No. 16-5246

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA LOCAL 3047 et al.,
Plaintiffs-Appellees,
v.
HARDIN COUNTY, KENTUCKY et al.,
Defendants-Appellants

On Appeal from a Final Decision of the
United States District Court for the
Western District of Kentucky
No. 3:15-cv-00066-DJH

BRIEF OF AMICUS CURIAE COMMONWEALTH OF KENTUCKY IN SUPPORT OF APPELLEES AND AFFIRMANCE

Respectfully submitted,

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STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE, INTEREST IN THE CASE, AND SOURCE OF AUTHORITY TO FILE

The Kentucky Attorney General is a constitutional office of the Commonwealth created by KY. CONST. § 91. KY. REV. STAT. ANN. § 15.020 provides that "the Attorney General is the chief law officer of the Commonwealth of Kentucky," "shall exercise all common law duties and authority pertaining to the Office of the Attorney General under the common law," and "shall . . . attend to all litigation and legal business . . . in which the Commonwealth has an interest." *See generally Commonwealth ex rel. Conway v. Thompson*, 300 S.W.3d 152, 172-73 (Ky. 2009).

The issue addressed in this case, whether a local government may enact a right-to-work ordinance, is one of significant statewide importance. The Commonwealth seeks to protect its interests in ensuring uniform application of any right-to-work laws throughout the Commonwealth for the general welfare of its citizens. The Commonwealth also argues in defense of a decision of the former highest court of the Commonwealth, *Ky. State AFL-CIO v. Puckett*, 391 S.W.2d 360 (Ky. 1965).

The source of the Kentucky Attorney General's authority to file an amicus brief in this case is FED. R. APP. P. 29(a), which provides that "a state may file an amicus-curiae brief without the consent of the parties or leave of court."

SUMMARY OF ARGUMENT

The Commonwealth argues that Section 14(b) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 164(b), authorizes a state or territory only—and not a county—to enact so-called "right-to-work" legislation banning union or agency shops. Nevertheless, Hardin County, Ky. enacted Ordinance 300, a right-to-work ordinance. In *Ky. State AFL-CIO* v. *Puckett*, 391 S.W.2d 360 (Ky. 1965), the Commonwealth's former highest court properly found that the NLRA preempts such local right-to-work ordinances, in that the NRLA preempts the field, but carves out an exception for state laws, which does not include local regulation. The cases cited by Appellants do not involve statutory schemes similar to the NLRA, and do not undermine either of *Puckett*'s holdings. Other courts considering the same or similar situations have held that the NLRA preempts local regulation. The holdings of *Puckett* and other courts are sound public policy, as allowing local governments to pass their own individual right-to-work laws would create an untenable "crazy quilt of regulations." The District Court thus properly found that local right-to-work ordinances are preempted by the NLRA.

ARGUMENT

I. Background

Hardin County, Ky., Ordinance 300 § 4, (Answer Ex. A., RE 5-1, Page ID # 96) ("Ordinance 300"), provides:

> No person covered by the National Labor Relations Act shall be required as a condition of employment or continuation of employment:
>
> (A) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
>
> (B) to become or remain a member of a labor organization;
>
> (C) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;
>
> (D) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or
>
> (E) to be recommended, approved, referred, or cleared by or through a labor organization.

Ordinance 300 thus provides that no employee under the NLRA is required to join a union or pay dues to a union as a condition of employment or employment continuation.

Section 8(a) of the NLRA, 29 U.S.C. § 158(a), provides:

> It shall be an unfair labor practice for an employer . . . (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the

> thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . . .

29 U.S.C. § 158(a)(3) forbids an employer from discriminating in employment based on whether that person is a member of a union, forbidding "closed shops" that only consider union members for employment, although an employee may be required to join a union upon commencing employment, in what is known as a "union shop," or required to make payments equivalent to union dues, in what is known as an "agency shop."[1] Section 14(b) of the NLRA, 29 U.S.C. § 164(b), as amended by the Taft-Hartley Act, Pub. L. No. 80–101, 61 Stat. 136 (1947), provides that "nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." Although 29 U.S.C. § 158(a)(3) allows union and agency shops, 29 U.S.C. § 164(b) provides that states may enact so-called "right-to-work" laws forbidding union and agency shops. Twenty-five states have enacted such right-to-work laws. Kentucky has not.[2]

[1] *See generally Oil, Chem. and Atomic Workers, Int'l. Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407, 410 n.1 (1976).
[2] *See* Mem. Op. Order 2 n. 1, RE 43, Page ID # 1278.

II. Kentucky's Former Highest Court Properly Held that the NLRA Preempts Local Right-to-Work Ordinances.

In *Ky. State AFL-CIO v. Puckett*, 391 S.W.2d 360 (Ky. 1965), the Kentucky Court of Appeals, the Commonwealth's highest court at the time, considered a right-to-work ordinance enacted by the City of Shelbyville, which provided that "the right of persons to work shall not be denied or abridged on account of membership or nonmembership in, or conditioned upon payments to, any labor union, or labor organization." *Id.* at 361. The court considered the question of "whether Congress has pre-empted the field of regulation of such union-security agreements to the extent that local political subdivisions of a state have no power to legislate in the field." *Id.* at 361-62.

The *Puckett* court considered two interpretations of § 14(b):

> If the view be taken that by Section 8(a)(3) of the National Labor Management Relations Act, as amended, 29 U.S.C.A. § 158(a)(3), Congress did not intend to pre-empt at all the field of union-security agreements, then Section 14(b) would serve no purpose other than to restate and emphasize that fact, and the use of the words 'State or Territory' in Section 14(b) would have no particular significance.
>
> On the other hand, if it be considered that by Section (8)(a)(3) Congress did intend to pre-empt the field of union security agreements then Section 14(b) would seem to serve the function of making a special exception out of the pre-emption. Under the latter view, the words 'State or Territory' very well could be meant to so limit the exception as to exclude local subdivisions.
>
> In our opinion the latter construction is required by the terms of the Act and by its general import and purpose.

Id. at 362 (citations omitted). The court considered that if the NLRA did not intend to preempt the field of union security agreements, then § 14(b) would serve no purpose, as there is no need to provide an exemption from preemption that does not exist. If it did intend to preempt the field, then § 14(b) carves an exception out of the preemption for states. The court found that preemption was required by the terms and purpose of the NLRA.

The *Puckett* court confirmed its interpretation by reviewing *Retail Clerks Int'l Ass'n, Local 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96 (1963), which stated that "even if the union-security agreement clears all federal hurdles, the States by reason of s [§] 14(b) have the final say and may outlaw it. . . . It is a conflict sanctioned by Congress with directions to give the right of way to state laws . . . ." *Id.* at 102-03. Based on *Schermerhorn*, the *Puckett* court reasoned that:

> Section 14(b) makes an exception out of the otherwise full pre-emption by the Act. The exception should be strictly and narrowly construed because it represents a departure from the overall spirit and purpose of the Act. We think it is not reasonable to believe that Congress could have intended to waive other than to major policy-making units such as states and territories, the determination of policy in such a controversial area as that of union-security agreements.

391 S.W.2d at 362 (citations omitted). The *Puckett* court construed § 14(b) narrowly to refer only to states and territories, reasoning that Congress did not want to leave the important field of union security agreements to local regulation.

The court then concluded that "Congress has pre-empted from cities the field undertaken to be entered by the Shelbyville ordinance." *Id.*

III. The Cases Cited By Appellants Do Not Undermine *Puckett.*

A. The Cases Cited By Appellants Do Not Demonstrate That the NLRA Does Not Preempt Local Right-to-Work Ordinances.

Appellants argue that "the District Court's reliance on *Puckett* was erroneous," (Br. Defs.-Appellants 51), on the grounds that it "is contrary to *Schermerhorn, Algoma,* and the NLRA's legislative history." (*Id.* at 50.) First, although Appellants are of course correct that *Puckett*, as a state court's interpretation of federal law, "was neither binding on the District Court nor is it binding on this Court," (*id.* at 49), the District Court did not treat *Puckett* as binding, but performed its own independent analysis, (Mem. Op. Order 3-11, RE 43, Page ID # 1279-87), and in actuality acknowledged *Puckett* only once in passing. (*Id.* at 8, Page ID # 1284.) More generally, as correctly decided by the District Court and as ably argued by Appellees, (Br. Appellees 5-16), *Schermerhorn*, *Algoma*, and the NLRA's legislative history do not demonstrate that Section 14(b) allows for local right-to-work ordinances.

First, Appellants cite *Schermerhorn* for the proposition that "uniformity has never been part of the right-to-work landscape." (Br. Defs.-Appellants 50 (quoting *Schermerhorn*, 375 U.S. at 104-05.)) Appellants neglect that on the very same page they cite, the *Schermerhorn* court stated that "state power, recognized by s 14(b),

begins only with actual negotiation and execution of the type of agreement described by s 14(b). Absent such an agreement, conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under Garmon." 375 U.S. at 105.[3] Rather than allowing for as many variations as there are local subdivisions, the *Schermerhorn* court expressly stated that the state power granted by § 14(b) is limited only to determine whether to enact right-to-work laws, and that regulation of other labor practices is preempted by the NLRA. This is because *Schermerhorn* was concerned with enforcement of the "'right to work' provision of the Florida Constitution," *id.* at 98, and not with a general ability for any political subdivision to enact right-to-work laws.

Schermerhorn also delved into the legislative history of the Taft-Hartley Act, stating that "Congress undertook pervasive regulation of union-security agreements." *Id.* at 100. However, "by the time s 14(b) was written into the Act, twelve States had statutes or constitutional provisions outlawing or restricting the closed shop and related devices." *Id.* The *Schermerhorn* court noted that "Senator Taft . . . stated that s 14(b) was to continue the policy of the Wagner Act and avoid federal interference with state laws in this field." *Id.* at 101-02. A proper reading of *Schermerhorn* makes clear that the purpose of the Taft-Hartley Act regarding § 14(b) was not to dispel the appearance of preemption, but to affirm the limited

[3] The District Court thus correctly held that *Garmon* preemption applies to local right-to-work laws. (Mem. Op. Order 10-11, RE 43, Page ID # 1286-87.)

right of states to enact right-to-work laws. *Schermerhorn* nowhere discusses the rights of political subdivisions to enact such right-to-work laws, and Appellants' careful selection of passages from *Schermerhorn* fails to establish such a right.

Appellants also cite to *Algoma Plywood & Veneer Co. v. Wis. Employment Relations Bd.*, 336 U.S. 301 (1949), decided before *Schermerhorn* and straddling the enactment of the Taft-Hartley Act, for the proposition that "the NLRA creates no federal preemption over non-federal laws forbidding compulsory unionism." (Br. Defs.-Appellants 26.) However, Appellants cannot provide a quote from *Algoma* to that effect, as there are none. Rather, Appellants can only quote *Algoma* to establish that "s 8(3) merely disclaims a national policy hostile to the closed shop" and "did 'nothing to facilitate close-shop agreements or to make them legal in any State where they are illegal; it does not interfere with the status quo on this debatable subject.'" (*Id.* at 25-26 (quoting *Algoma*, 336 U.S. at 307-08.)) As in *Schermerhorn*, *Algoma* dealt with enforcement of a right-to-work law passed by a state, not a local subdivision. 336 U.S. at 303. *Algoma* only establishes what no one in this case contests: states may enact and enforce right-to-work laws.

Schermerhorn and *Algoma* do not undermine *Puckett.* Rather, *Puckett* expressly relied on *Schermerhorn* in its analysis, and *Schermerhorn* was decided after and relied upon *Algoma*. Further, *Puckett* was noted and cited with approval in *Oil, Chem. and Atomic Workers, Int'l Union v. Mobil Oil Corp.*, 426 U.S. 407,

413 n. 7 (1976). The *Puckett* court's interpretation of *Schermerhorn* and the NLRA is correct, and is not refuted by Appellants' careful selection of passages from *Schermerhorn* and *Algoma*.

B. The Cases Cited By Appellants Fail to Demonstrate That Local Ordinances are "State or Territorial Law" Under Section 14(b).

Appellants also argue that "Section 14(b)'s reference to 'state' law includes ordinances adopted by political subdivisions pursuant to delegated state law authority." (Br. Defs.-Appellants 39.) They rely primarily on the holdings of *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597 (1991), and *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424 (2002). (Br. Defs.-Appellants 39-44.) However, *Mortier* interpreted a different statute that was not intended to preempt the field, and *Ours Garage* interpreted different statutes which generally expressly included political subdivisions in an area where local regulation was customary.

Mortier involved the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), which provided that "a State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter." 501 U.S. 606 (quoting 7 U.S.C. § 136v(a)). The court rightly held that "FIFRA fails to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly." *Id.* at 611-12. The court further stated that "the specific grant of authority in § 136v(a) consequently does not serve

to hand back to the States powers that the statute had impliedly usurped." *Id.* at 614. In contrast, § 8(a) of the NLRA serves to preempt the field of union security agreements, and then § 14(b) hands back to the States the powers to enact right-to-work laws. The NLRA does exactly what the *Mortier* court says the FIFRA did not.

In *Ours Garage*, the court considered the Interstate Commerce Act ("ICA"), which provides that "a State, political subdivision of a State . . . may not enact or enforce a law . . . related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 536 U.S. at 429 (quoting 49 U.S.C. § 14501(c)(1)). 49 U.S.C. § 14501(c)(2) and (3) provide the exceptions to § 14501(c)(1), but § 14501(c)(2)(C) and (3)(A) both expressly included the terms "State, political subdivision of a state," while § 14501(c)(2)(A) used only the term "State."

The respondents in *Ours Garage* argued that "the singularly bare reference to '[s]tate' authority in § 14501(c)(2)(A)'s exception for safety regulation must mean that Congress intended to limit the exception to States alone." 536 U.S. at 433. The court conceded that this was "an argument of some force," but concluded that "reading § 14501(c)'s set of exceptions in combination, . . . we concluded that the statute does not provide the requisite 'clear and manifest indication that Congress sought to supplant local authority.'" *Id.* at 434. The court so held because

the ICA dealt "with preemption stemming from Congress' power to regulate commerce, in a field where States have traditionally allowed localities to address local concerns." *Id.* at 439. Unlike the ICA, union security agreements are not an area in which states have traditionally allowed localities to address local concerns; union security agreements have been tightly regulated by federal law since the enactment of the NLRA. The situation presented by the NLRA is thus opposite to that which lead the court in *Ours Garage* to override the ICA's exclusion of the phrase "political subdivision" from one section, when it included it in all others.

In contrast, this Court has held that in a situation similar to this case, where an exception for "state law" was used in an otherwise preemptive scheme, that local regulation was forbidden. In *CSX Transp., Inc. v. City of Plymouth, Mich.*, 86 F.3d 626 (6th Cir.1996), this Court considered whether a municipal regulation concerning trains was preempted by the Federal Railway Safety Act ("FRSA"). *Id.* at 627. Like the NLRA, the FRSA contains an exception to preemption where "a State may adopt or continue in force an additional or more stringent law, regulations, or order related to railroad safety or security" when certain conditions are met. 49 U.S.C. § 20106(a)(2). This Court found that "Congress expressly intended that the FRSA preempt all railroad safety legislation except *state law* governing an area in which the Secretary of Transportation has not issued a regulation or order and *state law* more strict than federal regulations when

necessary to address local problems." *CSX Transp.* 86 F.3d at 628. The court held that "these exceptions apply only to a '*State* . . . law, regulation, or order . . .' As Plymouth is not a 'State,' the challenged Plymouth ordinance is not within the FRSA's preemption clause exceptions." *Id.* (citation omitted). This Court held in *CSX Transportation* that although federal law carved out an express exception from preemption for certain "state" laws, the term "state" did not include municipal ordinances. The same reasoning should apply to the exemption from preemption for state law in the NLRA.

The District Court correctly found that Appellants made "no attempt to show that the NLRA sections at issue in this case are analogous to the FIFRA and ICA provisions discussed in *Mortier* and *Ours Garage*. This is likely because there are virtually no similarities that would justify similar treatment." (Mem. Op. Order 7, RE 43, Page ID # 1283.) This Court has also held in *CSX Transportation*, a context similar to the NLRA in which the federal statute preempted the field but carved out a specific exception for "state law," that "state law" did not include local regulation. Accordingly, the District Court correctly decided that "standard principles of statutory interpretation control," and "'State' law does not include county or municipal law for purposes of § 14(b)." (Mem. Op. Order 7, RE 43, Page ID #1283.)

IV. Other Cases Confirm the Holding of *Puckett.*

Other cases which have directly confronted the question have affirmed that the NLRA preempts local right-to-work laws. In *N.M. Fed'n of Labor Local 1564 v. City of Clovis, N.M.*, 735 F. Supp. 999 (D.N.M. 1990), a case ignored by Appellants, the court similarly struck down a local right-to-work ordinance, holding that "Congress preempted the field of regulation of union security agreements, except to the extent specifically permitted in § 14(b)." *Id.* at 1003. The court found that:

> The Congressional regulation of union security agreements is comprehensive and pervasive. Section 8(a)(3) of the NLRA provides for specific conditions which must be met in order for an agreement to be valid. Congress intended to prohibit non-federal laws which would allow agreements impermissible under the Act. This indicates to me that Congress intended an exclusive regulatory system and that § 8(a)(3) so thoroughly regulates the subject of union security agreements so as to preempt the matter from state legislation except to the extent specifically permitted under § 14(b) of the Act.

Id. at 1002 (citations omitted). The court found a comprehensive scheme of legislation in the NLRA with a clear intent to preempt other legislation except as expressly permitted.

The *City of Clovis* court also based its reasoning on the plain language of the statute. "Looking to the language of the statute, § 14(b) permits union security agreements to be prohibited by 'State or Territorial law.' No mention is made of local ordinances or other means." *Id.* at 1004. The court further noted that "courts

have held that as a matter of plain language, reference to a 'state' does not include reference to subdivisions of the state." *Id.* (citing *Consol. Rail Corp. v. Smith*, 664 F. Supp. 1228, 1237 (N.D. Ind. 1987) (citing cases)).

Similarly, in *Grimes & Hauer, Inc. v. Pollock*, 127 N.E.2d 203 (Ohio 1955), the court considered whether "decisions of this court . . . have established the 'right to work' law in Ohio." *Id.* at 207. The court concluded that "Section 164(b) has reference to a constitutional provision or a legislative enactment," *id.*, holding that a right-to-work law must be enacted by either the legislature or adopted as a constitutional provision.

Kentucky's highest court and other courts have found that the plain language and the intent of § 14(b) of the NLRA preempts local governments from enacting right-to-work laws. This Court should follow the reasoning of the other courts and affirm the District Court's conclusion that local governments are preempted by the NLRA from enacting right-to-work laws.[4]

[4] Although the Commonwealth is primarily concerned with the possibility of local right-to-work ordinances, Appellants also argue that local regulation of hiring hall and dues checkoff provisions is not preempted by the NLRA. (Br. Defs.-Appellants 51-57.) The Commonwealth maintains that the District Court appropriately followed clearly established precedents in finding that local regulation of hiring hall and dues checkoff provisions is preempted by the NLRA. (Mem. Op. Order 11-14, RE 43, Page ID # 1287-90.)

V. Preemption Of Local Right-To-Work Ordinances Is Sound Public Policy.

The policy expressed in *Puckett* and other cases is sound, as the Commonwealth has an obvious and significant public interest in determining uniformity of working terms and conditions throughout the state regarding union and agency shops. If local governments were allowed to determine individually whether to enact right-to-work laws, it could and likely would result in significantly different working conditions between neighboring counties. And not just between counties, but within them, as cities have home rule power, KY. REV. STAT. ANN. § 82.082, and could enact their own right-to-work ordinances or override the county's ordinance. *Id.* § 67.083(7)(b). These varying ordinances could cause population shifts that would have a serious impact on local governments, as businesses may swiftly relocate, causing serious harm to the budgets, long-term planning, and services provided by local governments. A patchwork of right-to-work laws varying between the 120 Kentucky counties and the over 400 Kentucky cities would create an impossibly uncertain legal framework in the area of union security agreements.

For those reasons, the *Puckett* court stated:

> It is not reasonable to believe that Congress could have intended to waive other than to major policy-making units such as states and territories, the determination of policy in such a controversial area as that of union-security agreements. We believe Congress was willing to permit varying policies at the state level, but could not have

> intended to allow as many local policies as there are local political subdivisions in the nation.

391 S.W.2d at 362. The *Puckett* court saw the confusion that would be created by wild variance in right-to-work laws between local governments, and did not believe that Congress intended such wild variance in such a controversial area as union security agreements. The *City of Clovis* court concurred:

> It is true that by enacting § 14(b), Congress contemplated diversity of regulation throughout the country on the subject of union security agreements. . . . However, the diversity that arises from different regulations among various of the 50 states and the federal enclaves within the 21 right-to-work states is qualitatively different from the diversity that would arise if cities, counties, and other local governmental entities throughout the country were free to enact their own regulations. A consequence of such diversity for both employers and unions would be to subject a single collective bargaining relationship to numerous regulatory schemes thereby creating an administrative burden and an incentive to abandon union security agreements. This result would effectively undermine Congress' determination in § 8(a)(3) of the Act that union security agreements are consistent with federal labor policy and would similarly undermine the NLRA's purpose by discouraging rather than encouraging bargaining on "conditions of employment."

735 F. Supp.at 1002-03. The *City of Clovis* court reasoned that the intent of Congress in enacting § 14(b) was to permit diversity of regulation regarding union security agreements, but not the level and kind of diversity that would arise if each local government entity were to have the authority to enact right-to-work laws. "The result would be a crazy-quilt of regulations within the various states." *Id.* at 1002. Both the *Puckett* and *City of Clovis* courts contemplated and rejected as

unreasonable that Congress intended a "crazy quilt of regulations" within states regarding right-to-work laws.[5]

Just as importantly, forbidding local governments from enacting right-to-work ordinances benefits businesses as well by assuring them statewide stability in right-to-work laws, without being subject to the whims of local governments. If a local government can enact a right-to-work ordinance, it can just as easily repeal that ordinance. A business choosing to establish operations in an area with a right-to-work ordinance may soon find that a shift of one vote in a county fiscal court or city council could repeal that right-to-work ordinance, leaving the business with significantly different costs and plans than the business had expected. Congress wisely saw the need for uniformity throughout a state in right-to-work laws, to provide that any businesses contemplating establishing operations in a state could be reasonably assured that the laws governing union security agreements would

[5] *See also* Ted Finman, *Local "Right To Work" Ordinances: A Reply*, 10 STAN. L. REV. 53, 71 (1957):

> If one stops to consider the possible consequences of city and county regulation, it seems inconceivable that Congress could have intended the words "State . . . law" to have any but their literal meaning. Where an appropriate bargaining unit extends into two or more states, differing state laws on union-shop agreements can create highly complex problems. Imagine the situation if tens or hundreds of varying union-shop laws must be considered in negotiating a collective bargaining agreement! Yet if "state" means "city and county," the way is left open for just such chaos.

remain relatively stable, and not subject to small or multiple changes in local governments.

Courts and commentators have consistently recognized that allowing each individual local government to enact right-to-work ordinances could create an untenable "crazy quilt" of hundreds of different union security frameworks within a single state. Accordingly, this Court should follow the *Puckett* court and other courts in finding that limiting the ability to pass right-to-work laws to states only, and not to political subdivisions, is sound public policy.

CONCLUSION

For the reasons argued above, this Court should affirm the District Court's finding that local governments are preempted by the National Labor Relations Act from enacting right-to-work ordinances.

CERTIFICATE OF COMPLIANCE

Under FED. R. APP. P. 32(a)(7)(B) and (C), I hereby certify that this Brief for Amicus Curiae was prepared using a proportional 14-point typeface and contains 4,381 words (excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii)) as calculated by the word processing system used to prepare this brief).

CERTIFICATE OF SERVICE AND NOTICE OF ELECTRONIC FILING

It is hereby certified that a true copy of the foregoing was filed on this the 20th day of June, 2016 via the CM/ECF system.

/s/ Matt James
Matt James
Assistant Attorney General

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Record Entry	Date	Description of Document	Page ID #
5 Ex. A	2/24/2015	Answer Ex. A – Ordinance	94-98
43	2/3/2016	Memorandum Opinion and Order	1277-90