June 16, 2022

ATTORNEY GENERAL RAOUL LEADS COALITION DEFENDING STATES' AUTHORITY TO PROTECT WORKERS FROM RETALIATION

Raoul, Coalition of Attorneys General Submit Amicus Brief In New York Lawsuit Alleging That Amazon Retaliated Against Workers

Chicago — Attorney General Kwame Raoul today led a coalition of 15 attorneys general in submitting an amicus brief defending states' authority to protect workers from retaliation.

A lawsuit filed in 2021 by New York Attorney General Letitia James alleged that Amazon failed to take adequate health and safety precautions for workers at its New York facilities during the COVID-19 pandemic and that the company unlawfully disciplined employees for protesting unsafe working conditions. New York brought retaliation claims against Amazon for firing one worker and disciplining another after they complained about the lack of health measures at an Amazon facility.

In May, a New York state appellate court dismissed James' lawsuit. The court ruled that, because the disciplined employees had participated in protests that the court viewed as linked to a unionization drive, New York's retaliation claims were preempted by the National Labor Relations Act (NLRA). The NLRA governs collective bargaining and other coordinated efforts by workers. Raoul and the coalition have submitted an amicus brief supporting James' request that the lower appellate court allow New York to appeal the decision to the state's highest court, the Court of Appeals.

"When employers fail to comply with state laws regulating the workplace, employees play a critical role in reporting violations. Limiting states' power to protect whistleblowers could have a chilling effect on workers' willingness to report misconduct," Raoul said. "If adopted elsewhere, this ruling could deprive state attorneys general of the authority to address retaliation when an employer fires or disciplines a worker for joining with others to report workplace misconduct."

While there are some anti-retaliation protections at the federal level, most states have established even more robust laws that protect employees who report workplace misconduct from termination or other adverse action. Raoul argues that the appellate court's ruling significantly expands the scope of claims that are preempted by the NLRA, which would diminish the reach of state protections for workers. According to the brief, the ruling expands NLRA preemption to include claims with relatively weak ties to collective action by employees.

The amicus brief is Attorney General Raoul's most recent action to advocate for workers' rights nationwide. In 2020, Raoul filed two lawsuits challenging Department of Labor rules that impermissibly altered protections for tipped workers and eliminated key protections for workers under the Fair Labor Standards Act. In 2022, Raoul led a multistate coalition in an amicus brief defending transportation workers' rights at the U.S. Supreme Court and filed three amicus briefs supporting the federal government's efforts to increase the minimum wage to $15 per hour for certain federal contractors.

Attorney General Raoul has long fought unlawful employment practices, including during the COVID-19 pandemic. Raoul has devoted resources to educate and obtain compliance from employers in protecting their workforces through implementing adequate health and safety measures during the pandemic. Raoul also joined and led multistate efforts urging Amazon, Whole Foods and Walmart to strengthen measures to protect the health and safety of their workers during the COVID-19 pandemic.

Attorney General Raoul encourages workers who believe their rights have been violated to contact his Workplace Rights Bureau by calling 1-844-740-5076 or by visiting the Attorney General's website.

Joining Raoul in submitting the petition are the attorneys general of California, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon and Vermont.

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New York Supreme Court
Appellate Division: First Department

PEOPLE OF THE STATE OF NEW YORK
by LETITIA JAMES, Attorney General
of the State of New York

Plaintiff-Respondent, Case No. 2021-03934

v.

AMAZON.COM, INC., AMAZON.COM SALES, INC.
and AMAZON.COM SERVICES LLC

Defendants-Appellants,

BRIEF OF AMICI CURIAE STATES OF ILLINOIS, CALIFORNIA, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, HAWAII, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, OREGON, AND VERMONT IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

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INTEREST OF AMICI CURIAE AND REASONS TO GRANT LEAVE

The States of Illinois, California, Connecticut, Delaware, District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, and Vermont (collectively, "amici States") submit this brief in support of the State of New York's motion for leave to appeal this Court's decision to the Court of Appeals. Amici States focus here on the Court's preemption holding, which warrants further review for the reasons discussed below.[1]

Amici States have long exercised their police powers to protect workers within their respective jurisdictions by enacting and enforcing laws that prescribe occupational safety standards, set wages, and bar discrimination, among other things. *See, e.g.*, *DeCanas v. Bica*, 424 U.S. 351, 356 (1976) ("States possess broad authority under their police powers . . . to protect workers within the State."). But States depend in large part on workers' assistance to enforce those laws—specifically, on

[1] New York has also sought leave to appeal the Court's dismissal of their claims on mootness grounds. *See* Op. 3. Amici States also support New York's motion with respect to the mootness issue, given that (as New York explains) its claims were premised on Amazon's statutory duty to protect its employees, not New York's now-expired public health guidance. *See* R152. But amici States focus here on the Court's preemption holding and its impact on their ability to protect workers.

workers' willingness to report employers' violations of worker-protection laws. Amici States thus also share an interest in defending workers who stand up for their rights, most obviously by robustly enforcing anti-retaliation statutes against employers who take adverse action against workers on the basis of their reporting activity.

The Court's opinion in this case, if left undisturbed, threatens New York's ability to protect workers who report misconduct—and, if its reasoning were adopted elsewhere, could have the same effect in other States. New York brought state-law retaliation claims against Amazon, alleging that the company had retaliated against two workers because they reported violations of state health and safety standards. But the Court held that New York's claims were preempted by the National Labor Relations Act (NLRA), because Amazon's alleged retaliation was "based, in part, on [the workers'] participation in protests" that were protected by that Act, and because allowing the case to proceed might interfere with other proceedings pending before the National Labor Relations Board (NLRB or Board). Op. 2-3.

But the Court's broad reasoning would dramatically encroach upon States' authority to enforce anti-retaliation statutes, as further

explained below. New York alleged in its complaint that Amazon retaliated against the two workers for raising *individual* complaints about health and safety conditions. But the Court deemed that fact insignificant, given the existence of (in its view) a factual nexus with *other* workers' concerted activities. Thus, under the Court's reasoning, any retaliation claim with even a peripheral connection to activity that could be viewed as "concerted"—one worker speaking out on behalf of her fellow employees, two or more workers making parallel claims to a state labor agency, or any other form of cooperation between workers—is preempted by the NLRA. If allowed to stand and adopted elsewhere, this view threatens to leave States without power to protect workers from retaliation in a wide range of circumstances—chilling workers' willingness to report misconduct and frustrating States' ability "to protect workers within the State." *DeCanas*, 424 U.S. at 356.

Because the Court's preemption holding is "novel [and] of public importance," 22 N.Y.C.R.R. § 500.22(b)(4), the Court should grant New York's motion for leave to appeal to the Court of Appeals.

I. The Court's Decision Significantly Expands The Scope Of *Garmon* Preemption.

The Court's holding that New York's retaliation claims against Amazon are preempted by the NLRA, Op. 2, significantly expands the scope of NLRA preemption. The Court held that the conduct alleged in New York's complaint—Amazon's retaliation against two workers who reported workplace safety violations during the COVID-19 pandemic—was "clearly covered by the NLRA," and so New York's claims "must be dismissed with no further analysis." *Id.* In the alternative, the Court held, even if New York's claims concerned conduct only "arguably protected" by the NLRA, the claims were nonetheless preempted insofar as they created a risk of "interference" with proceedings before the NLRB. Op. 2-3. As New York explains in its motion for leave to appeal, Mot. 33-42, both aspects of the Court's opinion warrant further review.

Although Congress has long legislated in the area of labor relations, it has "never exercised authority to occupy the entire field of labor legislation." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985). Rather, in passing the NLRA, Congress intended primarily to "protect[] the collective-bargaining activities of employees and their representatives and create[] a regulatory scheme to be administered by

an independent agency [the NLRB] which would develop experience and expertise in the labor relations area." *Sears, Roebuck & Co. v. San Diego Cnty. Dist. Council of Carpenters*, 436 U.S. 180, 191 (1987). Thus, although the NLRA has been interpreted to have broad preemptive effect in areas in which it applies, *see Chamber of Com. of U.S. v. Brown*, 554 U.S. 60, 65 (2008), States retain considerable authority "to protect workers within the State," *DeCanas*, 424 U.S. at 356, pursuant to their historic police powers. Both aspects of the Court's opinion—(i) its holding that New York's allegations "clearly" revolve around conduct "protected by the NLRA" and (ii) its alternative holding that, even if the conduct were only "arguably" protected by the NLRA, New York's interest in enforcing its anti-retaliation laws would be insufficient to overcome preemption, Op. 2-3—significantly expand the scope of NLRA preemption, and in novel and problematic ways, warranting further review.

First, the Court's reasoning sweeps an expansive range of cases into the category of cases "clearly" preempted by the NLRA, such that "no further analysis" is needed. Op. 2. Under the Supreme Court's decision in *Garmon*, States may not regulate conduct that is "protected

by § 7 of the [NLRA]," which allows employees to engage in "concerted activities for . . . mutual aid or protection," or conduct that "constitute[s] an unfair labor practice under § 8," which prohibits interference with the exercise of such activities. *San Diego Building Trades Council, Millmen's Union, Local 2020 v. Garmon*, 359 U.S. 236, 244 (1959); *see* 29 U.S.C. §§ 157, 158. In addition, under *Garmon*, even if conduct is not clearly preempted because it falls within the scope of § 7 or § 8, "a presumption of federal pre-emption," rebuttable by a showing of a "'deeply rooted' local interest[]," applies when a state law "regulates conduct only arguably protected by federal law." *Brown v. Hotel & Rest. Emps. & Bartenders Int'l Union Loc. 54*, 468 U.S. 491, 502-03 (1984). But where state law "regulates conduct that is *actually* protected by federal law," no such exception applies. *Id.* at 503 (emphasis added).

The Court initially reasoned that New York's retaliation claims fell within the category of claims "clearly" preempted by the NLRA, Op. 2, but its reasoning is flawed, and would sweep in a wide range of garden-variety state retaliation actions. As New York explains, Mot. 34-39, its retaliation claims do not attempt to regulate conduct that is protected by the NLRA: The claims allege only that Amazon retaliated

against the two workers for complaining about the company's violation of state-law workplace safety standards, not that it retaliated against the workers for acting in concert. The Court's decision to the contrary rests on its apparent view that the workers' participation in protests brought New York's claims "clearly" within the ambit of the NLRA, Op. 2, but that misreads the complaint, which focuses on retaliation for individual complaints about violations of workplace safety standards and does not rely on the concerted nature of any activities.

The Court's opinion also adopts a cramped view of the "local interest" exception to *Garmon* preemption—thus likewise expanding the scope of NLRA preemption. Under that exception, where conduct is only "arguably" protected by the NLRA, state-law claims may proceed if they reflect "'deeply rooted' local interests." *Brown*, 468 U.S. at 502-03; *see Garmon*, 359 U.S at 244. To apply this exception, the court weighs "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 to the state as a protection to its citizens." *Loc. 926, Int'l*

Union of Operating Engineers, AFL-CIO v. Jones, 460 U.S. 669, 676 (1983).

The Court correctly assumed that States have a deeply rooted interest in exercising their police powers to regulate workplace safety and protect employees who report violations of workplace safety rules, Op. 2-3, as further discussed below, *infra* pp. 10-14. But it reasoned that New York's retaliation claims created "the possibility of inconsistent rulings on the same issue," given the existence of separate NLRB proceedings concerning the same Amazon facility. Op. 3. Again, however, that misreads New York's complaint, which raised entirely different claims and concerned entirely different employees than the proceedings pending at the NLRB. *See* Mot. 41-42.

Taken together, the Court's two errors dramatically expand the scope of *Garmon* preemption. As discussed, the Court's opinion rests in part on a misreading of the complaint, which alleges that Amazon retaliated against individual workers for raising individual complaints about health and safety conditions (not that Amazon retaliated against workers for engaging in concerted action) and does not concern the same claims as the NLRB proceeding. And if preemption applied to the

actual facts and claims alleged in New York's complaint, that would amount to a significant expansion of *Garmon* preemption. Under the Court's reasoning, any retaliation claim that bears a factual connection to activity that could be viewed as "concerted"—a worker speaking out on behalf of her fellow employees, two or more workers making parallel claims to a state labor agency, or any other form of cooperation—is preempted by the NLRA. As New York explains, that would "cast[] a preemptive shadow so large that it wipes out state law retaliation claims" altogether. Mot. 38.

Indeed, the Court's decision is inconsistent with opinions from the highest courts of other States, which have applied the local interest exception (and thus rejected claims of *Garmon* preemption) when workers bring state-law retaliation claims that turn in part on workers' collaborative action. In *Puglia v. Elk Pipeline, Inc.*, 226 N.J. 258 (2016), for instance, the Supreme Court of New Jersey rejected an employer's argument that a worker's state-law retaliation claim was preempted by the NLRA because the worker had complained about wages for *all* laborers, not just himself. *Id.* at 266-67, 293-94. The court agreed that the conduct in question "arguably" fell within the

NLRA, given that the worker had "complain[ed] about his wages" with other workers and "br[ought] a group complaint to management," but reasoned that the State's interest in having its retaliation laws enforced took precedence over "any potential interference with the federal labor scheme," and so the local interest exception applied. *Id.* at 293, 295. And in *Hume v. Am. Disposal Co.*, 124 Wash. 2d 656 (1994), the Washington Supreme Court took the same approach in rejecting an employer's invocation of *Garmon* preemption in response to a state-law retaliation claim, holding that "the state's interest of protecting the relationship between employer and employee" took precedence over the "unlikely" prospect of interference with federal labor law. *Id.* at 664.

In light of the inconsistency between the Court's decision and decisions of other States' courts, as well as the importance of the preemption question presented, the Court should grant leave to appeal.

II. The Court's Decision Impairs Amici States' Ability To Protect Workers In Their Jurisdictions.

A. States have a substantial interest in protecting their workers, including by enforcing state anti-retaliation statutes.

Amici States have a substantial interest in protecting workers in their jurisdictions from violations of state laws regulating occupational

safety and standards. The States' historic police powers confer a "great latitude . . . to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985). The Supreme Court has noted that "the establishment of labor standards falls within the traditional police power of the State." *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 21 (1987). Thus, States have historically regulated many aspects of the workplace and continue to do so today. *See* Henry H. Drummonds, *The Sister Sovereign States: Preemption and the Second Twentieth Century Revolution in the Law of the American Workplace*, 62 Fordham L. Rev. 469, 490 n.110 (1993) (citing historical examples of States adjudicating employment disputes).

To start, States often have their own wage standards, including provisions dictating minimum wage and overtime protections. *See, e.g.*, Ark. Code Ann. §§ 11-4-210, 11-4-211; Cal. Lab. Code §§ 510, 1182.12; D.C. Code §§ 2-220.03, 32-1302; Haw. Rev. Stat. Ann. § 104-2; Kan. Stat. Ann. §§ 44-1203, 44-1204; Mass. Gen. Laws Ann. ch. 151 §§ 1, 1B; Md. Code Ann., Lab & Emp. §§ 3-413, 3-415; Mich. Comp. Laws Ann. §§ 408.934, 408.472; Nev. Rev. Stat. Ann. § 608.016; N.J. Stat. Ann.

§ 34:11-56a4; Tex. Lab. Code Ann. §§ 62.051, 659.015. States have also passed laws requiring employers to provide their employees with sick leave. *See e.g.*, Ark. Code Ann. § 21-4-206; Cal. Lab. Code § 246; D.C. Code § 32-531.02; Fla. Stat. Ann. § 1012.61; Md. Code Ann., Lab & Emp. § 3-1304; Nev. Rev. Stat. Ann. § 608.0197; N.J. Stat. Ann. § 34:11D-2. And in addition to federal laws prohibiting discrimination in the workplace, most States provide similar, and at times more robust, protections to their citizens. *See, e.g.*, Ariz. Rev. Stat. Ann. § 41-1463; Cal. Gov't Code § 12940; D.C. Code § 2-1402.11; Mass. Gen. Laws Ann. ch. 151B § 4; Md. Code Ann., State Gov't § 20-602; Mich. Comp. Laws Ann. §§ 37.1102, 37.2202; Nev. Rev. Stat. Ann. § 618.445; N.J. Stat. Ann. § 10:5-12; Okla. Stat. Ann. tit. 25, § 1302.

Particularly relevant here, many States have enacted statutes that, like the New York laws at issue, mandate that employers guarantee a safe working environment. *See, e.g.*, Alaska Stat. Ann. § 18.80.220; Ariz. Rev. Stat. Ann. § 41-1463; Cal. Lab. Code § 6400; Haw. Rev. Stat. Ann. § 396-6; Md. Code Ann., Lab & Emp. § 5-104(a); Mich. Comp. Laws Ann. § 408.1011; Nev. Rev. Stat. Ann. § 618.375; Or. Rev. Stat. Ann. § 654.010. Some States have even passed legislation

that mandates specific protocols in the event of a COVID-19 exposure at the workplace. *See, e.g.*, Cal. Lab. Code § 6409.6; Mich. Comp. Laws Ann. § 419.403. And state attorneys general and other state agencies are often tasked with enforcement of state labor laws like those at issue here. *See, e.g.*, N.Y. Exec. Law § 63(12); Cal. Lab. Code § 6307; D.C. Code Ann. § 32-1306(a)(2)(A); Haw. Rev. Stat. Ann. § 396-4; 15 Ill. Comp. Stat. Ann. 210/1; Mass. Gen. Laws Ann. ch. 149, §§ 2, 142G, 190; Nev. Rev. Stat. Ann. §§ 607.220, 618.525; N.J. Stat. Ann. § 34:11-56.6.

When employers fail to comply with state laws regulating the workplace, employees play a critical role in reporting such violations, both internally and to government regulators. *See* Norman D. Bishara et al., *The Mouth of Truth*, 10 N.Y.U. J.L. & Bus. 37, 39 (2013) (whistleblowers serve as an "important source of information vital to honest government, the enforcement of laws, and the protection of the public health and safety"). It is widely accepted, however, that "employers do interfere and retaliate and that the lack of effective legal protection deters some would-be citizen employees and facilitates significant corporate crime and abuse of public interests." Richard R. Carlson, *Citizen Employees*, 70 La. L. Rev. 237, 252 (2009). States thus

have an interest in ensuring that workers are protected if they choose to report or otherwise publicize violations of state worker-protection laws.

To that end, most States have established robust anti-retaliation statutes that protect employees who report workplace misconduct from termination or other adverse action. *See, e.g.*, Cal. Lab. Code § 6310; Haw. Rev. Stat. Ann. § 396-8(e); 740 Ill. Comp. Stat. Ann. 174/15; Mass. Gen. Laws Ann. ch. 149, §§ 105A, 148A, 148C, ch. 151, § 19; Mich. Comp. Laws Ann. § 15.362; N.J. Stat. Ann. §§ 34:11-4.10(c), 34:11-56a24; Nev. Rev. Stat. Ann. § 618.445; Or. Rev. Stat. Ann. 654.062(5); Okla. Stat. Ann. tit. 25, § 1601; Tex. Lab. Code Ann. § 21.055; Wyo. Stat. Ann. § 27-4-502. Some such provisions even protect workers who report a violation on behalf of someone else. *See, e.g.*, Nev. Rev. Stat. Ann. § 618.445(a). And while there are some anti-retaliation protections at the federal level, States have generally "adopt[ed] broader whistleblower protection standards, both in the form of statutes and common law claims of retaliatory discharge in violation of public policy." Alex B. Long, *Viva State Employment Law! State Law Retaliation Claims in A Post-*Crawford/Burlington Northern *World*, 77 Tenn. L. Rev. 253, 260 (2010). The goal of these provisions is to ensure

that employees feel safe reporting perceived violations of state workplace laws, both to the employer and to governing entities.

B. The Court's decision, if adopted elsewhere, could impair States' ability to enforce their anti-retaliation statutes.

The Court's decision not only impairs New York's ability to protect Amazon workers from retaliation by their employer but might also, if adopted elsewhere, call into question amici States' own ability to bring retaliation claims against employers in their own jurisdictions. That result would chill workers' willingness to report workplace misconduct and frustrate amici States' ability to safeguard workplaces as a general matter.

As explained, the States depend in part on workers' willingness to report and publicize employers' violations of state workplace laws. But such violations rarely occur in isolation. Often, an employer's violation of state workplace laws with respect to one worker reflects that employer's treatment of all workers. That is commonly true, for instance, in the wage-and-hour context, where a worker's complaint may reflect not just the fact that he or she is underpaid, but that all similarly situated workers are, too. In such a case, in amici States'

experience, either a public assertion of workers' rights or collaborative action among multiple workers is common. In *Puglia*, for instance, the plaintiff first brought up his wage-and-hour complaint "with another laborer"; the two "ask[ed] why their wages had been halved." 226 N.J. at 265. He then "protest[ed] the reduction in '*our*' wages," *id.* at 293 (emphasis in original)—that is, the wages of those workers similarly situated to him. *Accord Hume*, 124 Wash. 2d at 661 (plaintiffs approached employer together).

Under the Court's reasoning, however, the fact that workers act together to raise complaints regarding working conditions brings a retaliation case later premised on those complaints within the scope of NLRA preemption. Op. 2. That conclusion would exclude enforcement of state laws prohibiting retaliation in a wide range of cases, to the detriment of amici States and their workers.

Illinois, for instance, recently resolved a workplace-rights case that, like this case, involved collaborative action on the part of workers. In 2019, female temporary workers in Illinois organized to speak out against workplace sexual harassment. The female workers said that male coworkers regularly groped them and made sexual comments to

them. Melissa Sanchez, *Temp Workers Fight Back Against Alleged Sexual Harassment and Say They Face Retaliation for Doing So*, ProPublica (Aug. 28, 2020).[2] Many workers signed a petition to end this behavior, and several staged a public protest. *Id.* In response, the employer began an "aggressive campaign of retaliation" against the workers. Robert Channick, *Beauty Products Manufacturer Voyant Settles Lawsuit Alleging Years Of 'Pervasive' Sexual Harassment At Suburban Chicago Plant*, Chicago Tribune (Aug. 24, 2020).[3] Consistent with its "broad authority . . . to protect workers within the State," *DeCanas*, 424 U.S. at 356, the Illinois Attorney General sued to enforce state laws prohibiting sexual harassment and retaliation, resulting in civil penalties and injunctive relief. *See* Consent Decree, *People v. Vee Pak, LLC*, No. 2020-CH-05504 (Ill. Cir. Ct., Cook Cnty. Aug. 24, 2020).[4] Under the logic of the Court's opinion, though, that action would

[2] https://www.propublica.org/article/temp-workers-fight-back-against-alleged-sexual-harassment-and-say-they-face-retaliation-for-doing-so.

[3] https://www.chicagotribune.com/business/ct-biz-voyant-beauty-sexual-harassment-settlement-20200824-y7isxezn3vfm5ihstvav3nssha-story.html.

[4] https://illinoisattorneygeneral.gov/pressroom/2020_08/2020-08-24_Exhibit-ConsentDecree.pdf.

arguably have been preempted, given that the workers acted in concert to assert their rights.

Similarly, the Massachusetts Office of the Attorney General recently secured guilty pleas from two company owners for wage theft, tax fraud, retaliation, and witness intimidation, among other counts, in a case that involved action taken by workers acting together. In 2015, Massachusetts investigated a temporary employment agency after employees complained about minimum wage and overtime violations, and subsequently brought criminal charges against it. Press Release, *Temp Company Owners Plead Guilty to Wage Theft, Intimidation, and Retaliation Against Warehouse Workers* (Dec. 12, 2019).[5] During the investigation, the employer threatened workers and told them not to cooperate with government investigators. *Id.* The employer sought the dismissal of some of the state-law charges on the grounds that they were preempted by the NLRA, but the state court denied the motion. *See Commonwealth v. Carrion*, No. 17-85-CR00210, et al. (Mass. Super. Ct., Suffolk Cnty.). Under the logic of the Court's opinion, though, this

[5] https://www.mass.gov/news/temp-company-owners-plead-guilty-to-wage-theft-intimidation-and-retaliation-against-warehouse-workers.

prosecution, too, would arguably have been preempted, given that the workers acted in concert to assert their rights.

As these examples illustrate, amici States have a substantial interest in being able to protect workers in their jurisdictions, including by bringing retaliation actions against employers that take adverse action against workers who assert their rights. That interest is not diminished when workers act together. But if courts were to find actions of this sort preempted, under the reasoning adopted by the Court, States would be unable to enforce state laws to protect workers when an enforcement action bears some connection to action taken by workers together. That result would significantly expand the reach of NLRA preemption and diminish the reach of state-law protections for employees, frustrating amici States' efforts to protect workers within their jurisdictions. The Court should therefore grant New York leave to appeal its decision so that the Court of Appeals may consider this issue of grave importance to amici States.

CONCLUSION

This Court should grant the State of New York's motion for leave to appeal to the Court of Appeals.

Dated: Chicago, Illinois
June 16, 2022

Respectfully submitted,

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