

No. 08-1319

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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RONNIE ADCOCK et al.,  
*Petitioner,*

v.

FREIGHTLINER LLC et al.,  
*Respondents.*

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On Petition For Writ of Certiorari To The United  
States Court of Appeals For The Fourth Circuit

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**MOTION FOR LEAVE TO FILE BRIEF AS  
AMICI CURIAE AND BRIEF AMICI CURIAE OF  
THE NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS AND THE  
SOCIETY FOR HUMAN RESOURCE  
MANAGEMENT IN SUPPORT OF THE  
PETITIONER**

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**MOTION FOR LEAVE TO FILE BRIEF AS  
*AMICI CURIAE* IN SUPPORT OF THE  
PETITIONER**

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The National Federation of Independent Business Small Business Legal Center (NFIB) and the Society for Human Resource Management (SHRM), by undersigned counsel, hereby move pursuant to Court Rule 37 for leave to file a brief as *amici curiae* in support of the Petition for Writ of Certiorari in the above-captioned matter. As grounds for this motion, the *Amici* state as follows:

1. NFIB is the nation's leading small business association, with offices in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses. The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. Representing more than 250,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Both NFIB and SHRM have filed *amicus* briefs with this Court on issues of great importance to their members and to the business community as a whole.
2. NFIB AND SHRM seek leave to file this *amici* brief in support of the Petitioner because the Petition raises issues of great importance to the business community. In particular, NFIB and SHRM wish to bring to the Court's attention the adverse impact on public policy and labor law generally if the Fourth Circuit's decision is allowed to stand. The Fourth Circuit's misreading of LMRA Section 302's "thing of value" prohibition not only creates a conflict among the circuits, but will also improperly encourage unions to extort valuable organizational assistance from employers, violating the plain language of section 302.

3. The *Amici* have timely informed counsel for all parties of their intent to file this *amici* brief. The Petitioners and the Union Respondent have consented to this filing but Respondent Freightliner has declined to do so.

Wherefore, for the reasons above stated, NFIB and SHRM request that their motion for leave to file the attached brief as *amici curiae* be granted.

Respectfully submitted,

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**INTERESTS OF THE *AMICI***<sup>1</sup>

The National Federation of Independent Business Small Business Legal Center (NFIB Legal Center), a nonprofit, public interest law firm established to be the voice for small business in the nation's courts and the legal resource for small business, is the legal arm of the National Federation of Independent Business (NFIB). NFIB is the nation's leading small business association, with offices in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses. NFIB represents about 350,000 member businesses nationwide. To fulfill its role as the voice for small business, the NFIB Legal Center frequently files *amicus* briefs in cases that will impact small businesses.

The Society for Human Resource Management (SHRM) is the world's largest association devoted to

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<sup>1</sup> Pursuant to Supreme Court Rule 37.2, the *Amici* state that all parties have consented to the filing of this brief, except for Respondent Freightliner. Therefore, a motion for leave to file is being submitted together with this brief. Pursuant to Supreme Court Rule 37.6, the *Amici* further state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *Amici*, their members, or their counsel made a monetary contribution to its preparation or submission.

human resource management. Representing more than 250,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

NFIB AND SHRM are filing this *amici* brief in support of the Petition because the Petition raises issues of great importance to the business community. In particular, NFIB and SHRM wish to bring to the Court's attention the adverse impact on public policy and labor law generally if the Fourth Circuit's decision is allowed to stand.

### SUMMARY OF ARGUMENT

The Fourth Circuit's failure to enforce the plain language of Section 302 leaves employers at the mercy of union corporate campaigns whose primary purpose is to extort organizational assistance. Such assistance is inherently valuable to unions, and that is why they are willing to spend significant resources on corporate campaign pressure tactics in order to obtain it. Many of the *Amici's* members have been the targets of such campaigns. Employers require the protection of Section 302 in order to remove the incentives that currently exist for unions to engage in corporate campaigns. This Court's review of the Petition is urgently required in order to restore meaning to Section 302 by recognizing that organizational assistance is a "thing of value" which unions should not be allowed to extort.

**ARGUMENT****I. ABSENT REVIEW BY THIS COURT, THE FOURTH CIRCUIT'S MISREADING OF SECTION 302'S "THING OF VALUE" PROHIBITION WILL IMPROPERLY ENCOURAGE UNIONS TO EXTORT VALUABLE ORGANIZATIONAL ASSISTANCE FROM EMPLOYERS, VIOLATING THE PLAIN LANGUAGE OF SECTION 302.**

By declaring that employer assistance to union organizing is not a "thing of value" within the meaning of Section 302, the Fourth Circuit's decision allows unions to put pressure on employers to obtain such assistance, including access to private property, paying for and conducting mass meetings of employees, communications, and confidential information. Union pressure tactics against many employers, including members of the *Amici*, are becoming widespread because of the courts' failure to enforce Section 302 according to its plain meaning and original intent. The *Amici* are therefore submitting this brief in order to make the Court aware of the adverse continuing impact on the business community that will result from the Fourth Circuit's erroneous decision, absent review by this Court.

As explained in the Petition, Section 302 was intended "to deal with 'extortion or a case where the union representative is shaking down the employer.'" *Arroyo v. United States*, 359 U.S. 419, 426 n.8 (1959)

(quoting 93 Cong. Rec. 4746 (Sen. Taft)). Congress sought to "prohibit[ ], among other things, the buying and selling of labor peace." S. Rep. No. 98-225 (1984), reprinted 1984 U.S.C.C.A.N. 3182, 3477. See also S. Rep. No. 86-187 (1959), reprinted 1959 U.S.C.C.A.N. 2318, 2329 (congressional intent that the statute be "applicable to all forms of extortion or bribery in labor-management relations.").

Significantly, the statute does not merely prohibit payment of money to union agents who already represent the employer's employees. Instead, Section 302 prohibits both the payment of "money or other thing of value" (emphasis added); and the Act expressly prohibits employers from providing such things "to any labor organization ... which ... seeks to represent ... any of the employees of such employer."

Many employers have already become targets of union "corporate campaigns" whose stated purpose is to pressure them to enter into organizing assistance agreements. These union campaigns are unquestionably a form of extortion designed to gain something from employers that has great value to unions, *i.e.*, assistance in organizing the employers' employees. See Northrup & Steen, *Union 'Corporate Campaigns' as Blackmail: the RICO Battle at Bayou Steel*, 22 Harv. J.L. & Pub. Pol'y 771, 779-93 (1999).

Though not addressed by the Fourth Circuit, union corporate campaigns have been acknowledged by other courts as involving a "wide and indefinite range of legal and potentially illegal tactics," including "litigation, political appeals, requests that

regulatory agencies investigate and pursue employer violations of state and federal law, and negative publicity campaigns aimed at reducing the employer's goodwill with employees, investors, or the general public." *Food Lion, Inc. v. UFCW*, 103 F.3d 1007, 1014 n.9 (D.C. Cir. 1997)); *see also Diamond Walnut Growers v. NLRB*, 113 F. 2d 1259 (D.C. Cir. 1997); *Smithfield Foods v. UFCW*, 585 F. Supp. 2d 789, 795-97 (E.D. Va. 2008).

Richard Trumka, Secretary-Treasurer of the AFL-CIO, has similarly stated: "Corporate campaigns swarm the target employer from every angle, great and small, with an eye toward inflicting upon the employer the death of a thousand cuts rather than a single blow." Manheim, *The Death Of A Thousand Cuts: Corporate Campaigns And The Attack On The Corporation* (Lawrence Erlbaum Assoc. 2001). *See also* La Botz, *A Troublemakers Handbook* 127 (Labor Notes 1991) ("Every law or regulation is a potential net in which management can be snared and entangled. A complaint to a regulatory agency can cause the company managerial time, public embarrassment, potential fines, and the cost of compliance.").

The result of such union campaigns is often a perversion of the union organizing process, having little to do with the wishes of employees to organize or refrain from organizing, and having much more to do with the great expense to which targeted employers are subjected and what they will do to end the extortion. *See* Northrup, *Corporate Campaigns: The perversion of the Regulatory Process*, 17 J. LAB. RES. 345 (1996). Union corporate campaigns have

