institute for Justice, attempted to replicate the holding from *West Virginia v. EPA* by arguing that the DOL's ALJ system was not authorized by Congress to adjudicate cases dealing with alleged violations of H-2A regulations.[43] Sun Valley's case makes clear the extent that farm workers' rights have become a focal point for broader attacks on the administrative state.

III. NEW YORK STATE VEGETABLE GROWERS ASSOCIATION INC. V. HOCHUL

On October 3, 2023, a cohort of agricultural organizations and farms sued Governor Kathy Hochul, Attorney General Leticia James, and Public Employment Relations Board ("PERB") Chair John Wirenius in the Western District of New York over the implementation and enforcement of the 2019 Farm Laborers Fair Labor Practices Act ("FLFLPA").[44] The 2019 law amended the New York State Employment Relations Act to explicitly grant workers in the agricultural sector the right to collectively bargain free from interference or intimidation, as well as other complimentary wage, hour, and labor rights explicitly withheld by federal labor law.[45]

Established via statute in 1967 through the enactment of what is colloquially known as the "Taylor Law," PERB manages the administration of the FLFLPA.[46] The Taylor Law requires New York State employers to bargain collectively with unions, prohibits strikes by public employees, and establishes PERB for the purposes of administering and interpreting the Taylor Law and the New York State Labor Relations Act, where the FLFLPA is housed.[47] Pursuant to the statutory authority granted by Article 20 of NY State Labor Law, PERB promulgated Rules of Procedure that established definitions, scope of authority, and agency procedures.[48] Taking issue with PERB's ability to appoint a binding arbiter if a collective bargaining agreement between represented workers

---

[43] *See* Sun Valley Orchards Complaint, *supra* note 30, at ¶ 3; *see also* David Freeman Engstrom & John E. Priddy, *West Virginia v. EPA and the Future of the Administrative State*, SLS BLOGS (July 6, 2022), https://perma.cc/87C9-SJ3F.

[44] Complaint, N.Y. State Vegetable Growers Ass'n v. Hochul, No. 23-CV-1044, 2023 WL 6391051 (W.D.N.Y. Oct. 2, 2023) [hereinafter N.Y. State Vegetable Growers Ass'n Complaint].

[45] *See Farm Laborers Fair Labor Practices Act*, DEP'T OF LAB., https://perma.cc/6B95-4ELK (last visited April 13, 2024).

[46] *Overview*, N.Y. STATE PUB. EMP. REL. BD., https://perma.cc/R7WZ-FEWU (last visited May 10, 2024).

[47] *See id.*

[48] *See Rules & Regulations of the Public Employment Relations Board When Acting Pursuant to Article 14 of the Civil Service Law*, N.Y. STATE PUB. EMP. REL. BD (Aug. 2, 2017), https://perma.cc/F4BP-52F4.

and their employer is not reached within a year, the plaintiffs argued that the State, through its own agency arbitrator rather than a neutral third-party arbitrator—as is the norm in private-sector labor disputes—"has unlimited power to compel private sector agricultural employers to implement any employment or business practice that a labor union deems to be 'in dispute.'"[49]

Among complaints pertaining to federal preemption and employer free speech, the plaintiffs took particular issue with the role of PERB within the greater scheme of the law. They described issues with the process of this administrative body issuing and enforcing rules in a fashion that felt "unworkable, inconsistent, and divorced from any semblance of rule of law."[50] By raising issues with PERB's administrative court's enforcement of the agency's own rules and regulations, the plaintiffs replicated the attack on administrative bodies' role in statutory enforcement demonstrated by challenges to the nondelegation doctrine.[51] The plaintiffs further sought a temporary restraining order to halt the framework of FLFLPA, which governs what qualifies as employer intimidation interference in union organizing and PERB's ability to enforce collective bargaining provisions of the law.[52]

Here, similar to the complaint in *Sun Valley*, the plaintiffs took issue with the fact that the FLFLPA is enforced, interpreted, and adjudicated by PERB. From the plaintiffs' perspective, PERB's administrative structure created a circle of self-referential rules where adjudication referred to rule-making, rulemaking pointed to the statute, and the statute held the basis for granting this original authority.[53] The complaint takes another page out of *Sun Valley*'s book and provides significant detail on how one of the named defendants, Sarah Coleman, served as Deputy Chair of PERB, where she performed administrative, investigative, and adjudicative functions in unfair labor practice proceedings brought under the FLFLPA.[54] This particular issue distinguishes previous efforts made by the Vegetable Grower's Association to intervene or overturn the FLFLPA, which focused their challenges on issues of federal preemption and free speech violations.[55]

---

[49] N.Y. State Vegetable Growers Ass'n Complaint, *supra* note 44, at ¶ 34.

[50] *Id.* at ¶ 63.

[51] *See id.* at 3-6.

[52] *See id.* at 100-02.

[53] *See* N.Y. State Vegetable Growers Ass'n Complaint, *supra* note 44, at ¶ 300.

[54] *Id.* at ¶¶ 64-65.

[55] *See* New York State Vegetable Growers Ass'n, Inc. v. Cuomo, 474 F. Supp. 3d 572 (W.D.N.Y. 2020); New York State Vegetable Growers Ass'n, Inc. v. Cuomo, No. 19-CV-1720-LJV, 2021 WL 2651996 (W.D.N.Y. May 28, 2021).

The FLFLPA alone, which made New York only the second state in the country to fill the gap in collective bargaining rights left by the NLRA, has been litigated virtually every year since its enactment, largely on the basis of federal preemption, free speech violations, and due process and equal protection violations.[56]With this suit and the parroting of Sun Valley Orchards' concern over an agency appointing itself " . . . prosecutor, judge, and jury,"[57] the employer association representing farm-owners is taking a novel legal approach that mirrors a growing trend among employers in sectors dealing with activated organizing efforts.[58]

CONCLUSION

The joint efforts from SpaceX, Starbucks, Amazon, and Trader Joe's have garnered attention for repeating the argument that the structure of the NLRB is unconstitutional.[59] These employers have all been charged with breaking federal labor laws and have responded by challenging the authority of the administrative state to sanction them for doing so. While organized labor and constitutional scholars alike follow these high-profile cases with bated breath, the national attention to this issue should have started much sooner than *Sun Valley Orchards* and *Vegetable Growers*.

Farmworkers, by the nature of their outdoor workplaces, carefully constructed worker classification, and often uncertain immigration status, exist in a zone that is nearly exclusively governed by the administrative state. The attacks on the ALJs from whom farmworkers can seek relief and protection should be the canary in the coalmine for any American who enjoys clean air, safe workplaces, and trustworthy food and medicine. Should parallel constitutional arguments be successful with respect to farmworkers and the administrative structures designed in very recent history to protect them, the nearly ninety-year-old precedent that affirms the constitutional legitimacy of the NLRB is even more vulnerable to attack.

---

[56] *See id.*

[57] Sun Valley Orchards Complaint, *supra* note 30, at ¶ 7.

[58] *See* Kim Kelly, *Why SpaceX, Amazon, and Trader Joe's Are Pushing an Aggressive Lawsuit That Would Fundamentally Undermine Labor Organizing*, FAST CO. (Feb. 23, 2024), https://www.fastcompany.com/91035382/why-spacex-amazon-and-trader-joes-are-pushing-an-aggressive-lawsuit-that-would-fundamentally-undermine-labor-organizing (on file with CUNY Law Review).

[59] Pavithra Mohan, *The Surprising Strategy Behind the ACLU's Fight With the National Labor Relations Board*, FAST CO. (Mar. 31, 2024), https://www.fastcompany.com/91071206/the-surprising-strategy-behind-the-aclus-fight-with-the-national-labor-relations-board (on file with CUNY Law Review).