UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

TESLA, INC.	
and	
	Cases 32-CA-197020
MICHAEL SANCHEZ, an Individual	**32-CA-197058**
	32-CA-197091
and	**32-CA-197197**
	32-CA-200530
JONATHAN GALESCU, an Individual	**32-CA-208614**
	32-CA-210879
and	**32-CA-220777**
RICHARD ORTIZ, an Individual	
and	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA, AFL-CIO	

BRIEF OF *AMICI CURIAE* COALITION FOR A DEMOCRATIC WORKPLACE, THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINSS LEGAL CENTER, ASSOCIATED BUILDERS AND CONTRACTORS, INDEPENDENT ELECTRICAL CONTRACTORS, NATIONAL RETAIL FEDERATION, RETAIL INDUSTRY LEADERS ASSOCIATION, AND RESTAURANT LAW CENTER

Kurt G. Larkin
Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, VA 23219
(804) 788-8776
(804) 788-8218
klarkin@huntonak.com

Ronald Meisburg
Hunton Andrews Kurth LLP
2200 Pennsylvania Ave. NW
Washington, DC 20037
(202) 955-1539
(202) 778-2201
rmeisburg@huntonak.com

Gary Enis
Hunton Andrews Kurth LLP
1445 Ross Ave., Suite 3700
Dallas, TX 75202
(214) 979-2924
(214) 979-3910
genis@huntonak.com

Counsel for Amici

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STATEMENT OF INTEREST

This brief is submitted by the undersigned *amici curiae* in response to the National Labor Relations Board's ("the Board") Notice and Invitation to File Briefs, 370 NLRB No. 88 (February 12, 2021).

The **Coalition for a Democratic Workplace ("CDW")** is a coalition of nearly 500 organizations[1] representing the interests of millions of private-sector employers nationwide. CDW's members are or represent the interests of employers subject to the National Labor Relations Act ("the Act") and are consequently affected by the Board's decision in this case. CDW advocates for its members on numerous issues of significance related to federal labor policy and interpretations and applications of the Act.

CDW and its members have a direct interest in this matter because they include employers that maintain and enforce nondiscriminatory uniform policies. Thus, the decision in this case will apply to CDW members both with and without union workforces.

The **Chamber of Commerce of the United States of America** ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The **National Federation of Independent Business Small Business Legal Center** ("NFIB SBLC") is a nonprofit, public interest law firm, established to provide legal resources and

[1] A full list of CDW's Members is available at https://myprivateballot.com/about/.

be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. NFIB is the nation's leading small business association, representing members in Washington D.C., and all fifty state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. To fulfill its role as the voice for small business, the NFIB SBLC frequently files amicus briefs in cases that affect small businesses.

Associated Builders and Contractors ("ABC") is a national construction industry trade association representing more than 21,000 members. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors.

Independent Electrical Contractors ("IEC") is the nation's premier trade association representing America's independent electrical and systems contractors with over 50 chapters, representing 3,400 member companies that employ more than 80,000 electrical and systems workers throughout the United States. IEC aggressively works with the industry to promote the concept of free enterprise, open competition and economic opportunity for all.

The **National Retail Federation** ("NRF") is the world's largest retail trade association, representing all aspects of the retail industry. NRF members includes discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and Internet retailers. The NRF regularly advocates for the interests of retailers, large and small, in a variety of forums, including the legislative, executive, and judicial branches of government.

Retail Industry Leaders Association ("RILA") is a trade association of retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers,

which together account for more than $1.5 trillion in annual sales, more than 42 million American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

Restaurant Law Center ("Law Center") is a public policy organization affiliated with the National Restaurant Association, the largest foodservice trade association in the world. This labor-intensive industry is comprised of over one million restaurants and other food service outlets employing almost 14.7 million people—approximately 10 percent of the U.S. workforce. Restaurants and other foodservice providers are the nation's second largest private-sector employers. The Law Center seeks to provide the Board with the industry's perspective on legal issues significantly impacting the industry. Specifically, the Law Center highlights the potential industry-wide consequences of pending cases, such as the one here, through amicus briefs on behalf of the industry.

Collectively, CDW, the Chamber, NFIB SBLC, ABC, IEC, NRF, RILA, and Law Center are the "Amici."

POSITION ON THE BOARD'S QUESTIONS

The Board is seeking input from *Amici* on two related issues:

1. Does *Stabilus, Inc.*, 355 NLRB 836 (2010), specify the correct standard to apply when an employer maintains and consistently enforces a nondiscriminatory uniform policy that implicitly allows employees to wear union insignia (buttons, pins, stickers, etc.) on their uniforms?

2. If *Stabilus* does not specify the correct standard to apply in those circumstances, what standard should the Board apply?

For the reasons explained herein, *Amici* respectfully assert that *Stabilus* does not provide the correct standard for balancing Section 7 rights with facially neutral employer policies that limit—but do not prohibit—the wearing of union insignia. Not only is the "special circumstances"

standard set out in *Stabilus* an outlier in this context, but it is based on a misapplication of the United States Supreme Court's decision in *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). *Republic Aviation* required a showing of special circumstances to justify work rules that result in a *total ban* on employees' Section 7 rights. But where an employer maintains a facially neutral rule that limits—but does not ban—union insignia, the infringement of Section 7 rights is less severe, and a different standard should govern. In these circumstances, the Board has applied (and should continue to apply) the more reasonable, less onerous standard found in *Boeing Co.*, 365 NLRB No. 154 (2017), which balances an employer's legitimate right to maintain a dress code with an employee's right to display union insignia in the workplace.

Application of *Boeing* to facially neutral and non-discriminatory uniform policies is consistent with precedent and properly treats uniform and dress policies like other facially neutral work rules. The *Boeing* standard achieves proper balancing of employee rights to organize and employer interests in safety, discipline, and product quality. To apply, as *Stabilus* seems to do, the special circumstances standard from *Republic Aviation* tips the scale. Given the exceptionally high burden for proving special circumstances, the standard would invalidate almost all uniform policies. The Board should treat such uniform and dress code policies like other facially neutral employer policies and apply *Boeing* in this and future cases.

ARGUMENT

I. The special circumstances standard of *Republic Aviation* and *Stabilus* is inapplicable to facially neutral uniform policies that allow union insignia.

Although employees have the right to wear union insignia in the workplace, that right is not absolute. *Republic Aviation*, 324 U.S. at 797-98, 801-03. Employers may, in some instances, limit or ban the wearing of union insignia without violating the Act. *Id*. at 801-03; *see also Wal-Mart Stores Inc*., 368 NLRB No. 146, slip op. at *12 (Dec. 16, 2019). When an employer

establishes a policy that completely bans the wearing of union insignia, the Board has applied the special circumstances standard set forth in *Republic Aviation*. *See, e.g.*, *USF Red Star, Inc.*, 339 NLRB 389, 391 (2003); *United Parcel Service*, 312 NLRB 596, 597 (1993), enf. denied 41 F.3d 1068 (6th Cir. 1994). Under this standard, a workplace rule completely banning the display of union insignia is unlawful unless an employer can establish that the ban is warranted by and narrowly tailed to special circumstances. *Wal-Mart Stores*, 368 NLRB No. 146, slip op. at *2; *see Komatsu America Corp.*, 342 NLRB 649, 650 (2004) (special circumstances include "when their [union insignia] display may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, or when necessary to maintain decorum and discipline among employees").

On the other hand, when confronted with facially neutral uniform policies that merely limit, but do not ban, union insignia, the Board has analyzed such polices like any other work rule and applied a more reasonable, less onerous standard. *Wal-Mart Stores*, 368 NLRB No. 146, slip op. at *2; *see also*, *Burndy, LLC*, 364 NLRB No. 77, slip op. at *1 (Aug. 17, 2016); *Medco Health Sols. of Las Vegas, Inc.*, 357 NLRB 170, 171 (2011). The Board's deviation from that precedent in *Stabilus* was an error that this Board should correct.

A. The "special circumstances" standard applies only to bans on union insignia.

Historically, when determining whether a uniform/dress code policy is facially unlawful, the Board has applied different standards depending on whether (i) the policy altogether bans the wearing of union insignia or (ii) the policy only limits when and how an employee can wear union insignia. This important distinction is well-founded in both Supreme Court and Board precedent.

In *Republic Aviation*, the Court focused on the discharge of employees for wearing union insignia in violation of an employer's solicitation policy. *Republic Aviation*, 324 U.S. at 801. The Court affirmed the Board's determination that the outright ban on solicitation (and the wearing of

insignia) "must fall as interferences with union organization." *Id.* at 803. At the same time, the Court recognized the "undisputed" rights of employers and acknowledged that "a rule prohibiting union solicitation during working hours" may be valid in the face of "evidence that special circumstances make the rule necessary in order to maintain production or discipline." *Id*. at 803, n.10. On a full read of *Republic Aviation*, it is clear that the "special circumstances" test was meant to apply only to a narrow subset of employer rules, namely, those that: (i) are directed primarily towards solicitation, and (ii) ban such solicitation on non-work time.

The facts here are decidedly different. Tesla maintains a facially neutral uniform policy that prohibits the wearing of union clothing while implicitly allowing other forms of union solicitation, including wearing union insignia and buttons. Thus, the policy at issue here does not come close to a ban on union solicitation in the workplace. Tesla has not restricted—or sought to cabin—union solicitation. Where, as here, the right to wear union insignia is not banned, but merely regulated, *Republic Aviation* simply does not apply. The Board recently reiterated this distinction in *Wal-Mart Stores*:

> The Supreme Court long ago affirmed the Section 7 right of employees to wear union buttons and other insignia. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801-803 (1945). But this right is not absolute. The Board has evaluated the lawfulness of facially neutral work rules that prohibit the wearing of all union buttons and insignia by examining whether the employer has shown special circumstances for the prohibition. In such cases, the infringement on Section 7 rights is incontrovertible, and the employer must therefore prove that special circumstances exist justifying the ban for it to be lawful.
>
> Where . . . the Employer maintains a facially neutral rule that limits the size and/or appearance of union buttons and insignia that employees can wear but does not prohibit them, a different analysis is required. Necessarily, because the infringement on Section 7 rights is less severe, the employer's legitimate justifications for maintaining the restriction do not need to be as compelling for its

> policy to pass legal muster, and justifications other than the recognized special circumstances may suffice.

Wal-Mart Stores, 368 NLRB No. 146, slip op. at *1-2.

And the Board's relevant decisions bear this out. It has limited application of the *Republic Aviation* special circumstances analysis to employer attempts to completely ban union insignia. *See, e.g.*, *USF Red Star, Inc.*, 339 NLRB at 391 ("[A] *ban* on wearing union insignia violates the Act unless it is justified by special circumstances.") (emphasis added); *United Parcel Service*, 312 NLRB at 597 ("In the absence of 'special circumstances,' the *prohibition* by an employer against the wearing of union insignia violates Section 8(a)(1) of the Act.") (emphasis added), enf. denied 41 F.3d 1068 (6th Cir. 1994); *The Ohio Masonic Home*, 205 NLRB 357, 357 (1973) ("In the absence of 'special circumstances,' the promulgation of a rule *prohibiting* the wearing of [union] insignia is violative of Section 8(a)(1).") (emphasis added), enfd. 511 F.2d 527 (6th Cir. 1975); *Floridan Hotel of Tampa*, 137 NLRB 1484, 1486 (1962) ("The promulgation of a rule *prohibiting* the wearing of [union insignia] constitutes a violation of Section 8(a)(1) in the absence of evidence of 'special circumstances' . . . .") (emphasis added), enfd. 318 F.2d 545 (5th Cir. 1963).

B. *Stabilus*'s reference to "special circumstances" is dicta.

Stabilus eroded this well-settled balance between employer and employee rights. In *Stabilus*, the Board addressed whether an employer had committed unfair labor practices by enforcing its policy that employees wear company shirts. Ruling in favor of the employees, the Board's holding rested on its finding that the employer "enforced its policy in a selective and overbroad manner against union supports." *Stabilus*, 355 NLRB at 837. The Board expressly caveated its decision, noting that "[w]e need not reach the [] conclusion that the Respondent failed to make the required showing that special circumstances justified the application of its uniform

policy." *Id.* In other words, the Board did not apply the *Republic Aviation* special circumstances standard to determine that the policy violated the Act.

Despite acknowledging that the special circumstances standard was irrelevant to the outcome, the Board in *Stabilus* suggested in dicta that this standard applied to the employer's uniform policy. *Id*. at 838. Citing *Republic Aviation*, the Board noted generally that "employees have a Section 7 right to wear union insignia on their employer's premises, which may not be infringed, absent a showing of 'special circumstances.'" *Id*. And it went on to observe, without justification or citation, that "[a]n employer cannot avoid the 'special circumstances' test simply by requiring its employees to wear uniforms or other designated clothing, thereby precluding the wearing of clothing bearing union insignia." *Id*. Not only is this an incorrect statement of law, but it is wholly ancillary to the holding of the case. *Stabilus* made no finding as to the facial lawfulness of the uniform policy at issue.

C. *Stabilus* is an outlier and any extension is unwarranted.

The Board's subsequent treatment of *Stabilus* demonstrates that its passing reference to *Republic Aviation* was not based on a well-founded proposition. The Board has declined to use *Stabilus* to reinvent the legal landscape here. Simply put, the Board has *not* applied the special circumstances standard to facially neutral and non-discriminatory work rules that do not ban the wearing of union insignia. Indeed, the Board has expressly stated that the *Republic Aviation* special circumstances standard is not appropriate in such cases. For example, in *Wal-Mart Stores*, the Board held that *Republic Aviation* is inapplicable where "the [e]mployer maintains a facially neutral rule that limits the size and/or appearance of union insignia that employees can wear but does not prohibit them." *Wal-Mart Stores*, 368 NLRB No. 146, slip op. at *2; *see also World Color (Usa) Corp.*, 369 NLRB No. 104 (June 12, 2020) (special circumstances standard inapplicable to

a dress policy which does not prohibit wearing of union insignia). As Member Schaumber explained in his dissenting opinion in *Stabilus*,

> [t]he question of whether there are "special circumstances," however, has arisen either in cases where (i) an employer without a uniform policy or dress code prohibited employees from wearing union insignia or attire, or (ii) an employer with a uniform policy or dress code prohibited employees from adding union insignia (such as a button or pin) to the required attire. *But the Board has never held that, where an employer lawfully maintains and consistently enforces a policy requiring employees to wear a company uniform, its employees have a right under Section 7 to disregard the policy and wear union attire in place of the required uniform*.

Stabilus, 355 NLRB. at 842-43 (emphasis added).

The Board's application of different standards to dress and uniform policies depending on whether the policies ban or merely limit the wearing of union insignia is neither an isolated nor recent phenomena. For example, in *Burndy, LLC*, the Board affirmed an ALJ's conclusion upholding an employer's dress code policy, which "reserve[d] the [employer's] right to address an employee's attire, jewelry, or any aspect of grooming" that it "believe[d] to be . . . not promoting customer good will or the subject of business disruption or complaint." *Burndy*, 364 NLRB No. 77, slip op. at *1. The ALJ explained that application of the special circumstances test was inappropriate to the employer's dress policy because it was facially neutral and not disparately enforced: "[g]iven the facial neutrality of Respondent's dress code and the lack of evidence that it was disparately enforced, I decline to apply the 'special circumstances' test pursuant to *Republic Aviation* and its progeny." Instead, the ALJ applied the "work rule analysis" from *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), a predecessor to the *Boeing* test discussed below. *Id*. at *31, n. 65. The Board affirmed, taking no issue with the ALJ's explanation why *Republic Aviation* was inapplicable to a nondiscriminatory dress code. *Id*. at *1.

Similarly, in *Medco Health Solutions*, an ALJ found that an employer's dress code that prohibited employees from wearing clothing displaying content that is confrontational, insulting, or provocative was unlawfully overbroad under *Lutheran Heritage*. Here again, the ALJ did not apply the special circumstances standard when analyzing the employer's rule. In affirming the ALJ's decision, the Board expressly affirmed the ALJ's decision, stating "the judge properly applied *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), in determining that the Respondent's application of the dress code to restrain Section 7 activity, violated Section 8(a)(1) by maintaining an overly broad work rule." *Medco Solutions*, 357 NLRB at 171.

In short, the Board has consistently treated facially neutral uniform policies and dress codes like all other facially neutral work rules and has not applied a heightened standard in such cases. *See Hosp. Coop. Laundry*, G.C. Mem. Case 27-CA-19349-1, 2005 WL 545235 (2005) (applying *Lutheran Heritage* to determine whether a dress code rule is facially unlawful); *see also Alma Prods. Co.*, Case 07-CA-89537, 2013 WL 4140303, *5-6 (NLRB Div. of Judges 2013) (applying *Lutheran Heritage* to conclude that the employer's dress code "d[id] not explicitly restrict Section 7 activity" but "it is reasonably construed to prohibit protected activity").

Because the special circumstances standard in *Republic Aviation* does not apply when evaluating the lawfulness of an employer's facially neutral and nondiscriminatory dress or uniform policy that does not prohibit the wearing of union insignia, it follows that *Stabilus* does not specify the correct standard. Accordingly, the standards set forth in *Republic Aviation* and *Stabilus* should not be applied here or going forward where an employer maintains and consistently enforces a nondiscriminatory uniform policy that allows employees to wear union insignia on their uniforms.

II. *Boeing* should replace *Stabilus* as the standard for assessing facially neutral and non-discriminatory uniform policies.

The Board's decision in *Boeing* supplies the correct standard for analyzing facially neutral and non-discriminatory uniform policies that allow union insignia. The application of the *Boeing* standard to facially neutral uniform rules places uniform rules on par with other facially neutral work rules and is consistent with the majority of Board precedent.

The Board has historically applied *Boeing* and its precursors when analyzing whether a facially neutral work rule unlawfully interferes with the exercise of rights protected by the National Labor Relations Act. Indeed, the Board explained in *Boeing* that its standard should be applied in "cases in which one or more facially neutral policies, rules, or handbook provisions are at issue that, when reasonably interpreted, would potentially interfere with Section 7 rights." *The Boeing Co.*, 365 NLRB No. 154, slip op. at *15 (Dec. 14, 2017). When presented with such facially neutral rules, "the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, *and* (ii) legitimate justifications associated with the requirement(s)." *Id*. at *4. The Board's *Boeing* decision makes no caveats or carve-outs. *Id*.

The application of the *Boeing* standard in this case—and to all facially neutral and non-discriminatory dress policies—would simply continue the Board's longstanding approach to analyzing dress and uniform policies that do not ban the wearing of insignia. As highlighted above, while the Board has applied the "special circumstances" standard to uniform and dress policies that were discriminatory in nature or that outright prohibit the wearing of union insignia, it has applied *Boeing* and its progeny to facially neutral and non-discriminatory work rules.

In *Wal-Mart Stores*, for example, the Board applied *Boeing* to a facially neutral work rule that regulated (but did not prohibit) employees' wearing of union buttons in the workplace. In electing to apply *Boeing* to the rule in question, the Board explained:

> In *Boeing*, the Board stated that it would apply the standard articulated in that case to determine the lawfulness of all facially neutral policies, rules, and handbook provisions that do not expressly restrict Sec. 7 activity, were not adopted in response to NLRA-protected activity, and have not been applied to restrict NLRA-protected activity. 365 NLRB No. 154, slip op. at 1 fn. 4; see also *PAE Applied Technologies, LLC*, 367 NLRB No. 105, slip op. at 2 fn. 6. First, the Respondent's logos or graphics policies are facially neutral; they apply to all logos and graphics, without in any way distinguishing union logos or graphics. Second, by expressly permitting the wearing of logos or graphics of a certain size and appearance, including union insignias, the policies cannot be said to explicitly restrict Sec. 7 activity. Moreover, the General Counsel did not allege that the policies were adopted in response to NLRA-protected activity or applied to restrict NLRA-protected activity. Therefore, *Boeing* is the proper test for determining the lawfulness of the Respondent's logos or graphics policies.

Wal-Mart Stores Inc., 368 NLRB No. 146, slip op. at *2, n. 11. The *Wal-Mart Stores* decision clarifies that *Boeing* provides the proper framework for analyzing a consistently enforced and nondiscriminatory uniform policy that implicitly allows employees to wear union insignia on their uniforms like the one present in this case

The Board's inclination to treat facially neutral and non-discriminatory uniform and dress policies like any other facially neutral policies that may restrict Section 7 activity long predates *Boeing*. Before *Boeing*, the Board applied its predecessor, *Lutheran Heritage*, to facially neutral and non-discriminatory uniform and dress policies. *See, e.g., Burndy*, 364 NLRB No. 77, slip op. at *31, n. 65. ("Given the facial neutrality of Respondent's dress code and the lack of evidence that it was disparately enforced, I decline to apply the 'special circumstances' test pursuant to *Republic Aviation* and its progeny, as opposed to the work rule analysis articulated in *Lutheran Heritage Village-Livonia*"); *Medco Solutions*, 357 NLRB at 171 (affirming ALJ's application of *Lutheran Heritage* to an employer's facially neutral dress code).

Simply put, if the Board were to forego applying *Boeing* to the uniform policy at bar, or any facially neutral and non-discriminatory uniform policy, it would run counter to decades of its own precedent and inexplicably treat employers' dress and uniform policies differently than the multitude of other neutral work rules that employers enact to govern workplace conduct.

III. The *Boeing* standard strikes the appropriate balance between an employer's right to manage its workforce and employees' Section 7 rights.

Not only is the application of *Boeing* to facially neutral and non-discriminatory uniform policies supported by the Board's own precedent, the application of *Boeing* properly takes into account important public policy considerations surrounding an employer's dress and uniform policies. A fundamental role of the NLRB is striking a balance between an employer's right to manage and operate its business and its employees' right to engage in Section 7 activity. *Boeing*, not *Republic Aviation*, strikes the appropriate balance of these rights when it comes to facially neutral and non-discriminatory employer policies. Anything else represents "a radical rebalancing of the relevant interests and a sharp curtailment of legitimate management prerogatives." *Stabilus*, 355 NLRB at 842 (Schaumber dissent).

Employers enact dress and uniform policies for a host of legitimate reasons, including for employees' safety, morale, and security. A blanket application of *Republic Aviation* and *Stabilus* to all dress and uniform policies would subject employers to the heavy burden of justifying company uniforms. Employers should not be required to meet this burden in order to undertake such a fundamental management action as establishing a uniform policy in the workplace. Holding otherwise subverts the employers' rights and effectively guarantees the employees have the right to wear union attire in place of a required company uniform.

Applying the *Boeing* standard to facially neutral uniform policies supports the many legitimate business justifications for a uniform policy. Unlike *Republic Aviation*, *Boeing* does not

presume to begin with the assumption that a uniform policy rule is unlawful. Rather, *Boeing* appropriately weighs the competing rights, protecting both an employer's managements prerogatives alongside an employee's Section 7 rights.

Amici strongly encourage the Board to adopt the standard articulated in *Boeing* and apply it to the uniform policy in this case. *Amici* also encourage the Board to hold that *Boeing* is the correct standard in all similar cases in which employers maintain facially neutral and non-discriminatory uniform policies that implicitly permit other forms of union solicitation.[2]

Respectfully submitted this 22nd day of March, 2021.

/s/ Kurt G. Larkin
Kurt G. Larkin
Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, VA 23219
(804) 432-8235
(804) 788-8218 (fax)
klarkin@huntonak.com

Counsel for Amici

[2] Even if *Boeing* were not the correct standard and the outcome here were controlled by *Republic Aviation*, the policy at issue would be presumptively lawful because it does not expressly prohibit Section 7 activity. Moreover, the special circumstances test would not even apply to enforcement of the policy on working time and/or in production areas of the employer's facility. *See Republic Aviation* at 803, n. 10. In this respect, regardless of the applicability of *Boeing*, it is clear that *Stabilus* is not a correct articulation of the standards originally announced in *Republic Aviation*.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2021, the foregoing Amicus Brief of Coalition for a Democratic Workplace, Chamber of Commerce of the United States of America, National Federation of Independent Business Small Business Legal Center, Associated Builders and Contractors, Independent Electrical Contractors, National Retail Federation, Retail Industry Leaders Association, and Restaurant Law Center was electronically filed and served by email on the following:

Margo Feinberg
Daniel Curry
Schwartz, Steinsapir, Dohrmann & Sommers LLP
6300 Wilshire Boulevard, Suite 2000
Los Angeles, CA 90048
margo@ssdslaw.com
dec@ssdslaw.com

Mark Ross
Keahn Morris
Sheppard Mullin Richter & Hampton LLP
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111
mross@sheppardmullin.com
kmorris@sheppardmullin.com

Christy Kwon
Catherine Ventola
Counsels for the General Counsel
Region 32 of the National Labor Relations Board
1301 Clay Street, Suite 300
Oakland, CA 94612
Christy.Kwon@nlrb.gov
Catherine.Ventola@nlrb.gov

/s/ Kurt G. Larkin
Counsel for Amici