UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PURPLE COMMUNICATIONS, INC. AND COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO	CASES 21-CA-095151 21-RC-091531 21-RC-091584

BRIEF OF *AMICUS CURIAE*
THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
IN SUPPORT OF RESPONDENT PURPLE COMMUNICATIONS, INC

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INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. It represents 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 interest 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 raises issues of concern to the nation's business community. The Chamber has participated as *amicus curiae* in dozens of cases before the National Labor Relations Board, including in the *Register-Guard* case before the Board, 351 N.L.R.B. 1110 (2007).

Many of the Chamber's member companies are employers subject to the National Labor Relations Act ("NLRA" or "the Act"). Most, if not all, of the Chamber's member companies also provide email or other electronic-communications systems to some or all employees for business purposes. The Chamber's members therefore have a strong interest in the resolution of this case, which presents fundamental issues regarding employers' right to control the information systems and technology that they purchase and maintain for business purposes. The Chamber appreciates the Board's call for interested parties to file *amicus* briefs, and respectfully submits this brief as *amicus curiae*. In the course of its discussion below, the Chamber responds to the five questions the Board posed in its April 30, 2014 Notice and Invitation to File Briefs.

ARGUMENT

The Chamber's member companies invest substantial resources in electronic communication systems used for business purposes. Acquiring and maintaining the computer

hardware, servers, networks, software, and support staff necessary to operate these systems requires substantial monetary investments by member companies.

To help protect these investments and to prevent abuse of company-provided systems, most, if not all, of the Chamber's member companies have policies governing their employees' use of company-provided email, computer networks, and related information technology. These policies serve critical business interests for member companies. They prevent non-business email traffic from reducing network speeds, wasting hardware and software assets, and otherwise diminishing the value of member companies' multimillion-dollar investments. These policies also help to prevent computer security breaches and the exploitation or theft of data and information from company networks and information systems. And they help to limit the risk of liability and embarrassment due to the transmission of unlawful or inappropriate messages or confidential information from company email accounts, as well as the risk of illegal copyright infringement using company computers. These and other goals cannot be achieved effectively without limiting non-business uses of company email and electronic-communication systems.

Over the past six years, member companies have relied on the clear rule laid out by this Board in *Register-Guard*, 351 N.L.R.B. at 1114, which holds that a company's computer-use policy does not violate the NLRA unless it treats Section 7 communications differently than other non-business related communications. *Register-Guard* thus allows employers to create neutral policies that protect their technology investments without impinging on their employees' Section 7 rights. Overruling *Register-Guard* and requiring companies to change their policies to comply with a new approach to email communications would require substantial legal compliance and other expenditures and likely would result in further uncertainty and costly litigation.

For these reasons, and for those discussed below, the Chamber urges the Board to affirm its *Register-Guard* decision, which gave appropriate deference an employer's property right to non-discriminatorily limit employee use of its expensive electronic communication systems.

I. The Board Should Adhere To The Recent Decision In *Register-Guard*

The Chamber urges the Board to follow its decision in *Register-Guard*, 351 N.L.R.B. 1110, enforced in relevant part, *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009), and to reaffirm that employees do not have a statutory right under the NLRA to use their employer's email or other electronic communication systems for Section 7 purposes. For decades, the Board has consistently held that an employer need not allow employees to use company-provided communications equipment for Section 7 purposes so long as it does not discriminate against union activity. These rules applied first to telephones and bulletin boards, and the Board rightly extended them to computers, email, and other communications systems in *Register-Guard*. There is no reason to overturn that long line of authority now. In today's world, employers have substantial property and business interests in ensuring that their significant investments in computer networks and information systems are used for productive ends; and employees have more means than ever to communicate with each other without the need to resort to the electronic-communications equipment procured, provided, and maintained by their employers for business purposes. So long as an employer's restrictions are based on union-neutral criteria, employers should and must be allowed to set rules for the use of their own email and other electronic communications systems.

A. Well-Established Precedent Compels The Holding In *Register-Guard* That An Employer's Email And Other Electronic-Communications Systems Are Properly Subject To The Employer's Control.

In *Register-Guard,* the Board recognized that employees do not have a statutory right to use their employer's email system or other electronic communications systems for Section 7 purposes. 351 N.L.R.B. at 1114. This decision resulted from careful consideration of previous Board and judicial precedent, which has consistently held that employees do not have a right to use an employer's equipment for non-business purposes. *Id.* (collecting cases). *Register-Guard* respects employer property rights while also protecting employees' Section 7 rights. It does so by prohibiting discrimination against union-related activity. Employer policies must treat employees using email systems for Section 7 purposes in the same way it treats all non-business use. In this way, *Register-Guard*, like the precedents it relied on, appropriately balances employers' basic property rights with employees' Section 7 rights.

1. As the Board recognized in *Register-Guard*, an employer's "communications system, including its e-mail system, is the [employer's] property and was purchased by the [employer] for use in operating its business." 351 N.L.R.B. at 1114. It is black-letter law that there is "no statutory right of an employee to use an employer's equipment or media" for Section 7 communications or other non-business related reasons. *Id.* at 1116 (citing *Mid-Mountain Foods, Inc.*, 332 N.L.R.B. 229, 235 (2000), order enforced, 269 F.3d 1075 (D.C. Cir. 2001) (*per curiam*)). Thus, as the Seventh Circuit observed in *Guardian Industries Corp. v. NLRB,* 49 F.3d 317, 318 (7th Cir. 1995), the starting proposition is "that employers may control activities that occur in the workplace, both as a matter of property rights (the employer owns the building) and of contract (employees agree to abide by the employer's rules as a condition of employment)." (citing *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992), and *Eastex, Inc. v. NLRB*, 437 U.S. 556

(1978)). Accordingly, the Board and reviewing courts have routinely upheld the legality under Section 7 of the NLRA of an employer's policy restrictions on its employees' use of the employer's bulletin boards, telephones, photocopiers, public broadcast systems, televisions, and VCRs for non-business purposes, so long as they do not discriminate against NLRA-protected activity in their policies. *See, e.g.*, *Fleming Cos. v. NLRB*, 349 F.3d 968 (7th Cir. 2003) (bulletin boards); *Union Carbide Corp.*, 259 N.L.R.B. 974, 980 (1982), enforced in relevant part, 714 F.2d 657, 663-664 (6th Cir. 1983) (telephones); *Champion Int'l Corp.*, 303 N.L.R.B. 102 (1991) (photocopier); *The Health Co.*, 196 N.L.R.B. 134 (1972) (facility public address system); *Mid-Mountain Foods, Inc.*, 332 N.L.R.B. at 235 (televisions and VCRs; collecting cases). *See also Adtranz, ABB Daimler-Benz Transp., Inc.*, 331 N.L.R.B. 291 (2000) (email systems).

This Board precedent not only protects employers' property rights, it also represents a thorough understanding of Section 7 of the Act, which "protects organizational rights . . . rather than particular means by which employees may seek to communicate." *Guardian Indus. Corp.* 49 F.3d at 318. Although the Act prevents employers from discriminating against unions, it has never mandated that the employer provide the supplies and tools for the union to communicate its message:

> Just as the right of free speech and association in the political marketplace does not imply that the government must subsidize political parties by distributing their literature without charge or giving them billboards on public buildings, so the right of labor organization does not imply that the employer must promote unions by giving them special access to bulletin boards.

Id. (citing *NLRB v. Honeywell, Inc.*, 722 F.2d 405, 406 (8th Cir. 1983), and *Container Corp. of America*, 244 N.L.R.B. 318, 318 n.2 (1979), enforced in relevant part, 649 F.2d 1213 (6th Cir. 1981)).

As the Board properly concluded in *Register-Guard*, email is not sufficiently different than other forms of communications that came before it—including telephones, public announcement systems, photocopiers, and bulletin boards—to deviate from the established precedent regarding employer property rights:

> [W]e find that the use of e-mail has not changed the pattern of industrial life at the Respondent's facility to the extent that the forms of workplace communication sanctioned in *Republic Aviation* have been rendered useless and that employee use of the Respondent's e-mail system for Section 7 purposes must therefore be mandated.

351 N.L.R.B. at 1116. The circumstances that gave rise to this conclusion in *Register-Guard* have not changed: there has been no evidence, nor is there any, that email and other communication systems have eliminated face-to-face communication, much less the use of telephones, bulletin boards, and other means of communication.

2. Email systems and other electronic-communications systems are, at their core, means of communication that the employer owns and provides to its employees to advance productive business interests. Much like bulletin boards, telephones, and photocopiers, email and other electronic communications systems represent a substantial business investment. Procuring and maintaining the infrastructure necessary to operate their systems costs American employers many billions of dollars per year. Indeed, Gartner, Inc. estimates that worldwide information technology spending is on pace to total $3.8 trillion in 2014, a 3.2 percent increase from 2013. *See* Press Release, *Gartner Says Worldwide IT Spending on Pace to Grow 3.2 Percent in 2014*, Gartner, Inc. (Apr. 2, 2014) (a technology research company) available at http://www.gartner.com/newsroom/id/2698017. Employers are entitled to protect these significant investments by limiting their use to the purposes for which they are intended and maintained.

Indeed, the costs from misuse of employers' information systems and networks can be significant. At the most basic level, the greater the traffic and use of those systems, the higher the potential costs. In addition to the cost of the network, servers, and associated equipment, most employers today must also have technology support staff that maintain their networks and fix problems. Each incremental increase in non-productive use by employees of the employer's information systems—whether it be surfing the Internet or using email, Twitter, Facebook, LinkedIn, FaceTime or Skype, or any number of other web-based means of communication—causes a corresponding increase in the information technology and services costs for the employer.

Moreover, decreases in employee productivity due to distractions caused by social media, personal emails, and other non-business related matters during work time substantially impact an employer's bottom line. Even under current rules, according to a Salary.com survey, 80 percent of employees admit visiting non work-related websites during work time. Aaron Gouveia, *2013 Wasting Time at Work Survey*, Salary.com (2013) available at http://www.salary.com/2013-wasting-time-at-work-survey/. Allowing employees to use the employer's electronic communications systems to send and respond to non-business related emails without restrictions will further detract from the productivity of the workforce.

With the rise of electronic discovery in federal and state courts, more emails on an employer's system means more emails the employer must potentially retain and sort through during the discovery process. Once a party reasonably anticipates litigation, they are required to put in place a litigation hold to ensure the preservation of relevant documents. This preservation obligation extends to electronically-stored documents. *See Zubulake v. UBS Warburg LLC,* 220 F.R.D. 212, 218 (S.D.N.Y. 2003). To comply with these obligations, employers often must

increase their storage capacity to collect and retain the copious amount of data that discovery now involves. In a study by RAND, electronic discovery was found to cost companies between $17,000 to $27 million per case, with a median value of $1.8 million, of which preserving and storing information is a substantial part of the cost. Nicholas M. Pace & Laura Zakaras, *Where the Money Goes: Understanding Litigant Expenditures for Producing Electronic Discovery*, RAND INSTITUTE FOR CIVIL JUSTICE, 17 (2012), available at http://www.rand.org/content/dam/rand/pubs/monographs/MG1208.html. *See also, id.* at ix ("All interviewees reported that preservation had evolved into a significant portion of their companies' total e-discovery expenditures. Some of them believed that preserving information was now costing them more than producing e-discovery in the aggregate."). These costs will only increase if more non-business related emails were permitted to traverse an employer's information systems.

Employers also can face costs associated with illegal activity, including cyber attacks. Employees using an employer's electronic communications systems can inadvertently introduce computer viruses and other malicious computer code sent by a cyber adversary (such as a nation state, groups such as Anonymous, or an individual hacker) onto an employer's network simply by clicking on the wrong link or opening the wrong attachment. Increasing the number and type of non-business emails that are sent, particularly those that may advertise outside groups and contain accompanying external links or attachments, increases the risk of introducing these issues to the employer's network. Despite tens of billions of dollars spent annually, experts say that the global economy is still not sufficiently protected against cyber attacks. Chinn et al., *Risk and Responsibility in a Hyperconnected World: Implications for Enterprises*, MCKINSEY & COMPANY and THE WORLD ECONOMIC FORUM (Jan. 2014), available at

http://www.mckinsey.com/insights/business_technology/risk_and_responsibility_in_a_hyperconnected_world_implications_for_enterprises.

Finally, harassment lawsuits, among other legal issues, related to employee-sent emails represents a substantial risk and potential liability for employers. *See, e.g.*, *Mandel v. M&Q Packaging Corp.,* 706 F.3d 157, 162 (3d Cir. 2013) (employer faced liability under Title VII for emails sent by employees containing sexual humor); *Blakey v. Cont'l Airlines Inc*., 751 A.2d 538, 543-44 (N.J. 2000) (similar). To be sure, the risk exists even where employees are permitted to use employer systems only for business-related communications. However, allowing employees to use the employer email system for non-business-related activities increases the risk, because it encourages more casual communications about non-work-related issues. As employees communicate with each other using employer email more frequently, and about a wider range of topics, their communications are likely to become more informal, increasing the risk of improper or offensive communications. On the other hand, if all communications are business-related, employees are more likely to view them as more formal, and take more care in how the communications are crafted, and to whom they are sent.

B. *Register-Guard* Properly Accommodates Modern Technological And Workplace Realities.

Employees' use of their personal electronic devices such as smartphones and tablets, as well as their use of social-media accounts and personal-email accounts, further support the balance between employer and employee rights that the Board struck in *Register-Guard.* Today it is even easier than it was seven years ago when *Register-Guard* was decided for employees to contact each other for Section 7 purposes. Finding co-workers on social-media sites such as Facebook and LinkedIn, where users often list their work affiliations, allows employees to communicate quickly and conveniently about non-business matters. The proliferation of free

and easily accessed personal-email addresses using third-party providers such as Gmail, Yahoo!, and other services, cellular phones with the ability to send written texts, and smartphones that allow a user to access the Internet and social-media applications like Twitter from the palm of one's hand offer still more means for employees to communicate with each other without using employer-provided email and other electronic communications systems. Indeed, use of these technologies has grown significantly in just the last few years. Smartphone usage among adults, for example, has increased to 58 percent in 2014, up from 35 percent in 2011. *See* Susannah Fox and Lee Rainie, *The Web at 25 in the U.S.*, THE PEW RESEARCH CENTER (Feb. 27, 2014) available at http://www.pewinternet.org/files/2014/02/PIP_25th-anniversary-of-the-Web_0227141.pdf. Email usage is only projected to increase for personal purposes. Moreover, social networking is expected to grow from about 3.6 billion accounts in 2014 to over 5.2 billion accounts by the end of 2018. *See* Sara Radicati and Quoc Hoang, *Email Statistics Report, 2014-2018*, THE RADICATI GROUP, INC. (April 2014). Simply put, there are even more means for employees to communicate with each other electronically today than there were just seven years ago when the Board decided *Register-Guard.* Employees cannot credibly claim that they lack the ability to communicate with each other unless Section 7 is read to require employers to allow them to use employer systems to do so.

Not only do smartphones and other devices provide greater means for employees to engage in instant communication without reliance on their employers' property, communicating through personal devices makes more sense for employees than using the employer's systems. They are their own personal, private devices. They can use them on a break or after work or on weekends. Employees are thus able to send private communications via personal email if they

choose to do so. And they can also communicate more publicly through social media or other sites, if that better suits their purposes.

And as was the case with telephones, bulletin boards, and photocopiers, there are still other non-employer owned means of communications that employees can use to discuss non-business related matters. Employees are still free to speak in person, or on their own cellphones. Moreover, consistent with other cases dealing with employer-owned communication devices, *Register-Guard* only allows union-neutral restrictions on email and other electronic-communication systems. 351 N.L.R.B. at 1116. This non-discrimination standard respects both employer property rights and provides employees the full protections and rights that the Act provides.

Those who advocate overruling *Register-Guard* point to the increase in telecommuting arrangements as a reason to interpret Section 7 to include employee use of employer email systems, on the grounds that employees do not have the same opportunities as before to engage in face-to-face communications for Section 7 purposes. But there is no reason to believe that the growth of telecommuting in the last several years—or email in general—has entirely displaced in-person communication among employees. Even if email has displaced in-person conversation (and it surely has not), that would simply mean that employees could use their own personal-email accounts and personal devices to engage with their fellow employees; not that an employer should be compelled to make its property available for non-business uses by employees. To be sure, there might be highly unusual circumstances where employees truly have no alternative means of communicating with other employees to exercise their Section 7 rights other than the employer's information networks and systems. The Board can address that situation in the event

that it arises in a concrete case, and it need not anticipate that extreme consequence in setting forth the general rule.

The General Counsel argues, however, that the Board should overrule *Register-Guard* because of technological changes, relying on the dissent's argument in *Register-Guard* that "email has revolutionized communication, both within and outside the workplace." *Register-Guard*, 351 N.L.R.B. at 1121 (Liebman and Walsh, dissenting). That is indisputably correct. But that revolution does not mean that employees should be able to use employer systems for those communications. To the contrary, the revolution in communication in the 21st century has only made it *easier* for employees to engage in Section 7 communications at any time, from any place, with anyone *by using their own personal devices and accounts*. There is no basis for the Board to abandon its long-held rule that employees have no statutory right to use employer equipment to communicate with each other.

C. Overruling *Register-Guard* Would Impermissibly Construe The NLRA In A Manner That Raises Constitutional Concerns

The Supreme Court has held that compelling an employer to make his means of communication available to those with whom he does not agree, or to those who espouse views contrary to his views or interests, infringes upon the employer's First Amendment rights. Thus, for example, a utility company may not be compelled to place inserts in its monthly customer bills written by those with contrary interests, even if it would be efficient to do so. *Consolidated Edison Co. of New York, Inc. v. Public Service Comm'n of New York*, 447 U.S. 530, 544 (1980). Similarly, a newspaper may not be compelled to allow a reply on its letterhead to opinions or political positions that the paper has taken. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). Likewise, the government cannot compel a private organization teaching youth or sponsoring a parade to associate with the speech of those who have viewpoints contrary to the

organization's own message. *See Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995).

The concern here is not that employee access to an employer's email system necessarily implicates the employer's right to use his systems for his own purposes, but rather that union-related solicitations on employer-provided email systems could imply company support for those messages, or could require, in effect, the loan of company property to espouse views with which the company does not agree. The Board has an obligation to interpret the Act in a manner that avoids these constitutional concerns. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building*, 485 U.S. 568, 575 (1988). Its *Register-Guard* decision does so, and this is an additional reason that the Board should continue to follow that decision. Construing the Act, however, to *compel* employers to use their own information-technology systems to carry the messages of their employees about collective action *against* the employer—messages with which employers certainly disagree—raises precisely these serious First Amendment questions.

D. Employees' Use Of Employer-Provided Email And Other Electronic-Communications Systems Does Not Under The Oral Solicitation Doctrine

Those who advocate overturning *Register-Guard* view email as the modern-day equivalent of oral solicitation, which the employer may not prohibit absent special circumstances. *See Republic Aviation v. N.L.R.B.,* 324 U.S. 793, 803 & n.10 (1945). But it is not.

In the first place, characterizing email as oral solicitation ignores the fact that, unlike a face-to-face conversation among co-workers, email requires employees to use the employer's information technology and services. Just as the Board has never held that employees have a Section 7 right to use an employer's telephone to have a conversation, notwithstanding that those conversations over the phone are "oral solicitation" in the same manner as an in-person

discussion, employees likewise have no Section 7 right to use an employer's email systems for "conversations" that they might otherwise have in person.

Moreover, although email shares some attributes of oral solicitations it does not fit neatly into that category. Email is similar to an oral communication in that it can elicit an instantaneous response. But email can also be "retained by the recipient for reading or re-reading at his convenience"—a quality the Board has long deemed "[t]he distinguishing characteristic of literature," the distribution of which employers lawfully may limit during working time and in working areas. *Stoddard Quick Mfg. Co.,* 138 N.L.R.B. 615, 620 (1962). In fact, email can easily be printed and become a paper distribution of literature, unlike an in-person conversation. Again unlike a conversation, email can be forwarded on to dozens or hundreds of others. It can also be reread on a variety of personal devices in many formats, including, in the case of misdirected emails, by persons having no connection with the employer—a problem that does not usually arise in the case of a conversation at work.

II. If The Board Nonetheless Decides To Overrule *Register-Guard,* It Should Minimize The Disruption To Employers' Limits On Non-Business Related Communications

As discussed above, there is no basis to overrule *Register-Guard.* The Board need not reach its second question regarding what standards should apply in place of *Register-Guard*. If the Board nonetheless decides, however, to change the legal standards applicable to employees' use of their employer's email and other electronic-communications systems, it should minimize the intrusion upon employers' property rights and valid business interests.

A. An Employer's Policy Prohibiting Certain Non-Business Related Communications Should Be Lawful.

Employers should be permitted to impose neutral limitations on the use of employer-provided email without violating the NLRA in order to address employer concerns related to the

employer's property interests in information technology systems—valid concerns that the Board has previously acknowledged. *See supra* Part I.A, at 4-9. For instance, employers should be able to implement restrictions on the number of non-work-related emails sent, their size, and the number of recipients to whom those emails are addressed. Large numbers of non-work related messages, large attachments, and messages to significant numbers of recipients could overload employer networks, interfering with their use for business purposes. Furthermore, employers should be able to restrict malicious computer code (such as viruses, "phishing" schemes, or other malware) from their networks and to monitor their network traffic for those and other lawful purposes.

B. Employers Should At A Minimum Be Allowed To Impose The Same Kind Of Restrictions That Apply To Distribution Of Literature

Email cannot be equated with a simple, in-person, oral solicitation. At best, it is a "mixed" form of communication that can fall into both the oral solicitation and the written distribution categories. Therefore, employers must be allowed to impose the same non-discriminatory limitations on electronic communications that apply to the distribution of literature. *See Stoddard-Quirk Mfg. Co.,* 138 N.L.R.B. at 615.

Under this framework, appropriate limitations would include non-discriminatory restrictions on reading and sending designated categories of non-business related email using employer equipment during work time. Those neutral restrictions are consistent with *Stoddard Quirk* and *Republic Aviation*, and would allow employers to ensure that employees are working during scheduled work time. *See Republic Aviation* 324 U.S. at 803 & n.10 ("The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working

hours.”). Restricting use of employer email systems during work time and on company equipment is a right firmly established by Board precedent.

C. Employers May Bar Outside Access by Non-Employees To Employer-Provided Email And Other Electronic-Communication Systems.

Regardless of the ways in which an employer may restrict *employee* access to email communications, the Supreme Court has stressed that employers have the unqualified right to block outside organizations, such as unions, from accessing the company’s email because “the NLRA confers rights only on *employees*, not on unions or their nonemployee organizers.” *Lechmere,* 502 U.S. at 532. Employers may lawfully exclude nonemployee union representatives from their property except in the “rare case” where the union meets the high burden of “*showing that no other reasonable means of communicating its organizational message to the employees exists* or that the employer’s access rules discriminate against union solicitation.” *Id.* at 535 (emphasis in original, quoting *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180, 205 (1978)). Under this long-settled rule, employers may exclude nonemployee communications across their electronic-communications systems so long as reasonable alternative channels exist for communicating the union’s message.

With today’s technology, there can be no argument that unions have no reasonable alternative channels to communicate their message. They all have websites and social media accounts on which they can post whatever they choose and that employees may access from their personal-electronic devices, or from computers readily available in most public libraries. The proliferation of smartphones, personal-email accounts, and numerous widely used social media sites, means that unions have greater means of communicating their message than ever before. Although employer-provided email may be the most *convenient* way for unions to reach employees (particularly at work), convenience is not the legal standard. In fact, even a

"cumbersome or less-than ideally effective" means is a reasonable alternative that forecloses any right of access to employer property. *Lechmere*, 502 U.S. at 539. Accordingly, employers may exclude non-employees from their email and other electronic-communications systems.

The Chamber does not understand the Board's notice to implicate the rights of outside entities to access employer email systems, and that does not seem to be an issue in this underlying case. If, however, the Board is considering any change to those standards, it should explicitly inform the public of that, and seek additional briefing on the questions such changes would raise.

CONCLUSION

For all of the foregoing reasons, the Chamber respectfully requests that the Board uphold its decision in *Register-Guard* and reaffirm, consistent with decades of precedent, that employees do not have a statutory right to use their employer's email or other electronic-communications systems for Section 7 purposes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2014, an electronic copy of this Brief Of *Amicus Curiae* The Chamber Of Commerce Of The United States Of America In Support Of Respondent Purple Communications, Inc. was filed electronically at http://mynlrb.nlrb.gov/efile. In addition, true and correct copies of the brief were served by overnight delivery, addressed as follows:

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