No. 21-1449

In the Supreme Court of the United States

GLACIER NORTHWEST, INC., D/B/A CALPORTLAND,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 174,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF OF *AMICI CURIAE* COALITION FOR A DEMOCRATIC WORKPLACE, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES, ASSOCIATED BUILDERS AND CONTRACTORS, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, NATIONAL RETAIL FEDERATION, AND RESTAURANT LAW CENTER IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

Amici curiae are the Coalition for a Democratic Workplace ("CDW"), the National Federation of Independent Business ("NFIB"), Associated Builders and Contractors ("ABC"), the Associated General Contractors of America ("AGC"), the National Retail Federation ("NRF"), and the Restaurant Law Center.[1]

The CDW represents employers and associations and the interests of their employees, including nearly 500 member organizations and businesses of all sizes. The majority of CDW's members are covered by the National Labor Relations Act ("NLRA") or represent organizations covered by the NLRA and therefore have a strong interest in the way that the NLRA is interpreted and applied by the National Labor Relations Board.

NFIB is the nation's leading small business association. Its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. 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. The NFIB Small Business Legal Center ("Legal Center") is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. To fulfill its role as the voice for small

[1] Pursuant to this Court's Rule 37.2(a), *amici* affirm that timely notice of intent to file this brief was provided to counsel of record for the parties, and all parties have consented to the filing of this brief. In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *amici curiae*, their members, and their counsel made such a monetary contribution.

business, the Legal Center frequently files *amicus* briefs in cases that will impact small businesses.

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 chapters represent all specialties within the U.S. construction industry, comprised primarily of firms that perform work in the industrial and commercial sectors. ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry, which is based on the principles of nondiscrimination due to labor affiliation and fair and open competition.

AGC is a nationwide trade association of construction companies and related firms. It has served the commercial construction industry since 1918 and has become the recognized leader of the construction industry in the United States. The association provides a full range of services to meet the needs and concerns of its members, thereby improving the quality of construction and protecting the public interest. AGC now has more than 27,000 member firms in 89 chapters. It represents union- and open-shop employers engaged in building, heavy, civil, industrial, utility, and other construction.

NRF is the world's largest retail trade association and the voice of retail worldwide. NRF's membership includes retailers of all sizes, formats, and channels of distribution, as well as restaurants and industry partners from the United States and more than 45 countries abroad. NRF files *amicus curiae* briefs in support of the retail community on dozens of topics, including labor issues.

The Restaurant Law Center is the only independent public policy organization created specifically to represent the interests of the food service industry in the courts. This labor-intensive industry is composed of over one million restaurants and other foodservice outlets employing nearly 16 million people—approximately 10 percent of the

U.S. workforce. Restaurants and other foodservice providers are the second largest private sector employers in the United States. Through *amicus* participation, the Restaurant Law Center provides courts with perspectives on legal issues that have the potential to significantly impact its members and their industry. The Restaurant Law Center's *amicus* briefs have been cited favorably by state and federal courts.

SUMMARY OF ARGUMENT

I. The decision below rewrites this Court's precedent on an important question of federal law: whether unions are immune from state tort suits when they intentionally destroy an employer's property. And in doing so, the decision creates a split with courts across the country.

A. For at least 40 years, this Court's precedents have been clear that the NLRA does not immunize unions that intentionally destroy an employer's property by preempting state tort suits against them. State tort suits are preempted when the alleged unlawful conduct is "arguably" protected by the NLRA, but since 1939 this Court has recognized that the NLRA does *not* protect the "despoiling of property" or similar unlawful activity. *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240, 253 (1939). Even if intentionally destroying property were arguably protected activity, this Court has explicitly explained that the "destruction of property" falls within the 'local feeling' exception to preemption. *Lodge 76, Int'l Ass'n. of Machinists & Aerospace Workers, AFL-CIO v. Wis. Emp't. Relations Comm'n*, 427 U.S. 132, 136 (1976) ("*Lodge 76*").

B. Federal circuit courts and the highest courts in multiple states have followed this Court's precedents regarding unions' intentional destruction of property. The Fifth and the Seventh Circuits have held that unions that intentionally destroy an employer's property are not engaged

in protected activity under the NLRA. Relatedly, the highest courts in Maryland and Arkansas, among others, have held that the NLRA does not preempt employers from enforcing their private property rights under state law—including through trespass actions.

C. The Washington Supreme Court below held that the NLRA preempts a tort suit alleging the intentional destruction of property. That court came to this conclusion not only by holding that the NLRA arguably protects the intentional destruction of property, contrary to *Fansteel*, but by rewriting the local feeling exception to apply only to violent actions, contrary to *Lodge 76*. This sharp divergence from established law created a conflict with the Fifth and Seventh Circuits, which have held that intentionally destroying property is unprotected activity, and with the highest courts of Maryland and Arkansas, both of which have rejected arguments that would narrow the local feeling exception to violent actions.

II. This Court should intervene now to protect businesses from the consequences of the Washington Supreme Court's decision to jettison established law.

A. The decision below leaves employers that suffer intentional property damage—whether that damage is to their product (as in this case), machinery (as the Respondents in this case allegedly intended), structures, or other tangible or real property—without a remedy. Absent review, employers in Washington will no longer be able to bring tort suits against unions that intentionally destroy their property, and the NLRA does not create a substitute remedy. Because state tort actions are often the exclusive means by which businesses recover for such unlawful acts, businesses in Washington will be left holding the bag whenever unions unlawfully swap negotiations for vandalism.

B. By stripping employers of any remedy, the decision below encourages unions to unlawfully inflict harm on employers by destroying their property. Many local unions across the country are already using unlawful tactics, including violence and harassment. And many unions not willing to cross this line have demonstrated that they are nonetheless willing to push for an ability to engage in any activity short of violence. In this context, unions will likely invoke the Washington Supreme Court's decision as a shield not only in Washington state, but in any jurisdiction that has not previously held that employers may pursue tort claims consistent with the NLRA.

C. The lack of a remedy also creates a significant imbalance in power between unions and employers. Congress has attempted to strike a balance between employers and workers. But so long as unions are allowed to engage in lawless activity and employers lack recourse, any union willing to destroy or threaten to destroy an employer's property will have the upper hand in negotiations.

D. The need for legal uniformity and predictability is particularly acute regarding NLRA preemption. Not only has this Court recognized the importance of uniformity in the NLRA context, but employers as businesses require predictability to effectively serve their communities, customers, investors, and employees.

E. The decision below harms local communities, which have a traditionally recognized interest in protecting local property, and union and non-union employees alike who suffer collateral damage when property is destroyed.

ARGUMENT

I. THE WASHINGTON SUPREME COURT'S DECISION REWRITES THIS COURT'S PRECEDENT.

This Court's precedents unmistakably establish that the NLRA does not immunize unions that intentionally

destroy their employer's property by preempting state tort suits seeking to hold unions liable for their unlawful actions. In holding otherwise, the Washington Supreme Court rewrote this Court's precedents and created a split with multiple federal circuits and state high courts.

A. This Court's precedent is clear that the NLRA does not immunize unions that intentionally destroy an employer's property.

When Congress passed the National Labor Relations Act in 1935, it legislated with "broad strokes" and left "the judicial process" to fill in the details. *San Diego Bldg. Trades Council, Millmen's Union, Loc. 2020 v. Garmon*, 359 U.S. 236, 240 (1959). "The principle of pre-emption . . . was [accordingly] born of this Court's efforts, without the aid of explicit congressional guidance, to delimit state and federal judicial authority" under the NLRA. *Amalgamated Ass'n of Motor Coach Emps v. Lockridge*, 403 U.S. 274, 286 (1971).

This Court first set out the relevant framework for analyzing preemption in *Garmon*, where it held that the NLRA ordinarily preempts state efforts to regulate activity that is protected under §7 of the NLRA, prohibited under §8 of the Act, or "arguably" protected or prohibited under those sections. 359 U.S. at 245. But even when the NLRA arguably protects or prohibits conduct, there is no preemption where "the regulated conduct touche[s] interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, [courts] could not infer that Congress had deprived the States of the power to act." *Id.* at 244. This is often referred to as the "local feeling" or "local interest" exception.

It has long been established, using this framework, that state tort actions for the intentional destruction of property are not preempted because the NLRA does *not*

protect—even arguably—a union's intentional destruction of property. Only four years after the NLRA was enacted, this Court emphasized that the Act does not authorize unions to engage in "unlawful acts"—including "the seizure and conversion of [] goods[] or the despoiling of [] property"—"to force compliance with demands" because an employer is not "deprived [] of its legal rights to the possession and protection of its property." *Fansteel*, 306 U.S. at 253. The NLRA neither "license[s]" unions "to commit tortious acts" nor "protect[s] them from the appropriate consequences of unlawful conduct." *Id.* It is difficult to imagine a clearer resolution to whether the NLRA preempts state tort suits regarding the intentional destruction of property.

But even if it were unclear that intentionally destroying property is not protected activity and thus *not* preempted, this Court stated on multiple occasions immediately prior to *Garmon* that preventing the destruction of private property is a compelling local interest that Congress did not intend to remove from local control. In *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board*, this Court stated explicitly that "[t]he dominant interest of the State in preventing violence and *property damage* cannot be questioned." 351 U.S. 266, 274 (1956) (emphasis added). And in *United Construction Workers v. Laburnum Construction Corporation*, it explained that despite changes in labor law, localities maintain their ability to regulate property destruction through civil tort suits: "there is no doubt that [prior to Taft-Hartley in 1947] if agents of [labor] organizations had damaged property through their tortious conduct, the persons responsible would have been liable to a tort action in state courts for damage done" and that the Taft-Hartley Act

"increased, rather than decreased, the legal responsibilities of labor organizations." 347 U.S. 656, 666 (1954).

Roughly two decades later, this Court removed any lingering doubt that the local feeling exception permits employers to hold unions accountable through state tort suits for intentionally destroying property. In *Lodge 76, International Association of Machinists & Aerospace Workers, AFL-CIO v. Wisconsin Employment Relations Commission*, the Court stated in the context of discussing the local feeling exception that "[p]olicing of actual or threatened violence to persons or *destruction of property* has been held most clearly a matter for the States." 427 U.S. 132, 137 (1976) (emphasis added). And in 1978, *Sears, Roebuck & Co. v. Carpenters* held that a state trespass action brought against picketers on an employer's property was not preempted because trespass—a lesser violation of an employer's property rights than intentional destruction, because trespass is temporary—fell under the local feeling exception. 436 U.S. 180, 207 (1978).

Whether unions may destroy an employer's property with impunity due to NLRA preemption was an important federal question, but it was a question that this Court long ago settled with a resounding "no."

B. Multiple federal circuits and state high courts have faithfully followed this Court's precedent to hold that the NLRA does not preempt state tort suits alleging the intentional violation of an employer's property rights.

In light of this Court's long-standing clear precedent, it is no surprise that every federal circuit to consider the issue has held that the NLRA does not protect a union's intentional destruction of property—which, under *Garmon*, means there is no preemption.

In 1955, the Fifth Circuit reviewed a Board petition for enforcement based on findings that an employer

discharged striking employees who intentionally timed their walkout for when molten iron in the plant cupola was ready to be poured, leaving the employer vulnerable to "substantial property damage and pecuniary loss." *NLRB v. Marshall Car Wheel & Foundry Co.*, 218 F.2d 409, 411 (5th Cir. 1955). Relying on this Court's early NLRA cases, and specifically citing *Fansteel*, the Fifth Circuit held that the walkout was "akin to the type of irresponsible and unprotected activity condemned by the Supreme Court as effectively removing the guilty employees from statutory protection." *Id.* at 413. It did not matter that non-striking employees were able to "pour off the molten metal and prevent any actual damage," *id.* at 411—the intent to damage property brought the striking employees outside of the NLRA, and thus outside its preemptive scope.

Two years prior, the Seventh Circuit similarly held that the NLRA did not protect steel workers who went on strike, intentionally leaving ovens unattended and knowing that doing so created serious risk of property damage. *U.S. Steel Co. (Joliet Coke Works) v. NLRB*, 196 F.2d 459, 467 (7th Cir. 1952). Moreover, as in *Marshall Car Wheel*, the court in *Joliet Coke Works* held that the intentionally tortious activity was unprotected even though great physical damage was avoided thanks to tremendous effort. 196 F.2d at 467.

Following these cases, it appears to have been so undisputed that the NLRA does not immunize union members who intentionally destroy an employer's property that no other circuits were ever presented with the issue. Even so, at least three other circuits—as well as the NLRB—have expressed their agreement with this proposition. *See* Petitioner's Br. at 14 (collecting cases).

State courts, drawing on the local feeling exception, have separately held that the NLRA does not preempt employers from enforcing their private property rights

under state law when unions and their members intentionally violate those rights. For example, in *United Food and Commercial Workers International Union v. Wal-Mart Stores, Inc.*, 162 A.3d 909 (Md. 2017) (hereinafter *United Food* (Md.)), the Court of Appeals of Maryland held that Wal-Mart's claims for trespass and nuisance were not preempted by the NLRA. *Id.* at 912. The union had argued that the NLRA preempted these state-law claims because the local interest exception applied only to "cases involving violence, threats of violence, or malicious conduct"—not to other violations of private property rights. *Id.* at 922. But the court rejected this limitation. *Id.* The Arkansas Supreme Court also rejected this same argument from the same union, allowing an employer's trespass action to move forward as not preempted. *United Food and Commercial Workers Int'l Union v. Wal-Mart Stores, Inc.*, 504 S.W.3d 573, 578 (Ark. 2016) (hereinafter *United Food* (Ark.)).

In short, every appellate court to have confronted the question has followed this Court's clear precedent to hold that the NLRA does not immunize unions that intentionally violate the property rights of an employer.

C. The Washington Supreme Court's decision rewrites this Court's precedents and creates a split in the process.

The Washington Supreme Court twice rewrote this Court's precedents and created a split with multiple state high courts and federal circuits when it held that the NLRA preempts a state tort suit against a union for the intentional destruction of an employer's property.

First, the Washington Supreme Court rewrote this Court's precedent when it concluded that intentional destruction of property is "arguably protected" by the NLRA, reasoning that there are two competing principles at play that only the NLRB can resolve: (1) conduct is not

protected when workers fail to take "reasonable precautions to protect an employer's plant, property, and products," and (2) "economic harm may be inflicted through a strike as a legitimate bargaining tactic." *Glacier Nw., Inc., D/B/A CalPortland v. Int'l Bhd. of Teamsters Local Union No. 174*, 500 P.3d 119, 131 (Wash. 2021).

This Court, however, meant what it said in *Fansteel*: "to justify [despoiling property] because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society." *Fansteel*, 306 U.S. at 253. The Washington Supreme Court had no license to disregard this precedent dispatching with the intentional destruction of property in favor of supposedly competing interests.[2] And in doing so, it created a clear split between it and the Fifth and Seventh Circuits, both of which have held that the NLRA does not protect—even arguably—intentional destruction of property. *See supra* pp.9-10.

Second, the Washington Supreme Court rewrote this Court's precedent by redefining the scope of the local feeling exception to include only "intimidation and threats of violence." *Glacier Northwest*, 500 P.3d at 129; *see also id.* at 130 (limiting "local feeling" exception to "violent or outrageous conduct"). This holding cannot be reconciled with this Court's express statement in *Lodge 76* that "[p]olicing of actual or threatened violence to persons *or destruction of property* has been held most clearly a matter for the States," 427 U.S. at 137 (emphasis added), or its holding in *Sears* that the NLRA did not preempt a trespass claim for a union's peaceful picketing, 436 U.S. at 207. Moreover, by

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[2] What is more, as discussed by Petitioner, by employing this unusual competing-principles methodology, the court below also created a split with six other circuits. Petitioner's Br. at 16-20 (collecting cases).

limiting the local feeling exception to violent conduct, the court below created a split with multiple state courts that explicitly *rejected* that argument. *See Supra* pp.10-11 (citing *United Food* (Md.) and *United Food* (Ark.)).

* * *

This Court should grant plenary review to resolve the split that has been created and to correct the Washington Supreme Court's distortion of otherwise well-settled law. But in the alternative, because the decision below is so clearly contrary to this Court's precedent, the Court should summarily reverse the Washington Supreme Court.

II. THIS COURT'S INTERVENTION IS NEEDED NOW.

The decision below creates a risk of stark consequences for employers, many of whom are already facing aggressive acts by unions and their members around the country.

A. The decision below leaves employers without a remedy for the intentional destruction of their private property.

"The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom." *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021). State tort law is the primary way that our system promotes this freedom by "protecting society as a whole from physical harm to a person or property." 74 Am. Jur. 2d Torts § 2. Specifically, "trespass laws" have historically served to "protect[] . . . private property, whether a home, factory, or store." *Taggart v. Weinacker's Inc.*, 397 U.S. 223, 227 (1970) (Burger, C.J., concurring). Indeed, a trespass action under state law—whether trespass to real property or trespass to chattel—is often the primary way to ensure that those engaged in wrongdoing through the intentional destruction of

property are held accountable for their actions and that the victims of those actions are compensated.

The decision below, however, removes this powerful and important protection from businesses whose employees intentionally destroy their property, and does so without providing an alternative remedy. The Washington Supreme Court did not dispute this, *see Glacier Northwest*, 500 P.3d at 134—nor could it. "Congress [in the NLRA] has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." *Laburnum*, 347 U.S. at 664. Preempting a state tort action, therefore, "cut[s] off the injured respondent from [its] right of recovery," and "deprive[s] it of its property without recourse or compensation." *Id.*

As a result, unless the decision below is reviewed and reversed, businesses in Washington will be without remedy if union members in their employ decide to intentionally destroy the employer's property. Moreover, businesses in jurisdictions that have not definitively resolved the preemption questions presented by this petition face risk that a court following the Washington Supreme Court will deprive them of their right to bring a tort suit.

B. The decision below encourages the intentional destruction of employer property.

Removing tort liability for intentionally destroying private property is particularly concerning in the labor relations context because "[l]abor disputes are ordinarily heated affairs." *Linn v. United Plant Guard Workers of Am., Loc. 114*, 383 U.S. 53, 58 (1966). When tensions run high and unions seek any form of leverage available to bolster their bargaining position against employers, they will be emboldened to use the destruction of property—or the threat thereof—against employers as a means to an end, knowing that unions and their members cannot be held to

account in the artificial "no-law area" created by the decision below. *See Taggart*, 397 U.S. at 228 (Burger, C.J., concurring).

That union members may engage in unscrupulous behavior is not speculative. For example, in September 2021, in Oregon, a Northwest Carpenters Union strike was paused after strikers engaged in threats of violence, harassment, and other illegal picketing activity, accompanied by near physical altercations.[3] According to the union, these "roaming protests" were unsanctioned and included both union and non-union members.[4] Only a month later, a company in Iowa won a temporary injunction against union members who not only trespassed—blocking customers and contractors from entering the building—but verbally and physically harassed vendors, customers, and non-striking employees.[5] And perhaps one of the most prominent recent examples was the 2015 conviction of a Philadelphia union leader and eleven union members who engaged in a systemic pattern of extortions, arsons, and assaults in an attempt to force non-union companies to hire union workers. *U.S. v. Dougherty*, 98 F.Supp.3d 721, 725, 727, 737 (E.D. Pa. 2015) (noting criminal activities "were aberrational, but not novel"), *aff'd*, 706 F. App'x 736 (3d Cir. 2017). These and similar incidents of unions using physical harassment and intimidation to achieve their goals raises strong concerns that they might also sanction destruction of employers' property if they know there will

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[3] *See* Cameron Sheppard, *Carpenters Union Strike on Pause After "Illegal Picketing Activity,"* SEATTLE WEEKLY (Sept. 24, 2021), https://tinyurl.com/bdzzva9w.

[4] *Id.*

[5] *See* Jonathan Turner, *Deere Wins Temporary Injunction Against Striking Union Workers in Davenport*, OURQUADCITIES.COM (Oct. 20, 2021), https://tinyurl.com/2p82jtyc.

be no consequences.

Moreover, even unions that do not engage in violence or intimidation have demonstrated a willingness to push the boundaries of lawful conduct. In *United Food* (Md.) and *United Food* (Ark.), unions occupied the employer's property despite the employer's insistence that they leave the premises, arguing that they were entitled to violate the employer's private property rights with impunity unless the trespass was violent, *United Food* (Ark.), 504 S.W.3d at 576, or in the Maryland case, unless the trespass was violent or caused property damage. *United Food* (Md.), 162 A.3d at 919. Here, the Respondent attempts to push the boundaries of preempted conduct *even further*—arguing that, even if property is intentionally destroyed, employers have no recourse in State courts because of NLRA preemption.

Put simply, the consequences of the decision below are undeniable: leaving the Washington Supreme Court's decision in place will likely lead to more unions intentionally destroying employers' private property.

C. The decision below upsets the balance of power in labor disputes in favor of unions willing to engage in lawless acts and against law-abiding businesses.

This Court has repeatedly stressed that, in enacting federal labors laws, Congress attempted to effectuate a balance in bargaining power between labor and management. *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60, 74 (2008); *Lodge 76*, 427 U.S. at 146; *Bldg. & Constr. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc., et al.*, 507 U.S. 218, 226 (1993). And Congress has recalibrated that balance when necessary, as when it passed the Taft-Hartley Act in 1947 out of "[c]oncern[] that the [NLRA] had pushed the labor relations balance too far in favor of unions." *Chamber of*

Commerce of U.S., 554 U.S. at 67.

This Court has recognized congressionally sanctioned "economic warfare between labor and management" wherein each side uses "economic weapons" governed generally by "the free play of economic forces" in the bargaining process. *See N.Y. Tel. Co. v. N.Y. State Dep't of Labor*, 440 U.S. 519, 530-531 (1979). This balance prevents both the NLRB and States from regulating certain aspects of labor disputes—leaving the bargaining parties and market forces free to work. *Chamber of Commerce of U.S.*, 554 U.S. at 65. Of course, each side is only permitted the use of *lawful economic* weapons. *Fansteel*, 306 U.S. at 256. Arming one side with patently unlawful *physical* weapons would wildly throw off the balance struck by Congress.

The decision below does just that. It creates a fundamentally uneven playing field by gifting unions an additional and unlawful weapon—the intentional destruction of property—while simultaneously removing an essential shield held by employers.

This is not some minor alteration: the financial, logistical, and reputational harms that attend the destruction of property at the hands of employees who know the lynchpins of a business can be incalculable. Even the mere threat of destruction of property will be enough to fundamentally alter the bargaining positions between labor and management, and therefore fundamentally alter the substance of the resulting collective bargaining agreement. It is critical, moreover, that this imbalance will reverberate for years to come because collective bargaining agreements last for years at a time, and future agreements build on prior agreements.

D. The harms attending a split of authority between the lower courts are particularly acute in the context of NLRA preemption.

Conflicting rulings in this area are particularly harmful because the NLRA established federal authority over certain aspects of labor disputes precisely to create uniformity and stability. "Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garmon*, 359 U.S. at 242-43.

Businesses and employers of all stripes require this predictability through uniformity and stability to continue to effectively serve their communities, customers, investors, and employees. That the law in Washington is now remarkably different from the law in every other state and circuit to have confronted the issue creates a problem requiring prompt resolution.

E. Allowing the intentional destruction of employer property harms local communities and workers.

The decision below harms local communities by barring them from prohibiting intentional tortious activity. As the Court recognized in *Garmon*, Congress did not intend to regulate conduct touching on "interests . . . deeply rooted in local feeling and responsibility." 359 U.S. at 244. Intentional destruction of property is inherently local—precisely the type of lawlessness that localities should be able to address and that state courts should be able to remedy through tort actions.

A contrary result would strip States of their traditional responsibility of protecting their citizens' rights, all without a clear command—or any command—from Congress.

The decision also harms workers. Non-union employees will not be able to continue working if unions destroy property that is necessary for the continuing operation of a businesses. The same is true for union members when they wish to return to work after a strike. And workers of other businesses relying on the timely operation of the directly affected company—such as the construction workers of Petitioner's customers, who were waiting for delivery of concrete to do their own jobs—could also be affected. The destruction of necessary equipment and supplies will slow work and drain resources, potentially depriving workers of jobs and communities of the goods and services that they need. Plus, businesses appropriately managing risk may price in the cost of potential property destruction when negotiating wages and benefits, not to mention setting prices for customers of goods and services.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the judgment of the Washington Supreme Court. In the alternative, the Court should summarily reverse.

Respectfully submitted,

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