UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PURPLE COMMUNICATIONS, INC.

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

21-CA-095151
21-RC-091531
21-RC-091584

BRIEF *AMICUS CURIAE* OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.

Pursuant to the Board's April 30, 2014, Notice and Invitation to File Briefs, the National Right to Work Legal Defense Foundation, Inc. hereby files this brief *amicus curiae*.

I. INTEREST OF THE *AMICUS*

The National Right to Work Legal Defense Foundation, Inc. ("Foundation") is a nonprofit, charitable organization that provides free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. The Foundation protects the Right to Work, freedoms of speech and association, and other fundamental liberties of ordinary working men and women from infringement by compulsory unionism. As such, the Foundation aids employees who have been denied, or coerced in the exercise of, their right to refrain from collective activity.

The Foundation's staff attorneys have served as counsel for individual employees in many Supreme Court, federal court and NLRB cases involving employees' rights to

refrain from joining or supporting labor organizations, and thereby has helped to establish important precedents protecting employee rights in the workplace against the abuses of compulsory unionism. These cases include *Communications Workers v. Beck*, 487 U.S. 735 (1988); *Lee v. NLRB*, 393 F.3d 491 (4th Cir. 2005); *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000); *Lucas v. NLRB*, 333 F.3d 927 (9th Cir. 2003); *Saint-Gobain Abrasives*, 342 NLRB 434 (2004); *IAM District Lodge 720 (McDonnell Douglas Corp.)*, 243 NLRB 697 (1979), *enf'd*, 626 F.2d 119 (9th Cir. 1980); and *Dana Corp.*, 351 NLRB 434 (2007). The Foundation's legal aid program is at the forefront of halting abuses of compulsory unionism and protecting employees' right to refrain from unwanted collective relationships.

II. STATEMENT OF THE ISSUE

In *Guard Publishing Co.*, 351 NLRB 1110 (2007) (3-2 decision) ("*Register Guard*"), *enf'd in part,* 571 F.3d 53 (D.C. Cir. 2009), the Board held that employees have no Section 7 right to use their employer's e-mail system for non-job related communications. The issue is whether that decision should be overruled.

III. ARGUMENT

The Foundation takes no position on whether the Board should find that employees have a Section 7 right to use their employer's email systems for non-job related communications. However, the Foundation wants to ensure that, *if* the Board were to overrule *Register Guard* and find such a right for proponents of unionization to access their employer's e-mail system, it equally applies that right to employees who *oppose*

compulsory unionization schemes. As the Board noted in *Register Guard*, "an employer clearly would violate the Act if it permitted employees to use e-mail to solicit for one union but not another, or if it permitted solicitation by antiunion employees but not by prounion employees." 351 NLRB at 1118.

Applying that logic, any Board ruling in this case should protect employees who wish to refrain from unionization and collective activity and grant them equal access to their employer's e-mail system. This would include, *inter alia*, allowing employees to communicate via their employer's e-mail system about topics such as dues objector status under *Communications Workers v. Beck*, 487 U.S. 735 (1988); seeking support for decertification and deauthorization petitions; collecting signatures for such petitions; and campaigning in favor of decertification or deauthorization.

Section 7 guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively . . . , and to engage in other concerted activities" and *equally* "to refrain from any or all of such activities." 29 U.S.C. § 157; *see Chamber of Commerce of the United States v. Brown*, 554 U.S. 60, 67 (2008). Thus, it follows directly from the Act that, if the Board is going to allow employees to use their employer's email system to communicate regarding union business, then employees who oppose unionization generally, or a specific union representing or seeking to represent their unit, must also be allowed the same access to communicate and share information with their fellow employees.

Given unions' aggressive and well funded organizing campaigns, equal access for employee opponents of unionization is of paramount importance under the NLRA.[1] "The exercise of free speech in [organizing] campaigns should not be unduly restricted by narrow construction. It is highly desirable that the employees involved in a union campaign should hear all sides of the question in order that they may exercise the informed and reasoned choice that is their right." *NLRB v. Lenkurt Elec. Co.*, 438 F.2d 1102, 1108 (9th Cir. 1971). Indeed, equal access so that employees hear both sides is not just desirable, but an employee right protected by the Act, for the amendment to § 7 that added the right to refrain "implies an underlying right to receive information opposing unionization." *Chamber of Commerce*, 554 U.S. at 68.

In short, any ruling that opens employer e-mail systems to non-job related communications about unionization issues must also provide equal access to employees opposed to unionization and compulsory unionism.

IV. CONCLUSION

The Foundation takes no position on whether the Board should find that employees have a Section 7 right to use their employer's email system for non-job related communications. However, should the Board find that such a right exists and overrule *Register Guard*, the Board must ensure that employees who *oppose* compulsory

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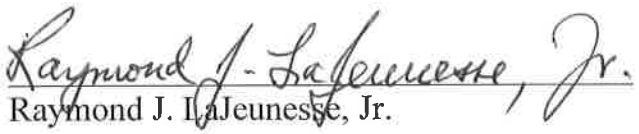
[1] Union organizing is a well-funded big business, against which individual employees are ill-equipped to compete. For example, the press has widely reported that the United Auto Workers (UAW) spent over $5 million on its unsuccessful multi-year campaign to unionize employees at Volkswagen's auto assembly facility in Chattanooga, Tennessee. http://laborunionreport.com/2014/02/16/uaw-may-have-spent-nearly-8000-per-vote-at-vw/

unionization schemes have the same right to access the employer's e-mail system as do proponents of unionization.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to Section 102.114 of the Board's Rules and Regulations, I hereby certify that a true and correct copy of the foregoing Brief was E-filed with the NLRB Executive Secretary, and was sent via e-mail to the following parties and counsel this 13th day of June, 2014:

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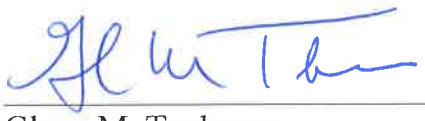

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