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 Writ of Certiorari To The Supreme Court Of Washington

BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES[1]

The Chamber of Commerce of the United States of America ("the 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, like this one, that raise issues of concern to the nation's business community. See, *e.g.*, *Epic Sys. Corp.* v. *Lewis*, 138 S. Ct. 1612 (2018); *FedEx Home Delivery* v. *NLRB*, 563 F.3d 492 (D.C. Cir. 2009); *People* v. *Amazon.com*, 169 N.Y.S.3d 27 (N.Y. App. Div. 2022).

Many members of the Chamber fall within the jurisdiction of the National Labor Relations Act ("NLRA" or "Act"), and therefore have a strong interest in its interpretation and application. They support the NLRA's preemption of state laws that interfere with the National Labor Relations Board's primary jurisdiction to interpret and apply the Act, but they also support this Court's longstanding precedent excepting from preemption state laws deterring and punishing

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Both parties have consented to the filing of this brief.

intentional property damage in connection with labor disputes.

The decision below contravenes this Court's decisions in two respects—first, by holding that intentional destruction of property is arguably protected conduct, in conflict with *NLRB* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240, 253 (1939), and other authority; and, second, by holding that the intentional destruction of property does not fall within the long established "local feeling" exception to preemption, in conflict with numerous cases, including *Lodge 76, International Ass'n of Machinists & Aerospace Workers* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, 136 (1976).

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves a labor dispute between Glacier Northwest ("Glacier") and its employees who are represented by the International Brotherhood of Teamsters Local Union No. 174 ("Teamsters" or "Union"). Glacier is a concrete company that uses mixing trucks to deliver and pour concrete for customers. In its state-law complaint filed in state court, Glacier alleged that the Teamsters intentionally waited until the concrete trucks were fully loaded for deliveries, and then called a work stoppage that was deliberately timed to ensure destruction of the company's property. Pet. App. 3a–5a, 47a–48a, 111a, 147a. Specifically, Glacier asserted that the Union's timing required the company either (i) to allow the concrete to harden in the trucks destroying the truck's mixing drums, or (ii) to dispose of the concrete promptly in a costly way that destroyed its value and prevented its delivery to customers. *Id.* at 3a, 5a & n.3. In its state-law action, Glacier sought damages for the property damage that resulted from

the Union's decision. The Washington Supreme Court held that Glacier's state-law claims were preempted by the NLRA.

Since the NLRA's enactment, this Court has recognized that (i) the Act has preemptive effect to ensure the NLRB's primary jurisdiction over labor relations and to facilitate development of a uniform national labor law, and (ii) the Act "leaves much to the states, though Congress has refrained from telling us how much." *Garner* v. *Teamsters Local 776*, 346 U.S. 485, 488 (1953). This Court has spent the past 70 years reaffirming the Act's preemptive effect and defining "how much" has been left to the States.

It is now well established that the NLRA generally preempts state-law claims based on conduct that is "arguably protected" or "arguably prohibited" by that Act. *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 246 (1959). It is equally well established, however, that union members' intentional destruction of an employer's property is not even "arguably protected," see *Fansteel*, 306 U.S. at 256. Additionally, it is clear that the Act does not preempt claims based on even "arguably protected" conduct if that "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 ha[s] deprived the States of the power to Act," *Garmon*, 359 U.S. at 243–44. Critically here, under longstanding precedent, this Court's "local feeling" exception to preemption applies to state-law claims for the intentional destruction of property. See, *e.g.*, *United Auto., Aircraft & Agric. Implement Workers of Am.* v. *Wis. Emp. Rels. Bd.*, 351 U.S. 266, 274 (1956) ("[t]he dominant interest of the State in preventing violence and property damage cannot be questioned.").

Accordingly, on their face, Glacier's allegations state a claim that falls outside the scope of NLRA preemption under this Court's decades-old precedent interpreting the Act.[2] Intentional property damage is not protected, even arguably, by the NLRA. And, even assuming it were, intentional property damage clearly falls in the heartland of the Court's exception to preemption for matters of intense and powerful "local feeling." In both respects, this Court's interpretation of the NLRA, and specifically of the line between the claims it preempts and those it does not, is longstanding and broadly accepted. The Court's approach appropriately balances the important federal interest in a uniform national law of labor relations and the state interests at stake. The Court's interpretation of the Act deserves significant *stare decisis* weight; Congress has not altered it; and there is no basis for disturbing it.

The Washington Supreme Court, however, held that the Teamster's intentional destruction of Glacier's property was "arguably protected" because "economic harm may be inflicted through a strike as a legitimate bargaining tactic," Pet. App. 23a, and that the State's interest in protecting citizens from the intentional destruction of their property does not qualify for the "local feeling" exception to preemption because it does not involve violence. That decision is doubly wrong.

Although the States have no cognizable interest in prohibiting or limiting the economic harm that may result from the use of *lawful* bargaining tactics and tools under the NLRA, intentional property damage is not a "legitimate bargaining tactic." This Court has made

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[2] As it was required to do, the Washington Supreme Court accepted the complaint's factual allegations as true. Pet. App. 13a.

that clear in numerous cases. See *Fansteel*, 306 U.S. at 253 ("[t]o justify [despoiling property] because of the existence of a labor dispute … 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"). See also, *e.g.*, *United Constr. Workers* v. *Laburnum Constr. Corp.*, 347 U.S. 656 (1954); *United Auto., Aircraft & Agric. Implement Workers of Am.*, 351 U.S. at 274; *infra* at 9-10.

Similarly, this Court has repeatedly explained that intentional property destruction falls within the "local feeling" exception to NLRA preemption, and has also held that numerous non-violent torts are excepted from preemption, including defamation and intentional infliction of emotional distress. The Washington Supreme Court's decision thus rested on two fundamental misunderstandings of this Court's precedent.

In addition to contravening this Court's decisions, the Washington Supreme Court's decision is bad labor policy. Allowing unions to treat intentional property damage as a bargaining "strategy" would encourage its use, exacerbate violence and property damage in connection with labor disputes, and undermine the industrial peace the NLRA is intended to further. The NLRA does not provide remedies for intentional property destruction in connection with labor disputes. The decision would thus leave a law-free zone for intentional property destruction in connection with a labor dispute. No risk of liability would deter such conduct, and no remedy would be available for the damage inflicted. States would be deprived of a traditional element of their police powers. Rejecting this outcome, this Court has explained that the States still may exercise their historical powers over such "actual or threatened violence to persons or destruction of property. … This con-

duct is governable by the state or it is entirely ungoverned." *Auto. Workers, Local 232* v. *Wis. Emp. Rels. Bd.*, 336 U.S. 245, 253–54 (1949).

The Washington Supreme Court's decision should be reversed.

ARGUMENT

I. THE HISTORY OF THE NLRA AND *GARMON* PREEMPTION ESTABLISHES THAT GLACIER'S STATE-LAW CLAIMS ARE NOT PREEMPTED.

From its earliest days, the National Labor Relations Act has been interpreted not only to preempt state laws regulating conduct protected by the Act, but also to permit the States to continue to regulate matters "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." *Garmon*, 359 U.S. at 244.

This Court struck that balance in its first cases construing the scope of the Act's preemptive force: It protected the National Labor Relations Board's primary jurisdiction over administration of the Act to establish a uniform national labor-relations law, and it displaced state regulation of labor-relations activities that Congress intended to leave unregulated. Simultaneously, the Court preserved the States' traditional role in maintaining civil order and protecting their citizens' safety and property.

As a result, much conduct regulated by the NLRA has been, and continues to be, the subject of state regulation in certain circumstances, such as picketing, trespass, defamation, and property destruction. Where that conduct is either clearly unprotected by the NLRA

or subject to the States' traditional authority to maintain civil order, state laws are not preempted. As explained *infra*, the Washington Supreme Court's decision—holding that intentional property destruction is arguably protected conduct under the NLRA and therefore that claims based on such conduct are preempted—is flatly inconsistent with this Court's precedent delineating the scope of the NLRA's protected rights and its preemption of state law.

Congress enacted the NLRA in 1935. Its "basic purpose" was "to preserve industrial peace" by establishing a national law of labor relations and creating a federal agency with primary jurisdiction over that law. *NLRB* v. *Fin. Inst. Emps. of Am., Local 1182*, 475 U.S. 192, 208 (1986). In 1937, this Court upheld Congress's power under the Commerce Clause to legislate in the realm of labor relations. See *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). Regulation of labor relations had previously been considered the province of the States; with the NLRA, Congress began the process of creating uniform federal law.

From the outset, this Court read the Act to implement a general Congressional intent to establish a uniform national law of labor relations administered by the NLRB:

> To attain its object Congress created a particular agency, the National Labor Relations Board, and established a special procedure. … Within the range of its constitutional power, Congress was entitled to determine what remedy it would provide, the way that remedy should be sought, the extent to which it should be afforded, and the means by which it should be made effective. … By the express terms of the Act, the Board was made the exclusive agency for that purpose.

Amalgamated Util. Workers v. *Consol. Edison Co. of N.Y.*, 309 U.S. 261, 264 (1940) (citing 29 U.S.C. § 160(a)). See *id.* at 267 ("Section 10(a) gives the [NLRB] exclusive jurisdiction to prevent and redress unfair labor practices.... [I]t is intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining") (quoting S. Rep. No. 573, 74th Cong., 1st Sess. 15).

As initially enacted, the NLRA protected only the rights of employees to organize and engage in concerted activities such as collective bargaining. With the passage of the Taft-Hartley Act in 1947 (also known as the Labor Management Relations Act ("LMRA")),[3] Congress added to the NLRA significant protections for employers and adopted a general code of regulation for labor relations.[4] But the purpose of the original NLRA—to foster industrial peace by creating a uniform federal labor-relations law administered by a federal agency with primary jurisdiction over that law—remained the same. In 1950, shortly after the NLRA was amended, this Court again explained:

> Congress has taken in hand this particular type

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[3] Except where the text indicates otherwise, reference to the NLRA hereafter refers to that Act as amended by the LMRA.

[4] In addition to amending the NLRA, the LMRA also addressed national emergencies (sections 206–210, 29 U.S.C. §§ 176–180), suits by and against labor organizations for violation of contracts between employers and labor organizations (section 301, 29 U.S.C. § 185), regulation of welfare and retirement funds (section 302, 29 U.S.C. § 186), and damage for secondary boycotts and jurisdictional disputes (section 303, 29 U.S.C. § 187).

> of controversy where it affects interstate commerce. … Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to parties. … Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules.

Garner, 346 U.S. at 488–90.

In the decades since the NLRA's enactment, this Court has clarified the preemptive scope of the Act in numerous decisions. It has defined conduct that the Act protects and has delineated "the areas … withdrawn from state power." *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 480 (1955).[5]

With respect to the first, it has long been clear that intentional destruction of property is not protected conduct. In one of its first decisions under the Act, in 1939, this Court held in *Fansteel* that the Act does not authorize employees to engage in "unlawful acts," including "the seizure and conversion of [] goods, or the despoiling of [] property," 306 U.S. at 253. This Court's early conclusion—that the NLRA did not protect intentional property destruction—is unsurprising. "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). And, in the context of the NLRA,

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[5] This Court used a similar incremental approach in defining the scope of preemption under section 301 of the LMRA to ensure that uniform federal law governs the interpretation and enforcement of collective bargaining agreements. *See*, *e.g.*, *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985); *IBEW* v. *Hechler*, 481 U.S. 851 (1987); *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988); *Livadas* v. *Bradshaw*, 512 U.S. 107 (1994).

this Court has likewise recognized that States play the primary role in protecting their citizens' property from damage and destruction. See *Lodge 76*, 427 U.S. at 136 ("[p]olicing of actual or threatened violence to persons or destruction of property has been held most clearly a matter for the States"); *United Auto., Aircraft & Agric. Implement Workers of Am.*, 351 U.S. at 274 ("[t]he dominant interest of the State in preventing violence and property damage cannot be questioned.").

With respect to the second—the preemptive scope of the NLRA—this Court's early decisions both establish a general rule of preemption *and* make clear that the Act does not deprive States of their power to deter and punish torts addressing intentional property destruction. This Court held that the regulation of conduct that the Act protects or proscribes—whether conduct of an employer or a union—falls within the jurisdiction of the NLRB, and that state attempts to regulate such conduct are preempted. See, *e.g.*, *Hill* v. *Florida*, 325 U.S. 538 (1945) (holding that the State may not prohibit or condition the exercise of rights which federal law protects); *Garner*, 346 U.S. at 499 (protecting employees' right to engage in peaceful picketing).[6]

Significantly, however, this Court has also made clear that conduct that is protected or prohibited by

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[6] This Court has also preempted state regulation that seeks to regulate bargaining conduct and tactics that Congress intended to leave unregulated by either federal or state legislatures or courts. *See Chamber of Com. of U.S.* v. *Brown*, 554 U.S. 60 (2008) (Congress displaced both state and federal regulation of certain aspects of labor disputes to allow the bargaining parties to settle their differences using lawful economic weapons); *Lodge 76*, 427 U.S. at 140 ("the crucial inquiry [is] whether Congress intended that the conduct involved be unregulated because left 'to be controlled by the free play of economic forces'"). That strand of NLRA displacement and preemption is not at issue here.

the Act may also be conduct historically at the core of the States' police power, and thus an appropriate subject for continued state regulation. For example, in *Allen-Bradley Local 1111* v. *Wisconsin Employment Relations Board*, 315 U.S. 740 (1942), this Court addressed conduct including the union's mass picketing, threats of bodily injury, and threats to property, all matters traditionally within the States' police power to preserve public safety and order. Upholding the state's power, the Court explained that "Congress has not made such employee and union conduct … subject to regulation by the federal Board." *Id.* at 749. The Court explained that the situation was "not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes." *Id.* at 751. Since 1942, this Court has affirmed and restated this point on multiple occasions.

In *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U.S. 656 (1954), a union demanded that an employer recognize it as the bargaining representative of its employees. When the employer refused, the union's agents "threatened and intimidated [the employer's] officers and employees with violence to such a degree that respondent was compelled to abandon all its projects in the area." *Id.* at 658. The Court recognized that this conduct was at least arguably prohibited by the NLRA, but declined to hold the employer's state-law claim preempted, relying on the State's traditional police power, and explained that if state law were preempted, "the offenders, by coercion of the type found here, may destroy property without liability for the damage done." *Id.* at

669. The Court noted that the NLRA lacked any parallel remedy for the employer's harm,[7] but also focused on the State's traditional role in maintaining civil order by deterring and punishing intentional property damage. Even more clearly, this Court concluded that "there is no doubt that [prior to enactment of the LMRA] if agents of [labor] organizations at that time had damaged property through their tortious conduct, the persons responsible would have been liable to a tort action in state courts for the damage done," and that the LMRA had only "increased … the legal responsibilities of labor organizations." *Id.* at 666.

Two years later, in *United Automobile, Aircraft & Agricultural Implement Workers of America*, 351 U.S. 266, the Court again observed that "[t]he dominant interest of the State in preventing violence and property damage cannot be questioned." *Id.* at 274. See also *UAW* v. *Russell*, 356 U.S. 634 (1958) (allowing state law claim for damages for wrongful interference with lawful occupation as consistent with *Laburnum*);

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[7] In assessing preemption under the NLRA, this Court has sometimes said that the States cannot grant remedies for unfair labor practices that the NLRB cannot grant. *Wis. Dep't of Indus., Lab. & Hum. Rels.* v. *Gould, Inc.*, 475 U.S. 282, 287 (1986) (holding preempted a state law forbidding state procurement of products manufactured or sold by persons who had repeatedly violated the NLRA). This statement is generally made when States enact or enforce laws setting up a regulatory regime directed at labor relations. In contrast, when the States enact or enforce laws of general application, this Court generally does not preempt their application to conduct that is otherwise connected to a labor dispute or remedies that might differ from those available under the NLRA. As this Court explained, it is less likely to preempt "laws of general applicability" which may reflect legitimate state interests unrelated to labor policy. *Sears, Roebuck & Co.* v. *San Diego Cnty. Dist. Council of Carpenters*, 436 U.S. 180, 194–95 (1978).

Youngdahl v. *Rainfair, Inc.*, 355 U.S. 131 (1957) (affirming state-law injunction forbidding workers from obstructing the streets, threatening or provoking violence, while vacating provisions that prohibited peaceful picketing).

In *Automobile Workers*, the Court explained that "Congress designedly left open an area for state control." 336 U.S. at 253 (internal quotation marks omitted). And, it held, that where a strike is illegal because it "consist[s] of actual or threatened violence to persons or destruction of property," "[p]olicing of such conduct is left wholly to the states." *Id.* See *id.* ("In this case there was also evidence of considerable injury to property and intimidation of other employees by threats[,] and no one questions the state's power to police coercion by those methods.").

Garmon, decided in 1959, summarized but did not break with the Court's historical treatment of the scope of NLRA preemption. In that case, the union was engaged in peaceful picketing to compel an employer to substitute one union with a minority union. This Court held that generally, "[i]n the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essentially undisputed facts, it is not for this Court to decide whether such activities are subject to state jurisdiction," 359 U.S. at 246. Significantly, however, this Court recognized and expressly preserved the "local feeling" exception. It echoed *Garner*, explaining that "the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction." *Id.* at 247.

This Court has since adhered to this balanced approach. In *Lodge 76*, in describing the "local feeling"

exception to preemption, the Court stated 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 136. And in *Sears, Roebuck & Co.* v. *San Diego County District Council of Carpenters*, 436 U.S. 180 (1978), this Court declined to preempt a state-law trespass action even though the conduct was both arguably prohibited and arguably protected. The Court explained that "whether the picketing had an objective proscribed by federal law was irrelevant to the state claim," which involved only whether the employees were at a location on the employer's property without permission. *Id.* at 198. Plainly, if a trespass on property falls within the "local feeling" exception, so, too, does the far greater intrusion on property rights when the employer's property itself is destroyed. The Court also emphasized that preemption is less likely when the State is enforcing "laws of general applicability … in connection with a labor dispute," *id.* at 193, because such laws reflect state interests unrelated to labor policy, underlining the importance of the State's general police power to protect public safety and property.

This Court has summarized its precedent about the preemptive scope of the NLRA as follows:

> The question of whether regulation should be allowed because of the deeply rooted nature of the local interest involves a sensitive balancing of any harm to the regulatory scheme established by Congress, either in terms of negating the Board's exclusive jurisdiction or in terms of conflicting substantive rules, and the importance of the asserted cause of action as a protection to its citizens.

Local 926, Int'l Union of Operating Eng'rs v. *Jones*, 460 U.S. 669, 676 (1983) (citations omitted). Plainly, the

States play an important traditional role in the protection of private property rights that supports this Court's long recognition that such state-law claims are subject to the "local feeling" exception and therefore not preempted.

As described above, this Court has defined the contours of *Garmon* preemption during the past 70 years, including long before *Garmon* itself was decided. By enacting the NLRA, Congress sought to support industrial peace by establishing a uniform federal law regulating labor disputes, to be administered by the NLRB, which had primary jurisdiction over labor relations. *Garmon* preemption of state laws that would unduly interfere with this federal regime was essential to the achievement of Congress's purpose of stable industrial relations.

The Court has also consistently held that intentional property damage is not protected activity under the NLRA, and that the States retain their authority with respect to intentional property damage, even if that conduct is arguably protected by or prohibited by the NLRA. For almost 75 years, Congress has declined to modify this Court's framework for protecting both the federal law governing labor relations and the States' police power; that carefully calibrated approach has stood the test of time.

For decades likewise, employers and labor unions have conducted their labor relations in this legal context and against the backdrop provided by *Garmon* preemption. Continued adherence to this precedent is, accordingly, also supported by *stare decisis*. Applying that doctrine here "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Kimble* v. *Marvel Ent., LLC*, 576 U.S. 446, 455

(2015). And, where, as here, there is a "reasonable possibility that parties have structured their business transactions" in light of this Court's decisions, "we have one more reason to let it stand." *Id.* at 457–58. "What is more, *stare decisis* carries enhanced force when a decision … interprets a statute." *Id.* at 456. See also *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 139 (2008). ("*stare decisis*" has "special force" in statutory interpretation because "Congress remains free to alter what [the Court has] done").

This Court should apply its longstanding precedent and reverse the decision of the Washington Supreme Court.

II. THE WASHINGTON SUPREME COURT'S ANALYSIS IS FUNDAMENTALLY FLAWED.

The Washington Supreme Court appeared to believe the Teamsters' conduct was arguably protected for two reasons.

First, the court relied on the theory that "economic harm may be inflicted through a strike as a legitimate bargaining tactic." Pet. App. 23a. As explained above, this contention wholly misunderstands this Court's precedent. Critically, moreover, holding that state laws governing the intentional destruction of property are preempted if the tortious conduct relates to a labor dispute is bad labor policy. In labor relations, employers and unions have a number of legitimate and lawful economic weapons to achieve their goals. Plainly, however, Congress did not intend to allow, and this Court has never allowed, unions to destroy employers' property to obtain leverage in labor negotiations. Doing so would destabilize labor relations and increase the potential for violent confrontations, in contravention of the NLRA's purpose to achieve industrial peace for the benefit of our national economy.

Treating claims for intention property destruction during labor disputes as preempted would also create a law-free zone for such conduct. The NLRA provides no remedy for that misconduct. The incentive for those involved in labor disputes—often heated contests—to engage in misconduct is evident, and it will be enhanced, and thus more frequent, if doing so is risk-free. On the Washington Supreme Court's view of preemption, employers who suffer intentional property damage in connection with a labor dispute will be left without a remedy. There is no sound reason to exempt intentional destruction of property from the States' legal regimes simply because it is connected with a labor negotiation or dispute, and there are many good labor policy reasons not to do so.

The State does not have an interest in preventing or mitigating the economic harm that arises from the use of lawful bargaining tactics, including a lawful work stoppage or lockout or the terms of a lawful collective bargaining agreement. Thus, a union or employer's state-law claim of economic harm resulting from a lawful work stoppage, lockout, or collective bargaining agreement would likely be preempted. See, *e.g.*, *Teamsters Local 24* v. *Oliver*, 358 U.S. 283, 295–96 (1959) (preempting the application of Ohio antitrust law to collectively bargained truck rental and lease terms). In marked contrast, the State has a powerful interest in exercising its police power to prevent or punish the destruction of property, including when that conduct is associated with a labor dispute. State-law claims based on generally applicable state law governing claims for property destruction are not preempted. See *Fansteel*, 306 U.S. at 253 ("to justify [despoiling property] because of the existence of a labor dispute … 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").

Second, the Washington Supreme Court appeared to believe that the "local feeling" exception applies only to "intimidation and threats of violence." Pet. App. 18a–19a; see *id.* at 21a (requiring "violent or outrageous conduct"). But, as detailed above, this Court has expressly stated that "[p]olicing of actual or threatened violence to persons *or destruction of property* has been held most clearly a matter for the States," *Lodge 76*, 427 U.S. at 136 (emphasis added). It has also held that employers may pursue state-law claims for trespass based on *peaceful* picketing, *i.e.*, non-violent picketing, *Sears*, 436 U.S. at 207.

Indeed, this Court has frequently extended the "local feeling" exception to preemption for non-violent torts. For example, in *Linn* v. *United Plant Guard Workers of America, Local 113*, 383 U.S. 53 (1966), this Court declined to preempt a state-law defamation claim. And in *Farmer* v. *United Brotherhood of Carpenters & Joiners of America, Local 25*, 430 U.S. 290 (1977), this Court allowed an employee's state-law claim for intentional infliction of emotional distress and harassment to go forward, explaining that the "inflexible application of the [*Garmon*] doctrine is to be avoided, especially where the State has a substantial interest in regulation of the conduct at issue and the State's interest is one that does not threaten undue interference with the federal regulatory scheme." *Id.* at 302. This Court's precedent does not confine the "local feeling" exception to intentional property damage accompanied by other violence.

* * * *

Federal preemption protects the primary jurisdiction of the NLRB and its ability to create and enforce a nationally uniform body of federal labor law in service of the goals of the NLRA, including fostering

peaceful labor relations and the protecting employer and employee rights within that regime. But States have a compelling traditional interest in maintaining civil order by deterring and punishing violence and intentional property destruction. This interest is particularly powerful in the context of labor disputes because federal law provides no effective remedy for violations of generally applicable laws that protect civil order and private property. This Court's delineation of *Garmon* preemption and its "local feeling" exception has allowed courts to effectively balance these vitally important federal and state interests for decades. It should be reaffirmed.

CONCLUSION

The decision of the Washington Supreme Court should be reversed.

Respectfully submitted,

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